

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN JOHNSON : CIVIL ACTION
 :
 v. :
 :
 THOMAS JEFFERSON UNIVERSITY :
 HOSPITAL, ET AL. : NO. 02-7303

MEMORANDUM

Padova, J.

October 1, 2003

Plaintiff has brought this action under Section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185 (West 1978), against his former employer for breach of a collective bargaining agreement, and against his labor union for breach of the duty of fair representation. Before the Court are Defendants' Motions for Summary Judgment. For the reasons which follow, Defendants' Motions are granted.

I. BACKGROUND

The following facts are essentially undisputed. Plaintiff was employed by Thomas Jefferson University Hospital (the "Hospital") from 1992 until his termination on January 28, 2002. (Union Ex. A at 10, 176.) Plaintiff became a nursing assistant in 1992 (id.), and was a member of the National Union of Hospital and Health Care Employees, District 1199C (the "Union"). (Hosp. Ex. J-1.) Between October 1997 and October 2001, Plaintiff was disciplined for misconduct several times, including three suspensions for insubordination which resulted in final written warnings. (Union

Exs. B, C and D and Hospital Ex. A-2.)¹

The incident which led to Plaintiff's termination by the Hospital began on November 13, 2001. He was assigned as a floater on 7OR. (Union Ex. A at 43.) One of his duties was to obtain the kitchen order. (Union Ex. E.) Obtaining the kitchen order means to obtain "cookies, crackers, edible goods for the staff" (Union Ex. A at 47.) Plaintiff maintains that obtaining the kitchen order is a voluntary duty, and not a required part of his job, although he had performed this duty in the past. (Union Ex. A at 48.) The Union and the Hospital maintain that obtaining the kitchen order is a required part of a nursing assistant's job duties. (Union Ex. G at 35, Hospital Ex. E ¶ 6.) Plaintiff was directly supervised in his position as nursing assistant by Helene Nimmons, the Charge Nurse for the operating room nursing staff at the Hospital. (Hospital Ex. E ¶¶ 1-2.)

Plaintiff claims that, during the morning of November 13, 2001, Nimmons paged him and asked him to give the kitchen order to

¹Plaintiff argues that the Court cannot consider evidence of these suspensions in connection with the Motions for Summary Judgment because that evidence would be inadmissible at trial pursuant to Federal Rule of Evidence 404(b). The evidence has not, however, been submitted to show that Plaintiff was, indeed, insubordinate on November 13, 2001, or that he has a propensity toward acts of insubordination. This evidence has been submitted to show the Union's and Hospital's knowledge and intent when they made their decisions to suspend and eventually terminate Plaintiff (the Hospital) and not to arbitrate Plaintiff's grievances over his termination (the Union). Evidence of Plaintiffs prior suspensions is admissible for these legitimate purposes.

a coworker. (Union Ex. A at 75.) He told her that he "felt uncomfortable assigning something to a coworker because [he] wasn't a supervisor . . . she was putting [him] in an awkward position. She said okay." (Union Ex. A at 78.) The Hospital and Union maintain that Nimmons paged Plaintiff the morning of November 13, 2001 to ask him to add creamers to the kitchen order and he refused to get the kitchen order, telling Nimmons "I don't eat it so I'm not getting it." (Hospital Ex. E ¶ 8.) Later that morning, Plaintiff was paged by OR Nurse Manager Ann King, Nimmons' boss, who asked him to meet her in the glass office (the central command for the operating room on the 7th floor). (Union Ex. A at 81-82.) When they met in the glass office, King told Plaintiff "I heard that you refused to do an assignment." (Id. at 82-83.) Johnson told her that it wasn't true and Nimmons entered the room, stating "yes it is. You did refuse." (Id. at 84.) Plaintiff asked to leave the meeting to attend a previously scheduled appointment at the University Health Service, his request was denied and King told him to clock out and go home. (Id. at 85-86.)

