

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELYN RENEE LEE, §
Plaintiff, §
v. § Civil Action H-06-1379
§
UNITED STATES POSTAL SERVICE, *ET AL.*, §
Defendants. §

MEMORANDUM AND RECOMMENDATION

This breach of duty of fair representation case is before the court on motions for summary judgment of defendants National Postal Mail Handlers Union AFL-CIO Local 311 (Union) (Dkt. 27) and United States Postal Service (USPS) (Dkt. 29). The court recommends that defendants' motions be granted and this case be dismissed with prejudice.¹

Background

Lee began working as a mail handler for the USPS in Houston, Texas in 1995. On May 31, 2004, Lee's supervisor, Barbara Bolton, alleged that Lee ran into her while moving an all purpose container (APC). Lee denies she struck Bolton with the APC. Lee was placed off the clock for the duration of her May 31, 2004 shift. When she returned to work a day later, she became ill and left on sick leave. She was on sick leave for ten to twelve days. Upon her return to work, the USPS conducted a pre-disciplinary hearing at which Lee was represented by union steward Christine Walker. On July 8, 2004, the USPS issued a Notice

¹ The district court referred this case to this magistrate judge for pre-trial management (Dkt. 3).

of Removal effective August 20, 2004. Lee's step 1, step 2, and step 3 grievances, filed on her behalf by the Union, were denied. The Union submitted Lee's grievance to arbitration, which was held on January 27, 2006 before arbitrator Lynne M. Gomez. Gomez ruled that the USPS did not have good cause to remove Lee from employment, and reduced Lee's punishment to a 14-day suspension with reinstatement. Gomez rejected Lee's request for back pay, stating:

The Arbitrator is concerned that awarding [Lee] back pay could be construed as validating her lack of remorse and refusal to accept responsibility for her actions, including her insistence, in the face of overwhelming evidence to the contrary, that she did not injure Acting Supervisor Bolton.

In this action, Lee seeks back pay for the period September 17, 2004 (the date she was "taken off the clock without pay") through April 26, 2006 (the date of she returned to work), minus pay for the 14-day suspension.²

Summary Judgment Standards

Rule 56 of the Federal Rules of Civil Procedure mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing of the existence of an element essential to the party's case, and on which that party will bear the burden at trial. *Baton Rouge Oil & Chem. Workers Union v. ExxonMobil Corp.*, 289 F.3d 373, 375 (5th Cir. 2002) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

² Dkt. 1, at 3.

In deciding a motion for summary judgment, the court must determine whether “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Calbillo v. Cavender Oldsmobile, Inc.*, 288 F.3d 721, 725 (5th Cir. 2002). “An issue is material if its resolution could affect the outcome of the action.” *Terrebonne Parish Sch. Bd. v. Columbia Gulf Transmission Co.*, 290 F.3d 303, 310 (5th Cir. 2002) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). In deciding whether a fact issue has been created, the facts and the inferences to be drawn from them must be reviewed in the light most favorable to the nonmoving party. *Hotard v. State Farm Fire & Cas. Co.*, 286 F.3d 814, 817 (5th Cir. 2002).

Analysis

A. The “Hybrid” Cause of Action³

Generally, the result of labor arbitrations are final and subject to very limited judicial review. *DelCostello v. Teamsters*, 462 U.S. 151, 164 (1983). Courts have developed an

³ Lee asserted two causes of action in her complaint. The first cause of action is an “appeal” seeking partial vacating of the arbitration award; the second is for wrongful termination. The defendants characterize the complaint as asserting only a “hybrid” cause of action under federal labor law. Lee adopts this characterization in her response. *See* Plaintiff’s Response, at 3 (Dkt. 3) (“Plaintiff is not required to plead her wrongful termination cause of action against the Union in this case. In this case, Plaintiff pleads a “hybrid” lawsuit against the defendants based on a judicially created exception to the general rule that an employee is bound by the outcome of the grievance or arbitration procedures contained in the negotiated contract between the employer and the Union.”). Thus, the court’s ruling on plaintiff’s “hybrid” cause of action fully disposes of this case.

exception to the rule of finality of collective bargaining arbitrations, called hybrid actions, to remedy injustice when the union acts in such a discriminatory, dishonest, arbitrary, or perfunctory fashion as to breach its duty of fair representation. *Id.* A plaintiff in a hybrid action may sue her employer, her union, or both, but the elements of the cause of action remain the same: (1) that the Union breached its duty of fair representation; and (2) that the employer violated the terms of its collective bargaining agreement with the Union. *Id.* at 165; *Gibson v. United States Postal Serv.*, 380 F.3d 886, 888 (5th Cir. 2004).⁴ Both elements must be established in order to prevail against either defendant.⁵ *Id.* If a plaintiff proves that the Union breached its duty of fair representation, the plaintiff must also prove that absent the Union's breach, the arbitrator would have ruled differently. *Hines v. Anchor Freight*, 424 U.S. 554, 568 (1976).

A union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *DelCostello*, 462 US. at 164; *Vaca v. Snipes*, 386 U.S. 171, 190 (1967); *Smith Int'l Org. of Masters, Mates and Pilots*, 296 F.3d 380, 382 (5th Cir. 2002). The union's conduct is arbitrary only if it is so far outside a wide range of reasonableness as

⁴ A hybrid claim against the USPS arises under the Postal Reorganization Act, 39 U.S.C. § 1208(b), but is governed by the same legal standards as a claim under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), governing private employers. *Gibson v. United States Postal Serv.*, 380 F.3d 886, 888 n.1 (5th Cir. 2004).

