

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC

SUPERIOR COURT

(FILED – OCTOBER 24, 2008)

ROSEMARY DAVIDSON

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v

C.A. No.: NC-2007-0396

NATIONAL EDUCATION  
ASSOCIATION MIDDLETOWN

**DECISION**

**THUNBERG, J.** Before this Court for decision are Plaintiff’s motions for partial summary judgment on Count I (“unfair representation”) and Defendant’s cross motions for summary judgment on Counts I, II (“breach of contract”) and III (“bad faith”). The essence of this controversy is an unfair representation claim brought by the Plaintiff, Rosemary Davidson (“Davidson”) against the Defendant Union, the National Education Association Middletown (“the Union”).

**Travel and Facts**

Davidson was a guidance counselor at the John F. Kennedy Elementary School in Middletown until June 2006. Throughout her career, the Union represented Davidson for purposes of collective bargaining. (Df.’s Mem. at 2.) In January 2006, Davidson sent her retirement notice to the Middletown School Department. This letter failed to include language required by the Collective Bargaining Agreement (“CBA”), that the “retirement is irrevocable effective the last day of school.” (Pl.’s Mem. at 2; Pl.’s Ex. 3.)<sup>1</sup> The Middletown School Committee (“MSC”) voted to accept Davidson’s retirement during its February 16, 2006 meeting. Sadly and suddenly, on May 8, 2006, Mrs. Davidson’s husband died of a heart attack. Understandably, Mrs. Davidson determined that a future without her beloved husband and her

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<sup>1</sup> Plaintiff was unaware of Art. XIX(A)(3) of the CBA and had no assistance from the Union in preparing her retirements letter (Pl.’s Aff., paragraphs 6 and 7).

career would be a “very difficult and painful experience.” (Pl.’s Memo., p. 2). Thus, she sought to rescind the aforementioned retirement letter and initiated process of the rescission approval.

On May 22, 2006, the State Retirement Office informed Davidson that her rescission of retirement would be acceptable if the Middletown School Department (“MSD”) concurred. The Middletown School Department, in turn, informed Davidson that the rescission would be permitted if the Union was not in opposition. Davidson formally requested that her retirement be rescinded by way of a letter, dated May 30, 2008, addressed to the Middletown Superintendent of Schools and the Middletown School Committee (“MSC”). (Pl.’s Ex. 5.)

On June 7, 2006, the Union’s President and President-Elect forwarded a letter to the NEA Middletown stating: “Due to the unfortunate circumstance surrounding the retirement of [Davidson], the rescinding of her resignation letter for the purpose of retirement will not set precedent for further requests.” (Pl.’s Ex. 6.) This agreement was presented to the MSC on June 15, 2006 and the MSC subsequently voted to accept the rescission, subject to the Union’s approval.

It was unclear whether Davidson’s reinstatement would violate the “recall rights” of another teacher; viz., whether a teacher on the “layoff list” would be prejudiced. (Df.’s Ex. 1, p.10.) Attorney Richard Updegrave (“Updegrave”), the school committee’s president, approached both the current Union president, Betty Hughes (“Hughes”), and the incoming Union President, Lisa Wood (“Wood”), to express concern over the matter. Id. Updegrave informed Hughes and Wood that during the executive session, school committee member, Lisa Fenton (“Fenton”) was concerned that Davidson’s retirement rescission would violate the recall rights of another teacher. Id. The “layoff list” has existed in Middletown for over 30 years and requires the MSC to notify the Union and all affected members of intended layoffs. (Df.’s Ex. 2, p.5.)

When an opening occurs, the most senior certified member on the layoff list is automatically recalled to fill the vacancy. Id. Davidson claims that, in July 2006, after requesting advice from the Union and a hearing to state her claim, she was rebuffed.

The Union decided to reject Davidson's rescission after determining that a teacher on the layoff list, Kristen Pachico ("Pachico"), was entitled to be recalled. The Union determined that it could not waive Pachico's rights by agreeing not to file a grievance if the school committee voted to allow Davidson to rescind her retirement. During the summer of 2006, the MSC eliminated the position of guidance counselor for budgetary reasons.

When Davidson learned of this change in August 2006, she appealed the MSC's decision to the Commissioner of Education to determine if an agreement to rescind the retirement had been effectuated, thus entitling Davidson to her former position. The Department of Education found, in a written decision of January 2007, that the MSC could not be required to allow Davidson to rescind her retirement and did not act unreasonably or arbitrarily. Specifically, the Department of Education found that the School Committee's position was justifiable because its decision was made to avoid a grievance relative to the recall issue. In February 2007, Davidson's counsel sent a letter to the National Education Association Rhode Island. Asserting that Davidson should have received a "Belanger Hearing" in June 2006.

