

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREGORY SOLOMON, Jr., Complainant,

vs.

WISCONSIN CENTER DISTRICT and SEIU, LOCAL 1, Respondents

Case 17
No. 71517
MP-4706

Decision No. 33884-B

Appearances:

Gregory Solomon, Jr., 3703 East Holmes Avenue (Lower), Cudahy, Wisconsin 53110, appearing on his own behalf.

Steven M. DeVougas, Hinshaw & Culbertson LLP, 100 East Wisconsin Avenue, Suite 2600, Milwaukee, Wisconsin 53202-4115, appearing on behalf of the Wisconsin Center District.

Leslie J. Ward, Associate Counsel, Service Employees International Union, 111 East Wacker Drive, Suite 2500, Chicago, Illinois 60601, appearing on behalf of SEIU, Local 1.

ORDER ON REVIEW OF EXAMINER'S DECISION

On January 8, 2013, Examiner John R. Emery issued Findings of Fact, Conclusions of Law and Order determining that Respondent Service Employees International Union, Local 1 (SEIU) had not violated its duty of fair representation to Complainant Gregory Solomon, Jr. (Solomon) and thus that SEIU had not committed a prohibited practice within the meaning of Sec. 111.70(3)(b)1, Stats. Based on that determination, the Examiner did not exercise the Commission's jurisdiction over Solomon's Sec. 111.70(3)(a) 5 allegation that the Wisconsin Center District (WCD) violated a collective bargaining agreement by terminating him. Thus, the Examiner dismissed Solomon's complaint.

Solomon timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. The parties then filed written argument in support of and in opposition to the petition-the last of which was received April 11, 2013.

No. 33884-B

Having reviewed the record and being fully advised in the premises, the Commission makes and issued the following

ORDER

The Examiner's Findings of Fact, Conclusions of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of May, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

WISCONSIN CENTER DISTRICT and SEIU, LOCAL 1 (Gregory Solomon, Jr.)

MEMORANDUM ACCOMPANYING ORDER
ON REVIEW OF EXAMINER'S DECISION

In his petition for review and supporting argument, Solomon asserts that SEIU breached its duty of fair representation by failing to follow proper procedures when investigating the incident that led to his termination and then refusing to proceed to arbitration.¹ He specifically contends that SEIU should have conducted a more complete investigation of the termination incident, allowed him to file a grievance and then made a more informed decision as to whether to proceed to arbitration.

At the time of incident that led to Solomon's termination, Solomon was working under the terms of a "last chance" agreement which specified that "any future violations of WDC Rules, Policies and Procedures, verbal and written orders will be cause for immediate termination." Solomon was subsequently involved in a dispute with a co-worker that prompted a Center District investigation. An SEIU representative was present during the District's investigatory interview with Solomon, reviewed a relevant security tape, and interviewed Solomon's co-worker. Based on the knowledge gained from that investigation of the incident and knowledge of Solomon's "last chance" agreement, SEIU concluded it was not likely that a challenge to Solomon's termination would be successful in arbitration. SEIU then advised Solomon that it would not arbitrate any grievance Solomon might file as to his termination.

We are satisfied that the SEIU's conduct fell well within confines of the duty of fair representation it owed Solomon. SEIU knew of the differing versions of the incident that led to Solomon's termination. Particularly in the context of a "last chance" agreement, it was aware that an arbitrator might well conclude that Solomon's conduct was a violation of "WDC Rules, Policies and Procedures". Thus, the evidence in the record provides ample support for the SEIU's having made a good faith decision not to arbitrate the termination. While Solomon faults SEIU for advising him that it would not arbitrate even before he had the chance to file a grievance, we conclude that where, as here, SEIU had already conducted a good faith investigation into the merits of the matter, it had the discretion to advise him of its decision before Solomon had the opportunity to file a grievance.

¹ Solomon also disputes the accuracy of SEIU witness testimony as to whether Solomon did or did not contact SEIU telephonically regarding his termination. We need not resolve that dispute because it played no role in the Examiner's decision (or ours) and thus no Finding of Fact as to that matter was or needs to be made.

Given the foregoing we have affirmed the Examiner's decision.²

Dated at Madison, Wisconsin, this 21st day of May, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

² We acknowledge the District's preclusion argument to the Examiner based on Solomon's unsuccessful proceeding in federal court. If we had concluded that SEIU had breached its duty of fair representation, we would have needed to respond to that argument and, if we found that argument to have merit, we would have dismissed the Solomon's claim against the District.