DECISION AND DISMISSAL OF COMPLAINT

On January 23, 2012, Josephine Peruzzi, (the Complainant) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that Local 884, Council 4, AFSCME, AFL-CIO (the Union) violated the Municipal Employee Relations Act (MERA or the Act) by breaching its duty of fair representation.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on nine dates from March 25, 2013 to March 17, 2016. All parties appeared and were given full opportunity to present evidence, examine and cross-examine witnesses, and make argument. The parties submitted post-hearing briefs on August 26, 2016. Based on the entire record before us, we make the following findings of fact and conclusions of law and we dismiss the complaint.

FINDINGS OF FACT

1. The City of New Haven (the City) is an employer pursuant to the Act.

2. At all material times, the American Federation of State, County, and Municipal Employees AFL-CIO was a labor organization having subordinate bodies and affiliates, including AFSCME Connecticut Council 4 (Council 4). Council 4 is an employee organization pursuant to the Act and has subordinate bodies and affiliates including AFSCME Local 884 (Local 884) which is an employee organization pursuant to the Act and at all material times has been the recognized bargaining representative for certain City classified employees.2

3. The City and the Union are parties to a collective bargaining agreement (Ex. 27) with effective dates of July 1, 2010 through June 30, 2015 that contains the following relevant provisions:

ARTICLE 13 – Grievance Procedure

Section 1

... 

A grievance shall be considered to be a dispute between an employee and/or the Union and the City concerning the interpretation and application of the specific provisions of this Agreement.

Section 2

...

Step 3:
If the decision at Step 2 is not satisfactory to the Union, it may appeal, in writing to the Director of Labor Relations ... Upon receipt of such an appeal, the Director or his designated representative will investigate the grievance and make an effort to resolve it to the satisfaction of all parties. Prior to denying any grievance at this Step, the Union shall be afforded the right to meet and discuss the grievance with the Director or his representative.

ARTICLE 14 – Arbitration

Section 1

In order to be considered, a petition by the Union for arbitration shall be received by the Director of Labor Relations or his representative within ten (10) working days after the next regular scheduled meeting of the Union’s Executive Board following the date of the Step 3 decision ...
Section 3
The Arbitrator or arbitrators shall be the Connecticut State Board of Mediation and Arbitration, except as otherwise agreed . . .

Section 5
The arbitrator(s) designated in accordance with Section 3 of this Article shall conduct a hearing at which the facts and arguments relating to the dispute shall be heard . . . The arbitrator(s) shall confine the award to a decision that the City or the Union has or has not violated a specific provision of this Agreement, and if such an award is in the affirmative, the award shall specify the remedy.

ARTICLE 26 – Disciplinary Procedures

Section 4
(A) Employees shall only be disciplined for just cause.

4. At all times relevant hereto, there existed a database maintained by the state of Connecticut and used by Connecticut law enforcement agencies, including the City’s police department, known as the Connecticut On Line Law Enforcement Teleprocessing (COLLECT) system. COLLECT users must be certified after training in use of the system and such training includes notice that inappropriate usage is a Class D felony. The City’s police department also maintained a separate internal database known as the AS400 system which contained general information, including public information relating to arrests such as the location and date of an arrest, name of the person arrested and the charges levied. City work rules prohibit use or access of COLLECT or the AS400 system for personal reasons unrelated to City business and all employees, including Complainant, acknowledge the existence of these rules upon hire by signing a confidentiality agreement as a condition of employment.

5. At some point prior to 2011, City police department records clerk Millie Belton (Belton) was charged with improperly using COLLECT for personal reasons. Belton ultimately retired pursuant to the terms of a settlement agreement between the Union and the City.

6. At some point within twelve months prior to May 19, 2011, City police department records clerk Melissa Hayden (Hayden) was terminated for accessing the AS400 system for personal reasons and informing a friend of a pending arrest warrant. A grievance was filed contesting the termination and at the Step III meeting, the Union, the City, and Hayden agreed Hayden would retire in lieu of proceeding to arbitration.
7. At some point within twelve months prior to May 19, 2011, City police department communications/dispatch employee April Reinhardt (Reinhardt) was terminated for allegedly informing her husband, after accessing the AS400 system, that his coworker was a sex offender. Reinhardt was reinstated after the Union submitted a grievance contesting the termination to arbitration.

8. On November 17, 2010, Complainant was working in her position as a City police department records clerk when a City police officer informed her that her teenage son had been arrested the previous night. Complainant accessed the AS400 system to confirm that the arrest had occurred and attempted to obtain a copy of the arrest report from other City employees. (Ex. 28).