On July 27, 2007, Davidson filed the within unfair representation claim against the Union seeking judgment against the Union in an amount sufficient to compensate her for lost wages, lost earning capacity, and pain and suffering associated with the Union's failure to provide Davidson with a Belanger Hearing.<sup>2</sup>

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<sup>2</sup> The concept of a Belanger Hearing arises from the Rhode Island Supreme Court's holding in Belanger v. Matteson, 346 A.2d 124 (R.I. 1975). In Belanger, the Supreme Court held that when a conflict or grievance arises between competing union members, the union must investigate the matter and must afford each party an opportunity to present his or her case.

Vincent P. Santaniello (“Santaniello”), the current Deputy Executive Director of the NEA Rhode Island, testified as to the then current hearing process afforded to union members. (Df.s Ex. 2, p. 9.) Subsequent to Belanger, the Union has adopted a procedure for a “fair rep hearing.” Id. A “fair rep hearing” generally occurs in the context of a promotional situation where two union members are competing for the same promotion. Id. When one member is selected over the other, the union provides all affected members an opportunity to present any relevant information, such as evidence of qualifications or experience. Id. The Union conducts this type of hearing for the purpose of revealing facts unknown to the Union. (Df.s Ex. 2, p.9.) Following the hearing, the Union determines whether it is appropriate to file a grievance on behalf of any member, and provides notice of its decision to all affected members. Id. Santanello further testified that a “fair rep hearing” was not warranted based on the circumstances of this case. Id. Santanello’s opinion was based upon the conclusion that there were no facts unknown or unavailable to the Union. Id.

### **Analysis**

In this case, Davidson argues that the Union unfairly represented her because the Union failed to conduct a Belanger Hearing per Davidson’s request. Thus, Davidson contends that the Union acted in bad faith when it failed to hear both her and Pachico’s respective arguments. Conversely, the Union argues that, in accordance with Belanger, Davidson was never entitled to such a “Belanger Hearing.” The Union claims that such a hearing is not mandatory and further asserts that Davidson has failed to establish the manner in which the Union acted arbitrarily or in bad faith so as to a breach its duty of fair representation.

The Union maintains that it did not conduct a “Belanger Hearing” because “the material facts were known to the Union” and “[it] was aware of all the material and relevant facts” and,

“able to make a good faith, informed judgment on the merits of the conflicting claim in this matter.” (Rsp. To Int. 3 No. 3.) The Union also contends that Davidson did not request a Belanger hearing until eight months after her effective retirement in the form of a letter dated February 21, 2007. Davidson disputes this assertion, claiming that the February 21, 2007 letter was not a request, but rather notification of a claim being made against the Union for failure to hold a “Belanger Hearing.” Davidson further maintains that she sought the Union’s advice in July 2006, but it refused to do so. Davidson subsequently sought the advice of an attorney who requested a hearing from the Union and he was also denied. Therefore, in light of the facts and circumstances of this case, this Court must determine if a “Belanger Hearing” was necessary.

### **Duty of Fair Representation**

“The duty of fair representation is a union member’s protection against the tyranny of the union majority.” Voccio v. General Signal Corp., 732 F. Supp. 292, 295 (D.R.I. 1990) (holding that employees failed to provide sufficient evidence proving that union breached its duty of fair representation). Due to the large number of members a union generally represents, a statutory bargaining representative is afforded a “wide range of reasonableness” in serving the unit it represents, always subject to “complete good faith and honesty of purpose when exercising its discretion.” Voccio v. General Signal Corp., 732 F. Supp. at 295 (quoting Ford Motor Co. v. Huffman, 345 U.S. 330, 338, 73 S.Ct. 681, 686, 97 L. Ed. 173 (1944)). “Given the latitude a court grants to a union [official], the plaintiff’s burden in proving the breach of the duty of fair representation is heavy: They can succeed only if they show the union acted in an ‘arbitrary, discriminatory, or . . . bad faith’ manner . . . .” Id. at 296 (quoting Vaca v. Sipes, 386 U.S.171, 190, 87 S.Ct. 903, 916, 17 L.Ed.2d 842 (1967)). Our Supreme Court has held, however, that, “a requirement of bad faith is an undue restriction on the duty of fair representation.” Belanger v.

