

APPEAL AGAINST THE UNION (OFNHP, AFT Local 5017)

Note: This appeal narrative covers both Union cases: 19-CB-316231 and 19-CB-339440.

Kathleen Spencer

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[redacted]

Date: 03/20/2025

To:

General Counsel

Attn: Office of Appeals

National Labor Relations Board

1015 Half Street SE

Washington, DC 20570-0001

SUMMARY:

The Regional Director wrongly concluded that the Union acted in good faith. In reality, the Oregon Federation of Nurses and Health Professionals (OFNHP), AFT Local 5017, failed to represent me at every critical stage—before, during, and after my termination—including failing to enforce the contract, abandoning ongoing mediation, and mishandling the grievance and arbitration process—in violation of both the Collective Bargaining Agreement (CBA) and federal labor law.

This appeal covers two connected cases:

Case 19-CB-316231 (Pre-Termination Failure): The Union abandoned me during active mediation with PeaceHealth. Despite knowing a nearly finalized Letter of Agreement (LOA) was in progress, they failed to object to my termination or enforce the CBA's required layoff protections—**specifically the 30-day notice and placement provisions in Article 13**. They allowed PeaceHealth to walk me out mid-process, without protest, intervention, or follow-up—undermining the very purpose of mediation.

Case 19-CB-339440 (Post-Termination Mishandling): The Union's grievance handling after my termination was delayed, disorganized, and riddled with missteps. They missed critical deadlines, ignored multiple arbitration requests, and ultimately refused to escalate the case—despite previously telling me they would. They failed to push for reinstatement and instead presented options that did not comply with the CBA—while PeaceHealth refused to offer any fair resolution. I chose to grieve the termination, but the Union delayed action and ultimately failed to fight for my role. Their conduct reflects bias, an internal conflict of interest in the arbitration decision-making process, and a **breach of their duty of fair representation**.

These were not isolated errors. The Union:

- Missed key deadlines that nearly caused an entire back pay grievance to collapse.
- Failed to take any immediate action after my termination—allowing retaliation to go unchallenged.
- Created a conflict of interest when the rep handling my case also had final authority over whether it went to arbitration.
- Allowed PeaceHealth to violate layoff protections, ignore open grievances, and retaliate mid-mediation—without resistance.

See:

- *Dutrisac v. Caterpillar Tractor Co.*, 749 F.2d 1270, 1274 (9th Cir. 1983): A union’s failure to meet deadlines that extinguish an employee’s only remedy constitutes a breach of the duty of fair representation.
- *DelCostello v. Teamsters*, 462 U.S. 151 (1983): When both the employer and union fail to uphold the CBA, the employee may bring joint claims. These cases are not separate—they represent one continuous breakdown in advocacy and accountability.

These failures demand immediate review and action. The Union’s conduct was neither reasonable nor made in good faith, and it fell short of its legal obligations. These cases must be reopened.

Three Clear Failures That Demand Reopening This Case

1. Failure to Enforce Layoff Protections (CBA Article 13)

The Collective Bargaining Agreement (CBA) clearly required the Union to defend its members from improper layoffs. Article 13.1.1 mandates that employees receive 30 days’ notice or pay in lieu of notice. Article 13.1.2 further requires that the employer make a good-faith effort to place the employee in a comparable position.

- PeaceHealth did neither—and the Union took no action to enforce these protections.
- The Union was notified in advance of my termination. Instead of invoking these contract provisions or objecting on my behalf, my representative simply responded, “Thank you for letting me know.” I was then walked out the door without notice, without pay, and without any effort made to place me in a comparable role.
- This inaction allowed PeaceHealth to blatantly violate the CBA without challenge. It was not a mistake or oversight—**it was a failure of duty**. The Union knew the rules. They knew I was engaged in active mediation. And they still stood by while I was removed in direct violation of Articles 13.1.1 and 13.1.2.

Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) affirmed that collective bargaining agreements are legally binding and must be enforced. **When a union fails to uphold those protections, it undermines the entire contract—putting all members at risk.**

2. Pre-Termination Failure (Case 19-CB-316231): Union Abandonment During Active Mediation

- I was engaged in active mediation with PeaceHealth regarding my Per Diem status.
- A nearly finalized Letter of Agreement (LOA) was in progress.
- On April 6, 2023, PeaceHealth told the Union they would respond “next week.”

- Instead of responding, PeaceHealth walked me out on April 14, 2023.
- The Union was notified before my termination and responded, “Thank you for letting me know,” instead of taking action to stop it by objecting and demanding the 30-day notice.
- The Union did nothing to stop this and never resumed mediation.

3. Post-Termination Failure (Case 19-CB-339440): Mishandled Grievance and Arbitration Process (with Conflict of Interest)

- The Union’s response after my termination was delayed, disorganized, and ineffective.
- They failed to demand reinstatement, missed key deadlines, and offered no contractually compliant path toward resolution.
- More critically, they mishandled the arbitration process in ways that suggest bias, contradiction, and internal conflict.
- After termination, the Union reached out to mediators—but forgot to confirm PeaceHealth’s participation.
- Over a month passed before they corrected the oversight—only after I followed up myself.
- This delay caused months of inaction and weakened my position.

In **December 2022**, after PeaceHealth stopped scheduling me, my assigned union representative—who also chaired the arbitration committee—told me she wanted to bypass mediation entirely and take the dispute straight to arbitration. A previous rep had warned me this approach was inappropriate, and ultimately, we moved forward with mediation instead.

From **January to April 2023**, we engaged in a months-long negotiation over a Letter of Agreement (LOA) intended to secure my continued employment. During that time, I repeatedly told the Union that if mediation continued to stall, I wanted the case taken to arbitration. Despite my clear requests, they never initiated that step. We continued negotiating the LOA.

By **early April**, we were 99% agreed when PeaceHealth abruptly terminated me on **April 14, 2023**. This not only interrupted an active dispute resolution process—it undermined months of progress and violated the very purpose of mediation.

After my termination, a different union representative informed PeaceHealth that OFNHP planned to arbitrate the termination grievance. A post-termination mediation session was held, but it proved fruitless. At that point, I was told the Union would escalate the case to arbitration—**yet the committee, chaired by the same rep who had previously reversed course and was now siding with the employer, declined to take the case forward.**

In **June 2023**, the Union reached out to the mediators—but failed to ask PeaceHealth whether they were willing to participate in mediation. More than a month passed before they corrected this oversight—only after I followed up myself on **July 27, 2023**. This unnecessary delay caused months of inaction and weakened my position.

This is not a case of simple discretion. It reflects a pattern of:

- Ignoring clear member requests for arbitration during stalled negotiations.
- Abandoning an active mediation process that was near resolution.

- Letting a rep with a clear conflict of interest—who had already reversed positions—make the final decision on arbitration.

This is textbook bad-faith handling under the duty of fair representation. It left me without recourse and enabled PeaceHealth to terminate me mid-process, without proper resistance from the Union.

“A union acts arbitrarily when it ignores a meritorious grievance or processes it in a perfunctory fashion.”— Vaca v. Sipes, 386 U.S. 171, 191 (1967)

UAW v. NLRB, 945 F.3d 337 (2020): A union violates its duty of fair representation when it fails to act with reasonable diligence and delays action in a way that prejudices the member.