9. On or about December 1, 2010, then records division supervisor lieutenant Roger Young (Young) was notified of Complainant’s activity in response to her son’s arrest and Young and City police sergeant Darcia Siclari (Siclari) discussed the matter with Complainant who waived Union representation at the time. After initially stating that she was unaware that her actions violated City work rules, Complainant admitted she was wrong and Young warned her that subsequent violations of the City’s computer policy would be subject to more serious disciplinary action. Young then placed a written memo concerning the meeting in Complainant’s personnel file. (Exs. 9, 26, 28).

10. On January 6, 2011, and at the direction of assistant police chief, Denise Blanchard, Young issued a “Report Concerning Violation of Department Rule/Order” that states, in relevant part:

I did find that [Complainant] did violate the City of New Haven Computer Hardware and Software policy paragraph 3 . . . However, it appeared she sincerely believed it was okay to access the entry as long as it was not on the COLLECT system.

[Complainant] is a conscientious and dependable worker. She has no other history of any problems with work or misbehaving while employed here to date. I was very surprised to learn about what she had done.

There was no evidence of any tampering or altering to the entry. Note that the information entered and accessed at the time was a matter of public record.

Remediation and warnings were issued by Sergeant Siclari and I during our meeting with [Complainant] on 12/1/10. Complainant understood what she had done wrong and was tearfully apologetic during our meeting.

Therefore, I respectfully recommend that the disciplinary action taken against [Complainant] be lenient.

. . .

Young sent the report to City police chief Frank Limon with a written memo of even date that states, in relevant part:

3 Lieutenant Young has since retired.
Kindly be advised that the issues with this incident have been satisfactorily addressed on a supervisory level. I believe this should be taken into consideration keeping in mind progressive discipline protocol . . .

(Exs. 9, 28).

11. By letter (Ex. 6) to Complainant dated April 11, 2011 with copies to Council 4 staff representative Kip Lockhart (Lockhart) and Local 884 president Ronald Hobson (Hobson), City labor relations director Craig. L. Manemeit (Manemeit) stated, in relevant part:

Please be advised that effective today . . . you will be placed on paid administrative leave pending a pretermination hearing, which has been scheduled for Wednesday, April 27, 2011 . . . [and] relates to your conduct on or about November 16, 2010. Specifically, your violation of the confidentiality agreement into which you entered upon your hire . . .

12. Shortly before April 27, 2011, then Local 884 grievance committee chairman Michele Myers, nee Clark (Myers) 4 told Complainant by telephone that she had spoken with Manemeit and that Complainant would receive a ten day suspension but would keep her job.

13. On April 27, 2011, Complainant attended a pre-termination hearing and in attendance were Manemeit, City human resources manager, Scott Nabel (Nabel), Blanchard, Lockhart, then Union executive board member Doreen Rhodes (Rhodes) 5, and Union vice president, Joanne D’Angelo (D’Angelo). At the hearing, Union and management representatives discussed Complainant’s long work history and agreed that any discipline should be lenient.

14. Shortly after the pre-termination hearing, Manemeit gave D’Angelo a written settlement proposal (Ex. 19) dated April 28, 2011, that states, in relevant part:

WHEREAS, the City of New Haven has determined that, although termination is not warranted in this particular case, that some discipline is warranted based on the fact that [Complainant’s] actions were motivated by a personal reason rather than for business-related reasons . . .

NOW, THEREFORE, the City of New Haven and Local 884, Council 4, AFSCME, AFL-CIO hereby agree to the following as full and final settlement of the above captioned matter:

4 Myers retired from her position as a City police department records clerk in February of 2011 but continued to hold her position as Local 884 grievance committee chairman until April of 2012.

5 Rhodes has since become president of Local 884.
1. [Complainant] shall serve a ten-day suspension (dates to be determined by the Department). Neither she nor the union shall have the right to grieve the discipline.

2. [Complainant] shall return to work on ________________.

4. This settlement agreement shall not set a precedent with respect to any other Local 884 bargaining unit member, EXCEPT for the fact that employees shall not access confidential information in a manner inconsistent with the duties and responsibilities of their employment. The remaining terms of this settlement agreement shall not constitute any form of a past practice on either party.

5. Neither this settlement agreement nor the terms of this settlement agreement shall be used in any other matter or proceedings(s) other than to enforce the terms of this particular agreement.

