



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 04
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September 19, 2018

Lucas K. Middlebrook, Esquire.
Seham, Seham, Meltz & Peterson, LLP
199 Main Street, Seventh Floor
White Plains, NY 10601

Re: ZUFFA, LLC, d/b/a Ultimate Fighting
Championship ("UFC")
Case 04-CA-219498

Dear Mr. Middlebrook:

We have carefully investigated and considered the charge that ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC") has violated the National Labor Relations Act.

Decision to Dismiss: As a result of the investigation, I find that the charge lacks merit. The charge alleges that ZUFFA, LLC d/b/a Ultimate Fighting Championship (UFC) violated Section 8(a)(1) and (3) of the Act by refusing to renew Leslie Smith's contract in retaliation for her Union and protected concerted activities. In April 2018, mixed-martial arts (MMA) fighter Smith was scheduled to fight in her last bout under the terms of her contract with the UFC, but her opponent missed her weight limit. Smith then informed the UFC that she would not fight unless the UFC gave her additional money and added two fights to her contract. The UFC rejected her demands and advised her that it would pay her a fight purse and win bonus in satisfaction of the contract, even though she would not actually have to fight. Although there is ample evidence that Smith has publicly engaged in efforts to unionize MMA fighters since 2016, there is insufficient evidence to establish that the UFC's failure to renew her contract in April 2018 was based on any protected activities. Rather, there is significant evidence suggesting that the breakdown in contract negotiations in April 2018 occurred for nondiscriminatory reasons related to her demands. Because I find no unlawful discrimination, I find it unnecessary to decide whether Smith is a statutory employee.

To establish unlawful discrimination under Section 8(a)(3) and (1) of the Act, the General Counsel must establish that the employee's union or protected concerted activities were "a motivating factor" in an employer's adverse action. *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Initially, it is not clear that UFC's failure to renew a contract and continue to negotiate with Smith was even an adverse employment action. While a failure to renew an employment contract can be an adverse employment action akin to discharge in certain circumstances, this is not what occurred here. Smith's contract expired by its terms and the parties failed to reach an understanding on a new agreement. The Act does not require any party to enter into a contract or to offer any

specific terms in a contract. Thus, it is not clear that UFC took any adverse employment action against Smith by failing to make a counteroffer or enter into a new fight contract.

Even assuming that an adverse action occurred, there is insufficient evidence that an unlawful motive contributed to the UFC's decision not to renew Smith's fight contract. Indeed, UFC's conduct at key points benefitted Smith in a manner that belies any unlawful motive. First, the UFC arguably could have terminated Smith's fight contract in 2017 after she refused to accept a bout against an opponent, but it instead extended her contract twice. These renewals occurred after Smith's public support of unionization. Second, the UFC approved Smith's Project Spearheaded-branded and pro-Union mouth guard for her April 21 fight, which would have been visible for a national television audience, despite policies placing heavy restrictions on the display of third-party logos. Third, the UFC provided Smith with a discretionary allotment of \$500 just prior to the scheduled April 21 fight when she expressed concern over travel expenses. These decisions undermine Smith's assertions that the UFC harbored animus against her for her protected activities. Finally, the investigation disclosed that negotiations broke down over the public manner in which Smith conducted negotiations with demands asking for up to a 222% increase over her then-current contract. It is not the proper role of the Board, in the absence of evidence pointing to animus or pretext, to second-guess UFC's business decisions not to continue to negotiate or renew Smith's contract in response to these kinds of demands. See *W.R. Case & Sons Cutlery Co*, 307 NLRB 1457, 1464 (1992). Accordingly, I am refusing to issue Complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 3, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by

delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than October 2, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 3, 2018.** The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 3, 2018, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Dennis P. Walsh

DENNIS P. WALSH
Regional Director

Enclosure

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC")

Case Name(s).

04-CA-219498

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)