That is exactly what happened here. My grievance was delayed, mismanaged, and ultimately abandoned **due to a failure of basic representation.**

LEGAL BASIS FOR REOPENING THE CASE

1. The Union’s Inaction Violates Supreme Court & NLRB Precedent

- *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960) → CBAs must be enforced in good faith; **failure to uphold grievance protections** weakens union representation and undermines collective bargaining.
- *Vaca v. Sipes*, 386 U.S. 171 (1967) → A union acts unlawfully when it **behaves arbitrarily or in bad faith.**
- *Air Line Pilots Ass’n v. O’Neill*, 499 U.S. 65 (1991) → **Failure to respond to member requests is arbitrary conduct.**
- *DelCostello v. Teamsters*, 462 U.S. 151 (1983) → **Both union and employer may be jointly liable for contract breaches.**
- *Miranda Fuel Co.*, 140 NLRB 181 (1962) → **Union inaction in the face of known employer violations constitutes potential collusion.** In my case, OFNHP had advance notice of my termination and failed to object or intervene—giving PeaceHealth the green light to retaliate.
- *UAW v. NLRB* (2020) → **Delays that impair a member’s ability to defend themselves breach the duty of fair representation.**
- *Dutrisac v. Caterpillar Tractor Co.*, 749 F.2d 1270, 1274 (9th Cir. 1983): A union’s **failure to meet deadlines** that extinguish an employee’s only remedy constitutes a **breach of the duty of fair representation.**

How This Applies to My Case:

- The Union **failed to challenge PeaceHealth’s clear violation of layoff protections** under Article 13 and stood by while I was terminated during active mediation.
- They **ignored my repeated arbitration requests, missed critical deadlines, and allowed PeaceHealth to stall** or derail every step of the grievance process.
- Their **delays and inaction** gave PeaceHealth time to retaliate unchallenged—despite a nearly finalized LOA being in progress.

- A union representative with a **conflict of interest** played a central role in both mismanaging my grievance and ultimately blocking arbitration.
- These failures mirror exactly the case law prohibiting **arbitrary, perfunctory, or bad-faith** union conduct. Both the Union and PeaceHealth must be held accountable.
- The timing of PeaceHealth’s actions—resuming retaliation immediately after my EEOC protections ended—further **supports a finding of animus under *Wright Line***.

2. Repeated Missed Deadlines Enabled Retaliation

Pre-Termination:

- April 6, 2023: PeaceHealth promised a response to the draft LOA “next week.”
- April 14, 2023: Instead of responding, they terminated me without warning.
- The Union took no follow-up action and never restarted mediation.

Post-Termination:

- Immediately after being removed from the building, I called my union rep, and he said he would speak with HR and figure out what they were going to do next, and he would get back to me that day. He did not.
- I received **no communication** from the Union for 5 days.
- April 21, 2023: My union rep finally spoke with me over the phone and talked about the next steps.
- April 25, 2023: An info request was finally submitted—11 days after my termination.

Air Line Pilots confirms this type of **inaction** falls below the standard for fair representation.

3. Arbitration Promised, Then Withheld at Critical Moments

- In the *pre-termination grievance*, I requested arbitration when the LOA stalled. Despite repeated requests, the Union **never initiated** that next step.
- In the *post-termination grievance*, I was told the Union intended to arbitrate my termination—but they ultimately declined, without explanation, and with a clear **conflict of interest** influencing the decision.
- These were not isolated events. Together, they reflect a **pattern of avoidance and internal contradictions** that denied me a fair and transparent path to resolution.

Timeline of Mishandling:

- May 2, 2023: PeaceHealth offered dates for my grievance meeting.
- My union rep never responded to them or reached out to me.
- May 8, 2023: The Union asked for an extension.
- May 26, 2023: Grievance meeting finally held—**six weeks after my termination**.

These delays directly weakened my defense.

UAW v. NLRB confirms this is a **breach of fair representation**.

4. The Union Relayed Retaliatory Offers & Failed to Challenge Employer Overreach

- **No “comparable” job was ever offered**, as required by Article 13 of the CBA.
- A .5 FTE position at a different location was mentioned—but did **not meet the contract’s**

definition of comparable work.

- The Union relayed proposals that **offered no reasonable path to reinstatement** and failed to challenge conditions that would have prevented me from continuing my employment.

Miranda Fuel confirms that a union's failure to challenge retaliatory or coercive employer proposals may constitute **collusion and breach of duty**.