15. After D’Angelo and Hobson reviewed and discussed the City’s settlement proposal, the Local 884 grievance committee\(^6\) voted to reject the proposal on the basis of the language in paragraphs 4 and 5. The Union did not inform Complainant of the settlement offer.

16. By letter (Ex. 7) to Complainant dated May 19, 2011, Manemeit stated, in relevant part:

   As a result of the pre-termination hearing held on April 27, 2011 the Department of Police Services and the Office of Labor Relations believes it is in the City’s best interest to sever your employment with the City . . . effective today . . . This termination is a direct result of your conduct on or about November 16, 2010 . . .

17. On May 24, 2011, Siclari approached Hobson and informed him that Complainant had been terminated. In response Hobson stated, “[s]he should be, they fired the other two for the same thing and she should be fired also.” Siclari then stated, “What? You’re kidding right . . . attempt to read a report as opposed to misuse of COLLECT” and Hobson replied, “[a] sin is a sin whether it’s a big sin or a small sin, they are equal.” (Ex.12).

18. On or about June 7, 2011, Complainant met with a private attorney after unsuccessfully attempting to contact the Union. The attorney contacted Nabel who claimed that Hobson refused to sign an agreement providing for Complainant to serve a two-week suspension.

\(^6\)At this time, the Local 884 grievance committee consisted of D’Angelo, Rhodes and Myers.
19. On or about June 7, 2011, Complainant told Rhodes by telephone that she wanted to file a grievance and on or about June 9, 2011 Rhodes filed a grievance contesting Complainant’s termination. (Ex. 11).

20. On July 7, 2011, Complainant, Nabel, Lockhart, Hobson, and Rhodes attended a Step III hearing on the grievance and the Union contended the Complainant’s actions did not warrant termination and asked that Complainant be reinstated and made whole for all losses. At or immediately after the hearing, Nabel gave Lockhart a written settlement proposal (Ex. 10) dated July 7, 2011 that referenced the Step III hearing but was otherwise identical to the April 28, 2011 written settlement proposal except that paragraphs 1 and 2 were altered to state:

   1. [Complainant’s] termination shall immediately be converted to an unpaid suspension. Neither she nor the Union shall have the right to grieve the discipline.
   2. [Complainant] shall return to work on July 8, 2011.

Hobson stated that he would not sign the agreement unless paragraphs 4 and 5 were deleted and left the room.

21. The City denied the grievance and by correspondence to the State Board of Mediation and Arbitration (SBMA) dated July 14, 2011, the Union submitted the grievance to arbitration. At some point in August, the SBMA scheduled an arbitration hearing for October 13, 2011. (Exs. 17, 18).

22. On September 15, 2011, Lockhart spoke with Nabel who indicated that the City was still willing to reinstate Complainant without back pay per the terms set forth in the previous offers. Lockhart then contacted Hobson who stated words to the effect, “if we can settle, fine, it’s up to [Complainant].” Lockhart then contacted Complainant who indicated that the settlement was acceptable.

23. On September 16, 2011, Nabel, Hobson, and Complainant signed a written settlement agreement (Ex. 8) identical to the July 7, 2011 proposed agreement except that paragraph 2 was altered to state:

   2. [Complainant] shall return to work on September 19, 2011.

CONCLUSIONS OF LAW

1. It is a prohibited practice for a Union or its agents to breach the duty of fair representation owed to bargaining unit members by engaging in conduct that is arbitrary, discriminatory, or in bad faith.

2. The Union did not breach the duty it owed Complainant while representing her in 2011.
DISCUSSION

Complainant contends that the Union violated Section 7-468(d) of the Act by failing to prepare for her pre-termination meeting and by declining to accept the terms of a proposed settlement in a timely manner. Specifically, Complainant claims that Hobson acted in bad faith when he rejected the City’s initial settlement proposals causing Complainant to lose four months' wages. In response, the Union argues that it properly represented Complainant at her pre-termination hearing and that its opposition to the City’s initial settlement proposals was, albeit unsuccessful, a bargaining strategy permissible under the Act. Given the record before us we find that the Union acted in good faith to further the best interests of its members and we dismiss the complaint.