On his way out of the hospital after his meeting with King and Nimmons, Plaintiff stopped to see Union delegate Dave Bass and asked him to handle the situation for him. (Union Ex. A at 87.) Bass said that "he would handle the situation by speaking to administration and what other steps that was [sic] necessary." (Union Ex. A at 87.) Bass was concerned that Plaintiff might be

terminated and was concerned to "do whatever I had to do to keep Sean in the door, to keep him from being terminated like immediately and to prevent a long suspension, to get him back as soon as I could." (Union Ex. I at 21.) Bass contacted Thomas Barossi, the Coordinator of Employee Relations for the Hospital, on November 14, 2001 and, over the course of many conversations with Barossi between the 14th and 26th, learned that the Hospital was considering terminating Plaintiff. (Id. at 21, 23 and 70.) As a result of Bass's conversations with Barossi, the Hospital prepared a Memorandum of Agreement setting forth the conditions for Plaintiff's return to work. (Hospital Ex. I at 39-40, 75, Ex. A ¶¶ 8-9.) The Memorandum of Agreement required Plaintiff to contact the Jefferson Employee Assistance Program ("EAP") "to enroll in and successfully complete whatever course of treatment that they may recommend with regard to anger management." (Hospital Ex. A-3 ¶ 2.) The Memorandum of Agreement also provided that Plaintiff would be discharged for failing to comply with that requirement. (Id. ¶ 3.) On November 26, 2001, Plaintiff attended a meeting with Bass, Barossi and King in Barossi's office at which the Memorandum of Agreement was discussed. (Union Ex. A at 94-113.) Plaintiff refused to sign the Memorandum of Agreement and was told that he could not return to work until he signed it. (Id. at 109-09.)

Plaintiff met with Barossi again on November 28, 2001 and was told that the Hospital would reinstate him even though he had not

signed the Memorandum of Agreement. (Id. at 121-22.) The Hospital reinstated Plaintiff on November 29, 2001, but informed him that, as condition of his reinstatement, he had to contact Mr. Goddard of the EAP and enroll in and successfully complete an anger management program. (Id. at 129, Hospital Ex. J-2 at 6, Hospital Ex. D ¶ 9 and Hospital Ex. D-2.) The conditions of Plaintiff's reinstatement were contained in a letter from Ann King to Plaintiff dated November 29, 2001, which states as follows:

At this time after thorough review and consideration of the matter, it has been determined that your failure to carry out an assigned duty constituted a serious act of misconduct, and your indefinite suspension is amended to a disciplinary suspension of twelve (12) days. Additionally, you are required to immediately contact Mr. Paul Goddard at the Firstcall Employee Assistance Program . . . and enroll in and successfully complete a program designed to improve your interpersonal relationship with management. It should be further understood that you must provide Mr. Goddard with a release to provide Departmental management information regarding your enrollment and successful completion of the program. Your failure to abide by these requirements will result in your discharge from employment. This will also serve as a final warning that any future infraction of the same or similar nature as outlined above will also result in your discharge from employment.

(Hospital Ex. D-4.) Plaintiff has admitted that he was given a copy of this letter. (Pl. Ex. A-3 ¶ 5.) Plaintiff did not comply with these conditions. (Hospital Ex. A ¶ 13.)

On December 14, 2001, King and Barossi met with Plaintiff and

his Union rep, Rodney Chamberlain, to discuss Plaintiff's failure to call Mr. Goddard. (Id. ¶ 12, Union Ex. A at 138.) During the December 14, 2001 meeting, at the urging of King and Barossi, Plaintiff called Goddard; however, he did not enroll in an anger management program or schedule an appointment with Goddard. (Hospital Ex. D ¶ 12, Union Ex. A at 139-40.)

On December 17, 2001, the Hospital suspended Plaintiff for failing to schedule an appointment with Goddard. (Union Ex. A at 148-49, Hospital Ex. D ¶ 13.) Plaintiff was sent a letter from King dated December 17, 2001, recording the reasons for his suspension:

Specifically, in the meeting you were told that unless you contacted the First CALL [sic] employee assistance program immediately to schedule an appointment and begin the counseling process you would be placed on indefinite suspension. You refused to make that appointment, and therefore you were placed on suspension. You were advised that you would remain on indefinite suspension until you begin counseling with the EAP, and that if you failed to do so by the close of business on December 28, 2001 you would be discharged from employment.

(Hospital Ex. D-5.)

On December 21, 2001, Plaintiff filed charges with the NLRB against the Hospital (for violation of his Weingarten rights, i.e., being singled out unfairly for union activities, being falsely accused and given unwarranted suspensions) and the Union (for not filing or following up on grievances and because of difficulties

reaching Union representatives). (Hospital Exs. S-1, S-2.) Plaintiff withdrew these charges prior to January 24, 2002. (Hospital Ex. S-3.) On December 20 and 27, 2001, the Union filed grievances on Plaintiff's behalf with respect to his November and December suspensions. (Hospital Ex. A-9.)