5. Union Failed to Track and Intervene in a Clear Pattern of Retaliation

- **January 31, 2022:** My first EEOC case (Charge No. 551-2021-00403) closed. Within one week, I was called into an investigatory meeting regarding “productivity”—a performance metric that had never been emphasized before. Despite a recent glowing review and no prior corrective actions in nearly seven years, I was issued formal discipline. **A co-worker investigated for the same issue received no discipline** and was not informed she had the right to union representation. This selective enforcement began only after EEOC protection ended—and the Union did not intervene.
- **July 2022:** I launched a “Bully Boss” campaign and led a Vote of No Confidence. The Union supported this campaign publicly but did not follow through with action when retaliation began escalating.
- **August 24, 2022:** I filed a formal HR complaint against multiple managers. The Union was aware but did not track the retaliatory responses that followed.
- **September 29, 2022:** PeaceHealth threatened to “resign” me unless I increased my availability—despite the fact that I met all Per Diem scheduling requirements under the CBA. **The Union did not challenge this coercive demand.**
- **December 2022:** Following a mediation session, PeaceHealth stopped scheduling me. I was later told they had already “resigned” me—without process or documentation. The Union remained passive.
- **January 2023:** I filed 11 grievances regarding PeaceHealth's refusal to schedule me for available shifts. None were resolved before I was terminated.
- **March 8, 2023:** My second EEOC case (Charge No. 551-2022-03969) officially closed.
- **April 6, 2023:** PeaceHealth told the Union they would respond “next week” to the Letter of Agreement (LOA) that had been in development since mediation in December 2022. Instead of continuing the negotiation, the Union let the matter drop.
- **April 14, 2023:** I was terminated—just five weeks after my second EEOC case was closed.

While PeaceHealth continued retaliating during the second EEOC case, they waited until it closed to take the most extreme step: terminating me. In contrast, they left me completely alone during the year my first EEOC case was open—proving they understood the risk of legal exposure. The Union failed to identify this shift, failed to connect the timeline, and failed to act.

*This timeline reveals a **clear and escalating pattern of retaliation** that the Union failed to acknowledge, defend against, or even document. Their silence in the face of these warning signs was not just negligent—it contributed directly to my termination.*

6. Missed Deadlines on a Key Per Diem Grievance

I was the original advocate and lead voice in exposing PeaceHealth's unlawful scheduling of Per Diem employees — a fight that began years before my termination. In 2019, I helped initiate a grievance showing that PeaceHealth required Per Diems to work beyond what was agreed upon

by Article 5.3.1 of the CBA. PeaceHealth eventually admitted the violation and agreed to provide back pay to a group of impacted employees.

However, the Union failed to meet a critical deadline, nearly causing the grievance to be dropped. That missed deadline severely weakened our bargaining position and ultimately reduced what was expected to be a five-figure settlement for many members to a small payout received by only a few. Many impacted employees received nothing.

Only after I and others escalated the issue did OFNHP leadership revive the case. I was the one consistently keeping this grievance alive — pushing the Union to act when they failed to follow through.

When my union rep continued to miss deadlines and ignore key steps in my termination grievance as well, I contacted the OFNHP Vice President and President directly. I reported the **pattern of delays, the lack of action**, and my growing concerns. Instead of defending me, the President told me to “increase availability”—even though I was already meeting the CBA requirements. This advice echoed PeaceHealth’s own justification and **showed clear alignment with management’s narrative.**

This pattern of disorganization and abandonment mirrors how the Union later mishandled my termination and grievance.

In *Dutrisac v. Caterpillar Tractor Co.*, 749 F.2d 1270, 1274 (9th Cir. 1983), the court held that a union breaches its duty of fair representation when it **fails to meet deadlines that extinguish a worker’s only remedy.** That’s exactly what happened in both instances. OFNHP’s delay nearly nullified a meritorious grievance and ultimately blocked many members from receiving the compensation they were owed. Later, similar missteps—**missed deadlines, passive representation**, and failure to arbitrate—stripped me of the ability to defend against a retaliatory termination.