The duty of fair representation under federal law arises from a union’s legal status as exclusive employee representative that necessarily entails “a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.” Vaca v. Sipes, 386 U.S. 171, 177 (1967). The United States Supreme Court holds that “a union’s actions are arbitrary only if . . . the union’s behavior is so far outside ‘a wide range of reasonableness’ as to be irrational.” Air Line Pilots Association, International v. O’Neill, 499 U.S. 65, 67 (1991) (quoting Ford Motor Co., v. Huffman, 345 U.S. 330, 338 (1953)) (Internal citation omitted). “This ‘wide range of reasonableness’ gives the union room to make discretionary decisions and choices even if those judgments are ultimately wrong.” Marquez v. Screen Actors Guild, Inc., 525 U.S. 33, 45-46 (1998). See United Steelworkers of America v. Rawson, 495 U.S. 362, 372-373 (1990) (“The courts have in general assumed that mere negligence … would not state a claim for breach of the duty of fair representation, and we endorse that view today”).

We have repeatedly affirmed these principles and have long required evidence that a union’s conduct towards a bargaining unit member is motivated by hostility, bad faith, or dishonesty in order to establish that a violation of the Act has occurred. Local 269, Council 4, AFSCME, AFL-CIO (Vera O’Brien), Decision No. 4485 (2010); School Administrators of Waterbury (David J. Gardino), Decision No. 4091 (2005); Anthony Parente and the Hamden Education Association (Vincent Virgulto), Decision No. 3974 (2004); Local 1565, Council 4, AFSCME, AFL-CIO (David Bishop), Decision No. 3510 (1997). A union “has no obligation to pursue any grievance, or to

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7 Conn. Gen. Stat. § 7-468(d) states, in relevant part:

(d) When an employee organization has been designated . . . as the exclusive representative of employees in an appropriate unit, it shall have a duty of fair representation to the members of that unit.

Conn. Gen. Stat. § 7-470(b)(3) states:

(b) Employee organizations or their agents are prohibited from . . . (3) breaching their duty of fair representation pursuant to section 7-468 . . .

8 The Union argues that Local 884 and Council 4 are separate legal entities and that Council 4 is not responsible for the actions of Local 884 or its agents. Since Local 884 is a subordinate body of Council 4 and in the context of the record before us we find that there is no separate legal existence of significance.
carry it to arbitration, as long as the decision is not arbitrary, discriminatory, or in bad faith.” *Local 1565, Council 4 AFSCME (David Bishop)*, *supra* at p. 4 (citing *Vaca v. Sipes*, *supra*) (Internal quotation marks omitted); see also *Local 269, Council 4, AFSCME (Vera O’Brien)*, *supra*; *Town of Greenwich (June Davila)*, Decision No. 4348 (2008); *Teamsters, Local 677 (Ida Singer)*, Decision No. 1141 (1973). This standard applies to those grievances a union has chosen to pursue to arbitration and it is well established that mere negligence at this level is insufficient to establish a violation of the Act. *Council 4, AFSCME, AFL-CIO (Mahesh Talwar)*, Decision No. 3782 (2000); *City of Bridgeport (Brown)*, Decision No. 1963 (1980). “Our case law requires us to evaluate the legality of the Union’s conduct, not its wisdom or quality.” *University of Connecticut AAUP (Judith Heald)*, Decision No. 2714 p. 6 (1989); *Connecticut State Employees Assoc. Local 2001 (Michael Cruess)*, Decision No. 4674 p. 8 (2013). See also *Enfield Teacher’s Assoc. (Sean Sweeney)*, Decision No. 4916 (2016); *Norwalk Federation of Teachers Local 1723 (Diane McCammon)*, Decision No. 4892 (2016); *University of Connecticut (Shane LaPointe)*, Decision No. 4759 (2014); *Stamford Career Firefighters Assoc. (Donald Berg)*, Decision No. 4758 (2014).

Complainant contends that the Union violated its statutory duty by failing to prepare Complainant in advance of the April 27 pre-termination hearing. We disagree. The primary purpose of such hearings is to provide the employee “with notice of the charges against her, an explanation of the employer’s evidence, and an opportunity to provide her side of the story.” *AFSCME, Council 4, Local 2663 v. Dept. of Children and Families*, 317 Conn. 238, 259 (2015) (citation omitted). Complainant does not contest the sufficiency of Manemeit’s letter scheduling the pre-termination hearing as notice of the allegations against her and Complainant was either aware or should have been aware that the City’s evidence included the full account she gave her supervisors during an earlier meeting at which she expressly waived Union representation. Since Complainant is unable to identify any aspect of substance in the presentation of her defense at the pre-termination hearing that would have differed had she met in advance with Union representatives, we find no breach of the duty of fair representation in this regard.