⁵ Lee alludes a third issue in her response, that defendants violated her due process rights. She does not offer any argument or authority on this purported issue. The court does not construe Lee's due process contention as a separate cause of action under 42 U.S.C. § 1983, (it is not pleaded in her complaint, Dkt. 1), but as a statement of the ways in which the Union allegedly breached its duty of fair representation.

to be irrational. *Air Line Pilots Assoc. v. O’Neill*, 499 U.S. 65, 67 (1991). Mere negligence does not state a claim for breach of the duty of fair representation. *United Steelworkers v. Rawson*, 495 U.S. 362, 372-73 (1990).

B. Lee Cannot Meet her Summary Judgment Burden

Lee alleges that the Union breached its duty of fair representation in several ways, including by (1) ignoring her “Form 13” informing the Union that she did not want to be represented by Nathan Braziel; (2) by not succeeding in having hearsay and unreliable documents excluded from evidence at arbitration; (3) by not offering testimony from 10 of plaintiff’s witnesses at arbitration; (4) by “allowing” the USPS to conduct a flawed investigation and disciplinary proceeding; and (5) by having an unfamiliar Union representative defend her at arbitration.⁶

The Union and the USPS argue that the Arbitrator’s decision to deny back pay had nothing to do with anything the Union did or did not do, but was based entirely on Lee’s own actions in failing to admit responsibility for her actions. Lee argues that the Union’s presentation of facts at arbitration influenced the arbitrator’s opinion of Lee’s attitude and behavior, leading to the decision to deny her back pay.⁷

⁶ Lee notes that she is an African-American female, but she does not allege or argue that the Union discriminated against her due to her race or gender.

⁷ Lee continues to deny that she hit Bolton with the APC (Dkt. 34 at ¶4), so it is beyond dispute that Lee, as the Arbitrator concluded, does not accept responsibility for the incident that led to her removal.

Lee has not cited, and the court is not aware of, any case holding a union breaches its duty of fair representation when it pursues arbitration on behalf of a represented employee and obtains substantial but not complete relief, *e.g.*, reinstatement without back pay.⁸ The court finds it difficult to conceive of factual circumstances that would support such a case; but even if such a hypothetical case exists, this clearly is not it.

Lee has no evidence that the Union's conduct was arbitrary, discriminatory, or in bad faith. The Union's representation need not be perfect or free from mistakes in judgment. *Lee v. Cytex Indus.*, 460 F.3d 673, 679 (5th Cir. 2006). Lee's affidavit states that she did not believe that Braziel had her best interests at heart because she had unspecified "differences" with him; that Christine Walker, her union steward, was not an effective advocate at the pre-disciplinary hearing; that Braziel and Walker argued during Step 2 of the grievance process creating a "hostile environment"; that contrary to her wishes Braziel represented her in the arbitration along with Albertus Lewis; and that the evidence and statements used against her by the USPS were inflammatory and erroneous. Lee further believes that Braziel's

⁸ In *Harrison v. Chrysler Corp.*, 558 F.2d 1273 (7th Cir. 1977), *overruled by Rupe v. Spector Freight Sys., Inc.*, 679 F.2d 685 (7th Cir. 1982), the union pursued the discharged plaintiff's grievance to the final step of arbitration before an Appeal Board comprised of union and management representatives. The union then resolved the arbitration by agreeing to reinstatement without backpay, a result identical to a settlement offer plaintiff had previously rejected. 679 at 1277. Plaintiff sued his employer alleging the union breached its duty of fair representation. On summary judgment, Chrysler did not contest the merits of the plaintiff's fair representation claim, and instead argued only that plaintiff failed to exhaust intraunion remedies. *Id.* Thus, *Harrison* is not relevant to this case, and in any event, is factually distinct because the grievance was resolved by agreement, not by decision of an independent arbitrator after hearing.

conversations with the Arbitrator and others had a detrimental effect on her case, but she has no evidence demonstrating the fact or content of any such conversations.⁹

The Union filed timely grievances on behalf of Lee and diligently pursued her case through arbitration.¹⁰ The Union asked and argued for reinstatement and back pay on behalf of Lee. While the Union ultimately did not get everything it asked for, it was successful in getting Lee reinstated. The Union's representation, while perhaps not perfect, certainly was not perfunctory or irrational. Lee's subjective displeasure with the way the Union handled her representation does not support a claim for breach of the duty of fair representation. The Union is entitled to great deference in performing its representational duties. *Air Line Pilots Assoc. v. O'Neill*, 499 U.S. 65, 77-78 (1991); *Bache v. American Tel. & Tel.*, 840 F.2d 283, 290 (5th Cir. 1988). A breach of the Union's duty "is not established merely by proof that the underlying grievance was meritorious." *Bache*, 840 F.2d at 290 (citing *Vaca*, 386 U.S. at 195). Because Lee cannot show that the Union breached its duty of fair representation, the court need not address whether the USPS violated the collective bargaining agreement.

Conclusion and Recommendation

A union owes a duty of fair representation to bargaining unit employees, but that duty entails no guaranty of total victory at arbitration. The partial success achieved here was

⁹ Lee Affidavit (Dkt. 35). Lee also believes that the Union should have settled her grievance before arbitration, but there is no evidence that the USPS was willing to accept a settlement, much less one that included back pay.

¹⁰ In fact, the arbitrator commented that the Union pursued certain due process issues "often with excessive zeal." Arbitration Award (Dkt. 28, Ex. 3), at 11.

unquestionably substantial, notwithstanding Lee's disappointment that her reinstatement did not come with back pay. Nothing in this record warrants an inference that anything the Union did or did not do would have resulted in a more favorable outcome. For the reasons discussed above, the court recommends that the Union's and the USPS's motions for summary judgment (Dkts. 27, 29) be granted and Lee's case be dismissed with prejudice.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas on January 3, 2008.



Stephen Wm Smith
United States Magistrate Judge