IN THE COURT OF APPEALS OF IOWA

000085

No. 7-648 / 96-775

FILED
DEC 29 1997
CLERK SUPREME COURT

DOUGLAS L. DAYSTROM,

Petitioner-Appellant,

vs.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent-Appellee,

and

IOWA UNITED PROFESSIONALS,
Intervenor-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge.

The petitioner appeals from the district court's ruling affirming the respondent's decision dismissing his prohibitive practice compliant against the intervenor union. **AFFIRMED.**

Douglas L. Daystrom, Victor, pro se.

Diane Tvrdik, Des Moines, for respondent-appellee.

Matthew Glasson of Glasson, Sole, McManus & Combs, P.C., Cedar Rapids, for intervenor-appellee.

Considered by Cady, C.J., and Streit, and Vogel, JJ.

CADY, C.J.

This is an appeal by an employee claiming his union failed in its duty of fair representation by not seeking arbitration of his grievance against a former employer. The district court affirmed the decision of the Public Employment Relations Board (PERB) which denied the claim. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Douglas Daystrom was employed by the Iowa Department of Human Services as a child protective investigator. He was discharged from his employment due to inaccurate mileage claims, an assault conviction, and substandard performance. Daystrom was a member of a union, Iowa United Professionals (IUP), and his employment was subject to a collective bargaining agreement.

Under the terms of the collective bargaining agreement, Daystrom filed a grievance of his discharge with the Iowa Department of Personnel. Personnel denied the grievance. A representative of IUP then appealed the grievance to the next step, arbitration.

After some consideration, IUP decided to reconsider its decision to pursue Daystrom's claim. IUP's attorney advised the chances of success were slim because of the charges of violence and abusive behavior. By a telephone poll, the Stewards and Arbitration Committee of IUP decided not to arbitrate Daystrom's grievance. IUP notified Personnel it was withdrawing its request for arbitration.

Daystrom then filed a prohibited practices complaint with PERB. He alleged IUP had arbitrarily decided not to pursue his grievance in arbitration. PERB determined Daystrom failed to show IUP did not represent him fairly. On judicial review, the district court affirmed the decision of PERB. Daystrom has appealed.

Daystrom contends IUP failed to fairly represent him. He believes the vote to withdraw his grievance from arbitration was improper because it was conducted by telephone poll. He also believes IUP's pursuit of his grievance was untimely. Daystrom feels his grievance would have been successful in arbitration because the Job Service of Iowa Appeals Bureau determined Daystrom had not been discharged for misconduct.

Iowa Code section 20.17(1) (1995) provides employee organizations which represent public employees in a bargaining unit must represent all public employees fairly. To be successful in his claim, Daystrom was required to establish by a preponderance of the evidence action or inaction by the union which was arbitrary, discriminatory, or in bad faith. Iowa Code §20.17(1). A union breaches its duty when it arbitrarily ignores or perfunctorily processes a grievance. *Norton v. Adair County*, 441 N.W.2d 347, 356 (Iowa 1989) (citing *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S.Ct. 903, 916, 17 L.Ed.2d 842, 857 (1967)).

We first note Daystrom's claims concerning the impropriety of the telephone vote were not considered by the district court. Because there was no ruling on this issue, it has not been preserved for our review, and we do not consider it.

Daystrom did preserve error on his claims IUP acted in an untimely manner to pursue his claim. Evidence was presented at the administrative hearing to show there was an informal agreement with Personnel to extend the time for setting the case for hearing. There was no showing IUP decided not to pursue the grievance due to the time deadlines. We find there is substantial evidence in the record to support PERB's conclusion IUP did not breach its duty of fair representation by failing to timely pursue Daystrom's grievance.

We determine Daystrom has failed to show IUP's decision not to pursue his grievance to arbitration was arbitrary, discriminatory, or in bad faith. The union obtained two separate legal opinions from its counsel and conducted an investigation before it took a second vote on pursuing the grievance. We affirm the decision of PERB and the district court.

AFFIRMED.