We find the issue of whether the Union wrongfully deprived Complainant of City employment for four months more troubling. The record supports a finding that Complainant was amenable at all times to a two-week suspension, the City consistently maintained that it would not afford Complainant back pay, and the agreement the parties signed is largely identical to the City’s initial proposal. The Union admits that Complainant’s reinstatement was delayed when it rejected the City’s terms but claims it was attempting in good faith to negotiate a settlement that it could use to benefit employees in future matters involving similar alleged misconduct and that the City called its bluff. In assessing this defense, we first look to whether such tactics are permissible under the Act.

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9 Complainant’s contention in her brief that the Union failed to attend the April 27 pre-termination hearing is not supported by the record. Complainant admitted on cross-examination that Lockhart and Rhodes were in attendance.
Since assessment of just cause for discipline includes consideration of alleged disparate treatment, employers often propose that settlements of discipline disputes subject to grievance arbitration contain non-precedent setting language.

“That is because both the employer and the union have granted to the arbitrator the authority to interpret the meaning of their contract’s language, including such words as ‘just cause.’” *Eastern Associated Coal Corp v. United Mine Workers*, 531 U.S. 57, 61 (2000). In exercising this authority, arbitrators routinely consider whether the employer is treating the grievant differently from other employees. *Elkouri & Elkouri, How Arbitration Works*, §§ 15-3. Fii, xiii (7th ed. 2012); *Enterprise Wire Co.*, 46 LA 359 (Daugherty 1966); see *AFSCME, Council 4, Local 1565 v. Department of Correction*, 298 Conn. 824, 829-830 (2010).

City of New Haven, Decision No. 4744 p. 6 (2014). See, e.g., *City of New Haven*, Decision No. 4881 (2016). Arbitral refusal to consider a prior settlement agreement on the basis of such language is considered reasonable. *McCann v. Dept. of Environmental Protection*, 288 Conn. 203, 216 (2008); see *Elkouri and Elkouri, How Arbitration Works*, § 5.15 n. 371 (7th ed. 2012). (“Of course, a settlement will not bind future cases if it was reached with the understanding that it not establish a precedent for any future case.”)

Since Complainant received considerably more favorable treatment under the City’s proposal than prior employees charged with misuse of the AS 400 system, there was a reasonable basis for the Union to conclude that the non-precedent setting language in paragraphs 4 and 5 was a substantial Union concession. As such, the Union had a statutory right to reject this proposed concession provided it did so in good faith.

‘Good faith’ means more than merely going through the motion of negotiating; it is inconsistent with a predetermined resolve not to budge from an initial position. But it is not necessarily incompatible with stubbornness or even with what to an outsider may seem unreasonableness. A determination of good faith or of want of good faith normally can rest only on an inference based upon more or less persuasive manifestation of another’s state of mind. The previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course of negotiations constitute the raw facts for reaching such a determination.

*National Labor Relations Board v. Truitt Manufacturing Co*. 351, U.S. 149, 155 (1956) (Frankfurter, J. concurring in part and dissenting in part). In short, we conclude that rejecting a proposed concession in order to prompt a withdrawal of the proposal as a bargaining strategy was well within the parameters of the Act and we turn to the claim that the Union’s conduct was motivated by hostility or bad faith.

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10 Conn. Gen. Stat. § 7-470(c) states, in relevant part:

[T]o bargain collectively is the performance of the mutual obligation of the municipal employer . . . and the representative of the employees to meet . . . and confer in good faith with respect to wages, hours and other conditions of employment . . . but such obligation shall not compel either party to agree to a proposal or require the making of a concession.
If the Union maliciously declined the City’s offers because Hobson considered Complainant a “sinner” regardless of what she did or because, as our dissenting colleague finds, Hobson was retaliating against the City for terminating Hayden and Reinhardt, then improper animus exists and the Union violated the duty it owed Complainant under the Act. Since, in our view, there is not substantial evidence in the record to support either finding, we conclude that the Complainant has failed to meet her burden to show that a prohibited practice has occurred. Viewed in context, Hobson’s statements to Siclari upon being informed of Complainant’s termination was ironic commentary on the City’s actions. Since the Union contested Complainant’s and Reinhardt’s terminations by demanding arbitration, it is reasonable to infer sarcasm in Hobson’s suggestion that either employee “should be fired” and that “a big sin or a small sin are . . . equal.” Furthermore, the statements were made by an official responsible for representing all members of the bargaining unit to a supervisor outside the unit who supported substantially more lenient treatment of Complainant than of previous employees charged with misuse of the AS 400 system. Since the City was willing to afford Complainant such treatment provided it was irrelevant in future discipline disputes and the record is devoid of any other evidence that Hobson or the Union harbored animus as to Complainant, we find that statements were only intended to highlight, from Hobson’s perspective, the unfairness of the City’s position in Complainant’s case.