Matteson, 115 R.I. 332, 344, 346 A.2d 124, 132, n. 4 (1975) (adhering to the decision of other courts to reject the requirement that in order to find a breach of the duty of fair representation, the union's conduct must be not only arbitrary but also in bad faith).

In Belanger v. Matteson, the Rhode Island Supreme Court addressed the issue of whether a union breaches its duty of fair representation owed to a teacher if the union fails to offer that teacher an opportunity to present his or her case to it. Belanger v. Matteson, 115 R.I. at 330, 346 A.2d at 129 (holding union's failure to provide teacher with opportunity to present case to be breach of duty of fair representation). In Belanger, the plaintiff was awarded a position as head of the Business Department at a Warwick high school over competing union member defendant Matteson. Matteson then filed a grievance with the union, which ultimately resulted in an arbitration that awarded the job to Matteson. Belanger then filed a grievance with the union, but the union refused to ask for Belanger's reinstatement because doing so would effectively reverse a decision resulting from another union grievance. The undisputed testimony indicated (1) that the union and its representatives acted throughout the grievance procedure without ever contacting Belanger or considering his qualifications for the position; (2) that the union sided with Matteson in seeking Belanger's removal; and (3) that at the arbitration hearing, the union representative attempted to demonstrate that Matteson was entitled to the position. Thus, the Belanger Court determined that the union never offered Belanger an opportunity to present his case to it. In doing so, the Belanger Court found that the union breached its duty of fair representation owed to Belanger. Nonetheless, our Supreme Court also held that the union demonstrated no bad faith or arbitrary behavior.

Before reaching its decision, the Belanger Court considered the duty of fair representation and determined that this duty, "must not be such as to squelch union advocacy of

position, nor must it weaken the union's ability to act when it does for all its members, even those whose interests may not be served but who are nonetheless bound by the majority vote." Id. at 129. The Belanger Court also recognized that a union must often take sides, but emphasized that such side-taking should be done in a "nonarbitrary manner, based on its good-faith judgment as to the merits of the conflicting claims." Id. at 132.

Although the Belanger Court did not address a union's duty in the context of ordinary decision-making or investigations, the court did outline a union's obligations towards its members with respect to the negotiation process. Id. at 131. Specifically, the court stated, "a union must make an honest effort to serve the interest of all its members, without hostility to any, and its powers must be exercised in complete good faith and with honesty of purpose." Belanger, 346 A.2d 124, 131. To accomplish such service, the Belanger Court introduced the concept of the "Belanger Hearing," and stated:

"It seems to us that the only fair procedure in this type of a conflict is for the Union, at the earliest stages of the grievance procedure, to investigate the case for both sides, to give both contestants an opportunity to be heard, and to subject their qualification to the Union. We are not mandating a full-blown hearing, replete with strict rules of procedure and adversary proceedings. If the Union investigates in an informal manner, this would be sufficient so long as its procedure affords the two employees the ability to place all the relevant information before the Union." Id. at 131 [citations omitted].

The Belanger Court further held that when considering a union's act of discharging its duty to the bargaining unit members, the union's motives must be examined. Belanger, 346 A.2d at 132. A union provides sufficient employee protections if a court can insure that the union has fairly considered both sides before taking a stand. Id.<sup>3</sup> In accordance with Belanger, it can be

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<sup>3</sup> The Belanger Court ultimately held that the union breached its duty of fair representation because, "the Union chose sides totally on the fortuitous circumstances of who the School Committee did not hire . . . the [u]nion and its

assumed that union decision-making, like negotiation or grievance-arbitrations, must also be performed by a union in a non-arbitrary manner, and based on its good-faith judgment. Belanger, 346 A.2d at 132.

In accordance with Belanger, this Court holds that the Union's denial of Davidson's request for a Belanger hearing constituted a breach of the Union's duty to fairly represent the interests of its members. See Belanger, 346 A.2d at 132. Although the Union relies on numerous cases stating that a union breaches its duty of fair representation only when it acts arbitrarily or in bad faith, Belanger trumps such arguments. Belanger expressly and concisely states that although a formal hearing is not required in every union dispute, a union is always required to afford "two employees the ability to place all relevant information before the [u]nion." Belanger 346 A.2d at 344.