These were not isolated errors. They form a clear and consistent pattern of neglect that caused material harm—not just to me, but to many of my colleagues as well. As *Miranda Fuel Co.*, 140 NLRB 181 (1962) confirms, union inaction in the face of employer misconduct can amount to **collusion and a breach of the duty of fair representation.** In this case, the Union rep’s “thank you” response and complete inaction allowed PeaceHealth’s retaliation to proceed unchallenged—making the Union not just negligent, but potentially complicit in the outcome.

7. Union Allowed Employer to Rewrite Rules Without Bargaining

This wasn’t about eliminating a position—it was about control.

- PeaceHealth tried to reshape Per Diem scheduling **without bargaining.**
- I met all CBA requirements.
- I worked the equivalent of a part-time employee when scheduled.
- PeaceHealth used scheduling as a weapon — I was the last Per Diem standing.
- The ER was constantly understaffed, disproving their justification.
- The Union failed to push back.

- PeaceHealth was not eliminating my position due to financial concerns—Per Diem employees cost them nothing unless scheduled and receive no benefits. This was about control. PeaceHealth attempted to change the nature of Per Diem employment without going through the Union, stripping Per Diem employees of the one flexibility they had: the ability to set their schedules. My manager had a history of disregarding contract rules, and the Union failed to challenge these overreaches.
- I was speaking publicly, winning grievances, and defending the contract—and that **made me a target**.

There was no legitimate reason to eliminate me.

My termination was retaliation—and the Union let it happen.

BS&B Safety Systems (2021) confirms employers cannot shift justifications to hide retaliation — and the Union failed to hold PeaceHealth accountable.

8. Internal Conflict of Interest on Arbitration Decisions Undermined My Representation

The union representative assigned to my case initially told me she wanted to bypass mediation and take my grievance directly to arbitration after PeaceHealth stopped scheduling me in December 2022. She acknowledged that my availability **met contract requirements and viewed PeaceHealth's actions as retaliatory**.

Yet, during mediation, her stance shifted in the employer's favor. She began citing a clause that Per Diems must "meet the needs of their work unit as determined by the Employer"—misinterpreting this to mean that PeaceHealth could **unilaterally** redefine my availability requirements or eliminate my position **without challenge**.

This was a misreading of the contract. That clause pertains to general scheduling discretion—not to permanent position elimination. It does not override layoff protections under Article 13, which require 30 days' notice and placement efforts. By accepting this misuse of language, the union allowed the employer to terminate me mid-mediation without due process.

Worse, I later learned that this same union representative held a leadership position on OFNHP's arbitration committee and had **final authority over whether my termination would be taken to arbitration**. This created a **direct conflict of interest**: the person guiding my grievance behind closed doors was also the gatekeeper for escalation—and she had already accepted the employer's flawed justification.

Her failure to act on her original intention, combined with her leadership role, contributed to the Union's ultimate decision not to arbitrate. This **breakdown in advocacy** denied me meaningful representation and enabled PeaceHealth's retaliatory conduct to proceed unchallenged.

This misuse of contractual language—combined with internal conflicts of interest—undermines both the CBA and the grievance process. If left unchallenged, it sets a precedent that puts every member at risk.

9. This Sets a Dangerous Precedent

If this dismissal is allowed to stand:

- Union members lose faith in the system.
- Employers learn they can retaliate without consequence.
- Union failures go unchecked.

This case is about more than one job—it's about **accountability and contract enforcement**.

REQUEST FOR ACTION

I respectfully request that the NLRB:

- Reopen this case and conduct further investigation.
- Issue a complaint against the Union for failure to provide fair representation.

Please confirm receipt and advise me of any further steps.

Sincerely,

Kathleen Spencer

Note: Personal contact information has been removed for privacy. All other content remains unchanged and true to the original filing.