

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MINDY MCFETRIDGE,

Petitioner

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 13; PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Respondents.

Case No. 219 MD 2022

CIVIL ACTION

Original Jurisdiction

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this petition for review and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

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Original Jurisdiction

PETITION FOR REVIEW

AND NOW comes Petitioner Mindy McFetridge (“Ms. McFetridge” or “Petitioner”), by and through her undersigned counsel, and states the following claim for relief against Respondents American Federation of State, County and Municipal Employees, Council 13 (“Council 13”); and Pennsylvania Department of Transportation (“DOT”), and avers as follows:

SUMMARY OF THE CASE

1. Ms. McFetridge brings this civil action to address DOT’s and Council 13’s deliberate and unexplained failure to uphold and enforce seniority rights guaranteed to Ms. McFetridge.

2. “[T]he Union bears a heavy duty of fair representation to all those within the shelter of its protection.” *Falsetti v. Local Union No. 2026, United Mine Workers of*

America, 161 A.2d 882, 895 (Pa. 1960). “If the Union, in processing an employee’s grievance, does not act in good faith, in a reasonable manner and without fraud, it becomes liable in damages for breach of duty.” *Id.*

3. Council 13 has refused to process any grievance on behalf of Ms. McFetridge regarding DOT’s and Council 13’s failure to uphold and enforce seniority rights in accordance with the applicable collective bargaining agreement.

4. Council 13’s failure and refusal to represent Ms. McFetridge led to her involuntary unemployment from DOT.

5. Council 13 and DOT acted in bad faith or discriminatorily toward Ms. McFetridge in connection with her unemployment because they permitted and sanctioned junior employees to maintain employment while Ms. McFetridge was laid off.

BASIS FOR JURISDICTION

6. The Commonwealth Court has original jurisdiction for all civil actions “[a]gainst the Commonwealth government[.]” 42 Pa.C.S. § 761(a)(1).

PARTIES

7. Petitioner Mindy McFetridge is an adult individual residing in Venango County, Pennsylvania.

8. Ms. McFetridge is an employee of DOT, at all relevant times hereto a dues-paying member of Council 13 within a bargaining unit represented by Council

13, and a “public employe” for purposes of the Public Employe Relations Act (“PERA”), Act of July 23, 1970, P.L. 563, No. 195, 43 P.S. § 1101.301(2).

9. Respondent Council 13 is a labor union with a principal place of business at 4031 Executive Park Drive, Harrisburg, Pennsylvania 17111.

10. Council 13 is an “employe organization” for purposes of PERA, Act of July 23, 1970, P.L. 563, No. 195, 43 P.S. § 1101.301(3).

11. Council 13 is also Petitioner’s exclusive representative for purposes of PERA, Act of July 23, 1970, P.L. 563, No. 195, 43 P.S. § 1101.606.

12. Respondent DOT is an agency of the Commonwealth of Pennsylvania located at 400 North Street, Fifth Floor, Harrisburg, Pennsylvania 17120.

13. DOT is a “public employer” for purposes of PERA, Act of July 23, 1970, P.L. 563, No. 195, 43 P.S. § 1101.301(1).

STATEMENT OF MATERIAL FACTS

Background

14. Ms. McFetridge is, and was at all relevant times, employed by DOT as a Transportation Equipment Operator B (“TEO B”) in Venango County, Pennsylvania, in a bargaining unit represented by Council 13.

15. Upon information and belief, Ms. McFetridge is one of few women employed as a TEO B for DOT in Venango County.

16. A fellow DOT employee and official of Council 13 has previously told

Ms. McFetridge that she is “just a girl in a man’s world.”

17. Nevertheless, Ms. McFetridge has been honored by DOT as a Workplace Hero.

18. At all relevant times, Ms. McFetridge was subject to the provisions of a collective bargaining agreement between Council 13 and the Commonwealth of Pennsylvania, which governs the terms and conditions of Ms. McFetridge’s employment and provides for the processing of grievances (the “CBA”). A true and correct copy of the CBA is attached hereto as “Exhibit A,” and incorporated herein.

19. Ms. McFetridge is, and was at all relevant times, a dues-paying member of Council 13.

20. On information and belief, Council 13’s policies state that Council 13 stewards have the responsibility to utilize grievances to address violations of employee rights and enforce collective bargaining agreements.

21. Bargaining unit employees like Ms. McFetridge rely upon Council 13 stewards and representatives to represent them throughout contractually mandated grievance procedures.

Ms. McFetridge’s Involuntary Unemployment

22. In or around March 2020, DOT shut down operations at Ms. McFetridge’s place of work and other locations due to the onset of the COVID-19 pandemic.

23. At the beginning of the shutdown period, Ms. McFetridge and others received “paid office closing time” from DOT and the Commonwealth of Pennsylvania.

24. After the paid office time concluded on or around April 11, 2020, Ms. McFetridge and others who were not allowed to continue working were told by Council 13 and DOT that they could use other time, *i.e.*, paid time off (“PTO”), or take unemployment.