As the union in Belanger denied Belanger an opportunity to present his case, Davidson was similarly denied an opportunity to be heard by the Union. Here, the Union admits that it denied Davidson's request for a hearing because the Union claimed that it was aware of all relevant information prior to making its decision to reject Davidson's retirement rescission. Furthermore, the Union claims that the purpose of a Belanger Hearing is to obtain information from Union members that is otherwise generally unknown or unavailable to the Union. The facts that the Union were admittedly aware of were:

1. Davidson submitted a letter of retirement in January 2006;
2. In June 2006, Davidson requested that the MSC consider allowing her to rescind the letter of retirement;
3. Initially, the Union was not averse to the MSC's consideration of Davidson's request and agreed that the letter should be rescinded;

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representatives acted without ever contacting the plaintiff or considering his qualifications for the position." Nonetheless, the Belanger Court also held that the union's breach did not cause a reversal of the arbitrators' award in favor of the defendant union. Our Supreme Court based this decision on the fact that the school committee, whose position was coextensive with the plaintiff's position, had forcefully argued the plaintiff's position before the arbitrators.

4. Upon further investigation, the Union ascertained that there was a member on layoff who was eligible for recall to the position vacated by Davidson;
5. The Union determined that if Davidson's retirement letter was rescinded, the recall of the other member on layoff would be blocked. (Pl.'s Ex. B, pp. 2-3.)

Conversely, Davidson argues that the Union was not fully informed when it decided to reject her request for retirement rescission. Davidson contends that until she stopped work in June 2006, she continued to fill her guidance counselor position, and therefore, the position was never vacant. She further argues that her position would not be vacant until her efforts to rescind her retirement were exhausted and she ceased working for the Middletown schools at the end of the 2006 school year. In support of this argument, Davidson points to Article XIX (A)(3) of the CBA, which states that under the school's "Early Retirement Incentive Program," resignation becomes effective on the last day of the school year. (Pl.'s Ex. 12 p. 30.)

Davidson also argues that as of the 2006 school year, the CBA contained no contractual obligation to recall laid-off teachers to positions which became vacant. Davidson emphasizes that this recall procedure was only memorialized in the succeeding CBA, which became effective on September 1, 2007. Instead, Davidson maintains that the CBA in effect at the time Davidson sought to rescind her retirement contained an Article X entitled "Promotions and Vacancies," but did not discuss recalls. (Pl.'s Ex. 11.) Davidson argues that the inclusion of "recall" language in the 2007 CBA denotes a lack of a contractual obligation to uphold the recall policy prior to this date; otherwise, such contractual language would be unnecessary.

Belanger expressly states that, "[f]or a union to make a decision affecting its members without investigating the underlying factual situation is a clear breach of the duty of fair representation." Belanger, 346 A.2d at 344. Even if this Court did agree with the Union's contention that in accordance with Belanger, a "fair rep hearing" is unnecessary when the Union thoroughly investigates a factual situation and is aware of all relevant information, such an

argument is unavailing here. As Davidson correctly argues, the Union was not aware of all relevant information when it made its decision to reject Davidson's retirement rescission. Rather, as Davidson asserts, the Union chose to ignore the CBA language that *did* exist at the time Davidson attempted to rescind her retirement. This CBA language stated that resignation was effective upon the last day of school. Davidson submitted her letter of retirement on January 26, 2008. Thus, Davidson's position was arguably not vacant until the final day of the 2006 school year and, therefore, Pachico was arguably not entitled to be recalled until such time.

The Union breached its duty of fair representation owed to Davidson when it failed to provide Davidson with a Belanger Hearing and an opportunity to present such arguments. Had the Union afforded Davidson such an opportunity, Davidson would have called the Union's attention to the absence of a recall provision in the CBA, as well as the inclusion of such a provision in the succeeding year's CBA. Davidson also would have emphasized that her resignation arguably did not take effect until the last day of school and that as a result, Pachico was not entitled to Davidson's position on the day that her retirement became effective. Thus, the Union did not have all the relevant information required to make an informed decision and thus did not have the right to dispense with the "Belanger Hearing" process. Although such information may not have persuaded the Union to approve Davidson's retirement rescission, it was, nonetheless, relevant to a meaningful hearing. Therefore, in accordance with Belanger, Davidson was entitled to an opportunity to present such information to the Union in support of her retirement rescission.

### **Conclusion**

For the foregoing reasons, this Court concludes that the Union breached its duty of fair representation owed to Davidson by failing to conduct a Belanger Hearing. Thus, the Court

grants the Plaintiff's motion for partial summary judgment as to liability. (Count I).<sup>4</sup> Counsel for the Plaintiff shall prepare an order conforming to this decision.

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<sup>4</sup> Plaintiff has interposed no opposition to the Defendant's motions for summary judgment on Count II ("breach of contract") and Count III ("bad faith") and those motions are also granted. Note: no contract existed at the pertinent time between these parties.