

STATE OF NEW MEXICO
COUNTY OF GRANT
SIXTH JUDICIAL DISTRICT

JOHNNY M. TRUJILLO,
Plaintiff,

v.

No. D-0608-CV-2015-00250

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES 3973,
Defendant.

**ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

THIS MATTER came before the Court March 13, 2017 for Hearing on Defendant American Federation of State, County & Municipal Employees 3973 ("AFSCME") Motion for Summary Judgment filed January 12, 2017; Plaintiff Johnny M. Trujillo's Response filed January 30, 2017; and AFSCME's Response filed January 30, 2017. Donald Gilpin appeared telephonically on behalf of Trujillo. James A. Montalbano appeared telephonically on behalf of AFSCME. The Court, being advised, FINDS:

1. Trujillo's Complaint alleges AFSCME breached its duty of fair representation by:
 - a. Failing to adequately represent Trujillo at his hearing on an unspecified date in September, 2014 before an administrative law judge at the State Personnel Board; and
 - b. Failing to timely inform him of the State Personnel Board's final decision which allegedly prevented him from appealing to the District Court.
2. AFSCME argues it is entitled to summary judgment because:

Summary

- a. Trujillo's Complaint is time-barred; and
- b. AFSCME's conduct towards Trujillo was not arbitrary, discriminatory or in bad faith, which is the required standard for a breach of fair representation claim.

TIMELINESS

3. AFSCME argues Trujillo did not file his Complaint within the six-month statute of limitations applicable to breach of the duty of fair representation claims. *Motion*, pp. 8-10 (citing, *inter alia*, *DelCostello v. Int'l Brotherhood of Teamster*, 462 U.S. 151 (1983); *Regents of the Univ. of N.M. v. M.M. Fed. of Teachers*, 1998-NMSC-020, ¶ 18, 125 N.M. 401, 962 P.2d 1236; *Akins v. United Steelworkers of America*, 2009-NMCA-051, ¶¶ 11-18, 146 N.M. 237, 208 P.3d 457).
4. Trujillo did **not** file a Complaint within six months of AFSCME's alleged failure to adequately represent him at the September, 2014 proceeding.
5. Trujillo did **not** file a Complaint within six months of the final agency decision of March 27, 2015.
6. Trujillo does **not** dispute six months is the relevant statute of limitations. *Response*, p. 11.
7. AFSCME argues it advised Trujillo of the administrative law judge's decision and provided Trujillo copies of the relevant documents prior to the final agency decision. *Motion*, ¶¶ 20, Ex. 2, *Deposition of Rose Sanchez*, 31:12-20; 33:20-34:9.

8. AFSCME argues Trujillo was informed separately by Rose Sanchez and Steve Griego of the State Personnel Board's final decision upholding his termination and his right to appeal **within a week to 10 days after March 27, 2015**. *Motion*, p. 8; Ex. 2, *Deposition of Rose Sanchez*, 32:24-33:13, 34-24-35:3; 35:22-36:5; Ex. 4, *Answer to Interrogatory No. 6*; Ex. 3, *Deposition of Steve Griego*, 20:6-10; 22-12-22; 23-14-24; 24:25-25:7, 24:8-15.
9. AFSCME further argues Trujillo was advised of his appeal right throughout the hearing process and his ability to check to State Personnel Board website for a report of the final decision. *Motion*, ¶¶ 22-23; Ex. 2, *Deposition of Rose Sanchez*, 37:16-21; 35:10-18;
10. AFSCME itself first learned of the final decision **through the State Personnel Board's website**. Ex. 4, *Answer to Interrogatory No. 6*; Ex. 3;
11. Trujillo argues he filed his Complaint within six months of **June 19, 2015**, the date Trujillo argues he learned of the adverse decision. *Id.*, p. 11.
12. Trujillo argues:
 - a. Steve Griego did not inform him of the administrative law judge's January 7, 2015 decision or the Board's final decision March 27, 2015 until June 17, 2015;
 - b. Rose Sanchez did not inform him of the administrative law judge's January 7, 2015 decision or the Board's final decision March 27, 2015 until June 18, 2015;

- c. Griego, Sanchez and the hearing officer did not tell him he had 30 days to appeal the final decision or that he could check the status of his case online;
- d. Griego and Sanchez did not return Trujillo's phone calls; and
- e. Trujillo told Sanchez and Griego he did not have a computer, so he could not have checked the status of his case.