25. Consequently, Ms. McFetridge initially chose to use her accumulated PTO because she did not want to lose any seniority rights as laid out in the CBA. *See* Ex. A, art. 29.

26. After using approximately two weeks of PTO, Ms. McFetridge took unemployment compensation for another approximately two to four weeks, until DOT resumed normal operations.

27. Thus, Ms. McFetridge was laid off by DOT during the time from the beginning of the shutdown until DOT resumed normal operations.

28. Due to this involuntary time off and unemployment, Ms. McFetridge had to use most of her accumulated PTO.

29. PTO is critical to Ms. McFetridge as a single mother tasked with caring for her juvenile daughter who suffers from a serious medical condition.

The Union Crew

30. Despite Ms. McFetridge's involuntary unemployment and loss of PTO, one transportation equipment crew working out of a DOT location in Franklin, Venango County, Pennsylvania (the "Union Crew") continued to work throughout this shutdown period.

31. Officials of Council 13 and/or DOT initially explained to Ms. McFetridge that this crew was permitted to continue to work because they had access to handwashing facilities.

32. Notably, several of the individuals on the Union Crew were low in seniority per the terms of the CBA. *See* Ex. A, art. 29.

33. On information and belief, at least three men under Ms. McFetridge in seniority kept working with the Union Crew while Ms. McFetridge was laid off, contrary to the CBA's seniority provisions. *See id.* at art. 29, § 7.

34. Significantly, the president of Council 13's local affiliate, Johnathon Reisinger ("Reisinger"), was a member of the Union Crew that kept working.

35. On information and belief, relatives of Reisinger and other members of the local union's executive board were members of the Union Crew that kept working.

36. On information and belief, the Union Crew was comprised of only men.

37. On information and belief, the Union Crew was only allowed to

continue working in defiance of seniority rights because it was comprised of men who supported Council 13 as members or representatives of Council 13 and/or as relatives or friends of Reisinger.

38. After learning of the Union Crew and their ability to continue working despite several members being junior in seniority to Ms. McFetridge, she reached out to her Council 13 union representative.

39. Council 13's official told Ms. McFetridge that there was "nothing [Ms. McFetridge] can do" about it.

40. While laid off, Ms. McFetridge also spoke to Council 13 officials located in Harrisburg and they offered no explanation as to why the Union Crew was permitted to continue working when several of its members were junior in seniority to her.

41. Unsatisfied, Ms. McFetridge persistently called Council 13 officials until she received some answers as to why less-senior employees were allowed to work instead of her.

Council 13's and DOT's "Furlough" Excuse

42. Council 13 officials eventually told Ms. McFetridge that Council 13 and DOT gave Reisinger (the local Council 13 union president) the option to lay off employees pursuant to seniority or pursuant to the specific working crew and he insisted that the decision be made by crew and not seniority.

43. Council 13 officials also told Ms. McFetridge that Reisinger insisted that employees in Venango County be laid off by crew and not seniority.

44. On information and belief, Reisinger insisted on this arrangement so that only the Union Crew could continue working.

45. As a result, DOT and Council 13 permitted and approved Reisinger's arbitrary, discriminatory, and bad faith selection of the Union Crew to continue working while forcing Ms. McFetridge out of work.

46. The option to lay off employees pursuant to specific working crews instead of seniority is neither contemplated nor authorized by the controlling CBA.

47. Council 13 and its officials did not offer any other justification or explanation for not basing the layoffs on seniority as mandated by the CBA.

48. After more investigation by Ms. McFetridge, a Council 13 official in Harrisburg stated that DOT and Council 13 were permitted to conduct the layoffs in that fashion because it was not a "furlough."

49. While Ms. McFetridge talked to Council 13 officials on several occasions during the time she was laid off, the officials did not provide the "not a furlough" excuse until more recently.

50. The term "furlough" is not defined in the CBA or in PERA.

51. The leading legal dictionary defines "furlough" as a "leave of absence from military or other employment duty." *Furlough, Black's Law Dictionary* (8th ed.

2004).

52. Therefore, Ms. McFetridge's time away from her employment duties as a TEO B from the inception of the COVID-19 pandemic to her full-time return was a furlough.

53. Ms. McFetridge previously asked Council 13 representative Randy Wilson if she could file a grievance related to her unemployment and the Union Crew and he told her "no," without any explanation.

54. Another Council 13 official in Harrisburg told Ms. McFetridge that some PTO may be returned to her.

55. Unfortunately, that official stopped answering calls from Ms. McFetridge.

56. On information and belief, DOT did not permit all its locations to perform layoffs based on working crew rather than seniority and only DOT employees in Venango County and one or two other counties were subject to this procedure.

57. On information and belief, Council 13 and DOT colluded to allow the Union Crew to continue working in violation of seniority rights guaranteed by the CBA.

58. Specifically, Council 13 and DOT conspired to and did avoid their obligations and duties under the CBA as evidenced by their approval and support of

Reisinger's insistence that seniority rights be disregarded.