For similar reasons, we do not find that the Union’s initial rejections of the proposed agreement were intended as a means to retaliate against the City for its treatment of prior employees. While these rejections were at the expense of an employee the City arguably favored, proceeding to arbitration while demanding a precedent-setting settlement is more indicative in these circumstances of an attempt to curtail prospective disparate treatment than to penalize the City. We credit the Union’s claim that it sought to negotiate a settlement that it could use to its benefit in other cases. “Such tactics as bluffing by the parties, with each calling the bluff of the other, is a normal part of the bargaining process.” Crown Cork & Seal Co., No-14-CA-16021 (Div. of Judges 1983), aff’d in part, rev’d in part, 268 NLRB 1089 (1984), remanded sub nom. Teamsters Local Union No. 688 v. NLRB, 756 F.2d 659 (8th Cir. 1985), supplemented on remand, Crown Cork & Seal Co., 275 NLRB 1476 (1985). Reasonable reassessment of one’s position is also part of the process and we find no violation of the Act in the Union’s eventual agreement to the City’s terms given the City’s demonstrated intransigence on the issue and Complainant’s growing losses.

In sum, the alleged breach of the duty of fair representation is this case turns on whether the Union’s proffered reason for rejecting the settlement proposals was pretext for improper animus and we find that it was not. While the Union’s strategy was ultimately unsuccessful, it was within the parameters of the Act notwithstanding Complainant’s losses and so we dismiss the complaint.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

ORDERED that the complaint filed herein be, and the same hereby is, DISMISSED.
CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Chairman

Barbara J. Collins
Barbara J. Collins
Board Member
DISSENT OF MEMBER BATTEY

I agree with the majority that, absent animus, there was a valid basis for Union opposition to a non-precedent setting agreement in these circumstances notwithstanding Complainant’s losses. I find, however, substantial support in the record for a finding of improper animus and therefore I dissent.

Since there is rarely direct evidence of animus, we infer motive from all the circumstances surrounding a respondent’s actions. See *Stamford Career Firefighters Association*, Decision No. 4758 (2014); *City of Waterbury*, Decision No. 3884 (2002); *Town of Watertown*, Decision No. 3719 (1999); *Town of Wallingford*, Decision No. 3662 (1999); *City of New Haven*, Decision No. 2230 (1983); *Killingly Board of Education*, Decision No. 1807 (1979); *Town of Monroe*, Decision No. 1043 (1972). Had the record before us excluded the events of May 24, 2011, I would join the majority and infer that rejection of the City’s initial proposals “was hard bargaining and not bad faith bargaining.” *Whittemore Memorial Library*, Decision No. 2634 p. 12 (1988); see also *State of Connecticut*, Decision No. 2456 pp. 11-17 (1986) (Act allows hard bargaining unless it is for the purpose of frustrating negotiations and preventing agreement). I am, however, bound by the record before me and since I find that Hobson intended the literal meaning of his statements to Siclari, I find that the Union acted for reasons prohibited by the Act.

At the time Hobson told Siclari that Complainant “should be fired”, he was aware that three bargaining unit members had previously been terminated for accessing the police database for personal reasons and that the only impediment to Complainant’s preferential treatment was the Union’s unwillingness to ignore her favored employee status in future discipline disputes. Union resources had recently been expended contesting a similar termination and Hobson’s statements to Siclari reflect both indifference to Complainant (who had nearly escaped with a mere warning from her supervisors) and anger with the City (which demanded Union acquiescence to blatant disparate treatment.)

In addition to circumstantial evidence of bad faith, this case contains the rare admission of animus. The Union processed a grievance contesting Complainant’s termination after its president openly stated that the termination was proper and I decline to give his comments a meaning directly opposite to what he said. By demanding arbitration and postponing acceptance of the City’s proposal for four months, the Union effectively retaliation against the City at Complainant’s expense. Such conduct is inconsistent with the policies underlying the Act and Complainant should be made whole. I dissent.

Wendella Ault Battey
Wendella Ault Battey
Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 19th day of January, 2017 to the following:

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