Response, Ex. A, Affidavit of Johnny Trujillo.

- 13. Even if Trujillo's representations are true they do not create an issue of material fact as to timeliness.
 - 14. With reasonable diligence Trujillo would have known the status of his case and been able to timely appeal.
 - 15. Trujillo **participated in the hearing** before the administrative law judge conducted in Santa Fe September, 2014 and **knew a decision was forthcoming.**
- Complaint, ¶ 13.*
- 16. Trujillo admits he never asked Rose Sanchez about the mechanics of appealing his case. *Response, ¶ 25.*
 - 17. Trujillo admits he was told the Union would **not** pursue the appeal on his behalf and **nothing** in the Union's collective bargaining agreement required it to pursue an appeal of the final decision. *Motion, ¶¶ 41-42, Ex. 5, Collective Bargaining Agreement, Art. 14; Response, ¶¶ 41-42.*
 - 18. AFSCME argues Regulations governing New Mexico's Public Employees Bargaining Act (PEBA) expressly bar claims brought more than six months after

the allegedly prohibited conduct, or six months after the complainant discovered **"or reasonably should have discovered each conduct."** NMAC 11.21.3.9.

19. The PEBA regulation mirrors the common law "discovery rule" which triggers the relevant statute of limitations when a plaintiff knew **or with reasonable diligence should have learned** of the complained-about harm. *E.g., Slusser v. Vantage Builders, Inc.*, 2013-NMCA-073, 306 P.3d. 524.
20. Trujillo does **not** explain why he could not use a computer at the public library, a friend's computer, or a smartphone to check the status of his case online and or request records.
21. Trujillo does **not** explain why he could not call the State Personnel Board himself to check the status of his case and to request records if, as alleged, calls to Sanchez and Griego were not returned.
22. Trujillo's Complaint is time-barred.

ARBITRARY, DISCRIMINATORY OR BAD FAITH STANDARD

23. Notwithstanding the lack of a timely-filed Complaint, the Court will consider the substantive arguments raised in the Motion for Summary Judgment.
24. AFSCME argues **even if** Trujillos' allegations are true, they amount to negligence and do not rise to the required standard of arbitrary, discriminatory or bad faith. *Motion*, pp. 10-11 (citing, *inter alia*, *United Steelworkers of Am. v. AFL-CIO-CLC v. Rawson*, 295 U.S 362, 373-73 (1990); *Callahan v. N.M. Fed'n of Teachers-TVI*, 2006-NMSC-010, ¶ 11).
25. Specifically, Trujillo alleges AFSCME failed to, *inter alia*:

- a. Call "some of the witnesses" Trujillo requested, including Joseph Chavez;
- b. Adequately prepare for the case by only spending 10 hours on it;
- c. Not informing Trujillo of the January 7, 2015 or March 27, 2015 decisions.

Response, pp, 13-14.

26. Trujillo argues Rose Sanchez did not call Joseph Sanchez to testify re Article 24, Discipline and Discharge and lack of training re removal of bed bugs from an infested site. *Id.*, ¶ 46; Ex. A, *Affidavit of Johnny Trujillo*, ¶ 6.
27. Steve Griego testified he would bring any witnesses to testify **for whom Trujillo provided a statement**. *Motion*, Ex. 3, *Deposition of Steve Griego*, 16:10-25-17:2.
28. Trujillo provided statements from **two individuals**: Jaime Triviso and Michael Valenzuela. *Id.*, Ex. 3, *Deposition of Steve Griego*, 16:10-25-17:2.
29. **Both Triviso and Valenzuela testified at hearing**. *Id.*, Ex. 3, *Deposition of Steve Griego*, 16:10-25-17:2.
30. Trujillo's Affidavit states Rose Sanchez and Steve Griego did not contact Joseph Sanchez. It does **not** state Trujillo obtained a statement from Sanchez and provided it to Griego or Sanchez. *Response*, Ex. A, ¶ 6.
31. Joseph Sanchez' affidavit does **not** state he provided Trujillo a statement, merely that he was not contacted by the Union. *Response*, Ex. B, ¶ 6.