59. Council 13 violated its duty to Ms. McFetridge by refusing to file a grievance on her behalf, by failing to protect or represent her interests and rights as a bargaining unit member, and by preventing DOT from adhering to the CBA.

60. Council 13, with the participation, assistance, and ratification of DOT, violated its duty of fair representation to Ms. McFetridge because it acted out of bad faith, arbitrarily, or with discrimination, because it permitted the Union Crew to work during a furlough period in violation of seniority rights provided for in the CBA.

61. On information and belief, Council 13 and DOT, by and through their agents or officials, as alleged above, discriminated against, punished, or otherwise retaliated against Ms. McFetridge because she is a woman.

CAUSE OF ACTION
Breach of Duty of Fair Representation

62. The foregoing paragraphs are incorporated by reference as if set forth fully herein.

63. Because the “[u]nion has assumed the role of trustee for the rights of its members and other employees in the bargaining unit” and employees are “beneficiaries of fiduciary obligations owed by the [u]nion[,] . . . the [u]nion bears a heavy duty of fair representation to all those within the shelter of its protection.” *Falsetti*, 161 A.2d at 895. Accordingly, unions must “act in good faith, in a reasonable manner and without fraud.” *Id.*

64. Additionally, “[t]he union must not have declined to press the grievance out of laziness or prejudice[.]” *Falsetti*, 161 A.2d at 895 n.21 (quoting Hanslowe, *Individual Rights in Collective Labor Relations*, 45 *Corn. L.Q.* 25, 46–47 (1959)).

65. Council 13, as Petitioner’s exclusive representative, owes the duty of fair representation to Ms. McFetridge.

66. Council 13’s duty of fair representation extends to the enforcement, including through the grievance process, of the CBA Council 13 negotiated with the Commonwealth. *See Miles v. FOP Lodge #5*, 217 A.3d 892, 898–99 (Pa. Cmwlth. 2019) (“A union has the duty to fairly represent its members throughout any grievance and arbitration process provided for by a collective bargaining agreement.”).

67. Council 13 breached its duty of fair representation by failing to file a grievance on behalf of Ms. McFetridge.

68. Council 13 breached its duty of fair representation by failing to adequately pursue or protect Ms. McFetridge’s interests as member of the bargaining unit exclusively represented by Council 13.

69. Council 13 breached its duty of fair representation, with the participation, assistance, and ratification of DOT, by arbitrarily, discriminatorily, and in bad faith permitting Ms. McFetridge to be laid off contrary to her seniority rights under the CBA.

70. Council 13 breached its duty of fair representation, with the

participation, assistance, and ratification of DOT, by arbitrarily, discriminatorily, and in bad faith permitting Reisinger to make decisions regarding furloughs and seniority rights and to preference union officials over other employees in the distribution of employment opportunities.

71. Council 13 acted in bad faith, arbitrarily, or with prejudice or discrimination toward Ms. McFetridge in its representation of her because she is a woman.

72. As a result of Council 13's and DOT's conduct, Petitioner was injured by losing crucial PTO that enables her to provide and care for her family.

73. As a result of Council 13's and DOT's conduct, Petitioner was injured by the lack of initiation, settlement, and/or resolution of her potential grievance.

74. Council 13's and DOT's conduct caused harm to Ms. McFetridge in the form of lost PTO, loss of seniority rights, and mental anguish and distress.

75. Council 13's conduct has caused Ms. McFetridge to lose faith in Council 13's ability to represent her and protect her rights as an employee of DOT.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Honorable Court to:

- a) Enter judgment against Council 13;
- b) As to Council 13 and DOT, award compensatory damages;
- c) As to Council 13, award damages for non-economic harm including but not

- limited to mental anguish and distress in an amount to be proven at trial;
- d) Order Respondents to initiate and complete the grievance process as set forth in the CBA, and/or to restore to Ms. McFetridge her lost PTO and seniority;
 - e) Award costs and fees, including reasonable attorneys' fees; and
 - f) Award such other relief as the Court deems appropriate.

JURY DEMAND

Petitioner demands a trial by jury pursuant to Pennsylvania Rule of Civil Procedure 1007.1.

Dated: April 11, 2022

Respectfully submitted,



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Attorneys for Petitioner

VERIFICATION

I, Mindy McFetridge, hereby verify that I am the petitioner in this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Petitioner's Petition for Review are true and correct to the best of my knowledge, information and belief.

Date: April 11, 2021

By: Mindy McFetridge

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: April 11, 2022



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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I will be serving the foregoing Petition for Review and related exhibit upon the persons listed below as follows which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 1514(c) and the Pennsylvania Rules of Civil Procedure:

Via personal service:

American Federation of State, County and Municipal Employees, Council 13
4031 Executive Park Drive
Harrisburg, Pennsylvania 17111

Via certified mail:

Pennsylvania Department of Transportation
Keystone Building
400 North Street, Fifth Floor
Harrisburg, Pennsylvania 17120

Via certified mail:

Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Dated: April 11, 2022



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