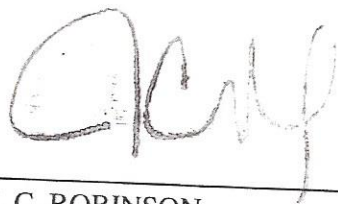
32. Griego further testified Trujillo's prior disciplinary actions and altercations with coworkers, some physical, made selecting witnesses difficult. *Motion*, Ex. 3, *Deposition of Steve Griego*, 16:10-25-17:2;
33. The parties provide conflicting evidence re the total number of hours Sanchez and Griego spent preparing for the hearing.
34. What is admitted by Trujillo is:
 - a. He agreed with the defense to be presented at hearing; and
 - b. The Union spent about 10 hours preparing for hearing.

Response, ¶ 33, ¶ 37.
35. AFSCME argues Trujillo failed to provide **any authority** to support not calling certain witnesses or working a certain number of hours on a case breaches the duty of fair representation. *Reply*, p. 4. AFSCME argues no such authority exists.
36. AFCSCME argues unions are granted wide discretion in handling the representation of their members. *Id.*, pp. 10-12 (citing, *inter alia*, *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); *Granberry v. Alb. Police Officers Assoc.*, 2008-NMCA-094, ¶ 7, 144 N.M. 595, 189 P.3d 1217).
37. Trujillo argues, pursuant to *Granberry*, a union's discretion is "not boundless" and unexplained union action which substantially prejudices a member's grievance is sufficiently arbitrary to constitute unfair representation. *Response*, p. 13 (quoting *Granberry v. Alb. Police Officers Assoc.*, 2008-NMCA-094, 144 N.M. 595, 598 189 P.3d 1217, 1220).

38. AFSCME argues Trujillo's reliance on *Grandberry* is misplaced. *Grandberry* concerned a union's apparently arbitrary failure to include all members of a group of potentially aggrieved employees. *Reply*, p. 8.
39. The *Granberry* union represented and obtained settlements only on behalf of white male union members. The union excluded a black male and Hispanic female union member from its claims re an allegedly flawed promotion process. *Id.*, p. 8.
40. AFSCME represented Trujillo **despite** the belief of union stewards, such as Sanchez, Trujillo's grievance lacked merit. *Motion*, ¶ 13, Ex. 2, *Deposition of Rose Sanchez*, 15:1-16:2.
41. There is no evidence of arbitrary or discriminatory action.
42. Nor is there evidence of bad faith. See, i.e., *Young v. United Auto. Workers Labor Employment & Training Corp.*, 95 F.3D 992, 971 (10th Cir. 1996) (stating bad faith requires a showing of fraud, deceitful or dishonest action).
43. Even if, *arguendo*, Trujillo was not timely notified of the final State Personnel Board decision by Sanchez or Griego, AFSCME's actions were **negligent**.
44. AFSCME had no obligation to assist Trujillo in his **private** appeal to district court.
45. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 1-056(C) NMRA.

46. The pleadings, depositions, and admissions on file show there are no genuine issues of material fact and AFSCME is entitled to summary judgment as a matter of law.
47. AFSCME's Motion for Summary Judgment is **granted**.
48. The instant matter is **dismissed**.
49. The jury trial setting for March 27, 2017 through March 29, 2017 is **vacated**.

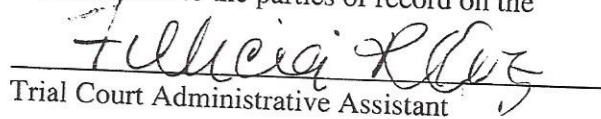
IT IS SO ORDERED.



J. C. ROBINSON
DISTRICT JUDGE, DIVISION III

Certificate of Service

I certify a copy of the foregoing was faxed/emailed to the parties of record on the 13 day of March, 2017.



Felicia R. King
Trial Court Administrative Assistant