Plaintiff was permitted to return to work on December 28, 2001, after he told King that he had scheduled an appointment with Goddard. (Union Ex. A at 153.) He was suspended again on December 31, 2001 for refusing to sign a release form which would have allowed the EAP to inform the Hospital of his participation in an anger management course. (Union Ex. A at 154-56, Hospital Ex. A ¶ 15.) On January 4, 2002, during a meeting with Barossi and two Union organizers, Linda Fields and Bernard Fisher, Plaintiff called Goddard and registered for an anger management class. (Hospital Ex. A ¶ 16.) Despite registering, Plaintiff never attended an anger management class. (Hospital Ex. A-5.)

On January 7-8, 2002, the Union (Fields, Sandra Mills, Rodney Chamberlain, Albert Cunningham) and the Hospital held a Third Step Grievance Hearing to discuss the grievances filed by the Union with respect to Plaintiff's November and December 2001 suspensions. (Union Ex. A at 176-177.) The Hospital denied those grievances by letter dated January 24, 2002. (Hospital Ex. L.) Neither Plaintiff nor the Union appealed this decision to arbitration. (Hospital Ex. J-3 ¶ 44.)

Plaintiff filed a charge with the NLRB against the Hospital on January 28, 2002, stating that he had been "repeatedly harassed, suspended and finally discharged on 1/28/02 because of union activities." (Hospital Exhibit T-1.) He filed a charge with the NLRB against the Union on February 11, 2002, stating that "since on or about November 13, 2001, the above-named Union has refused to represent me fairly regarding my grievances concerning the Employer's harassment of me and discipline against me." (Hospital Exhibit T-2.) On February 20, 2002, the NLRB found, as the result of an investigation, that the charges lacked merit, and refused to issue a complaint against either the Hospital or the Union. (Hospital Exhibit T-3.)

Plaintiff was terminated on January 28, 2002, during a meeting with King and Cunningham, for failing to comply with the conditions of his reinstatement. (Union Ex. A at 176, Hospital Ex. A ¶ 19, Hospital Ex. A-8, Hospital Ex. D ¶ 17, Hospital Ex. D-6.) The Union filed two grievances on Plaintiff's behalf on January 28 and 29, 2002, contesting his termination. (Hospital Ex. A-9, Hospital Ex. G at 75-77.) A hearing was held on these grievances on February 12, 2002, at which Plaintiff was represented by Fields. (Union Ex. A at 178, Union Ex. M at 78-79.) At the hearing, the Union took the position that "Management abused their rights under the [CBA] by requiring the Grievant to attend counseling sessions as a condition of employment. They further contend that it is

unjustifiable to terminate Grievant for not attending the session when the individuals that he works with state that [he] has not displayed anger or acted in any way abrasive." (Union Ex. O.) The Hospital denied the grievances by letter dated February 18, 2002. (Union Ex. A at 178, Hospital Ex. N.) Following the denial, Fields determined that the Union should not pursue Plaintiff's grievance to arbitration because "Mr. Johnson's unwillingness to comply with work conditions unarms the union to dispute just cause or insubordination." (Union Ex. M at 83.)

Plaintiff was notified that the Union would not pursue his grievance to arbitration by letter dated February 26, 2002. (Union Ex. Q.) This letter notified Plaintiff of his right to appeal the Union's decision. (Id.) Plaintiff appealed the Union's decision and the Appeals Committee of the Union's Executive Board held a hearing on his appeal on March 11, 2002, at which he was given the opportunity to present his side of the dispute. (Union Ex. A at 179-80, Union Ex. R.) The Appeals Committee of the Union's Executive Board is made up of members of the Union's Executive Board. Union employees, such as Fields and Fisher, do not serve on the Appeals Committee. (Pl. Ex. C at 43, Hosp. Ex. Q. at 17-18.) The Appeals Committee upheld the decision not to take Plaintiff's grievance to arbitration and informed Plaintiff of its decision by letter dated March 13, 2002. (Union Ex. A at 188-189, Union Ex. S.) The Union's letter stated that "[i]t is the unanimous belief

of the members of the Appeals Committee that, based on the available evidence, an arbitration on your behalf could not be won." (Union Ex. S.)

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the

adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. "Speculation, conclusory allegations, and mere denials are insufficient to raise genuine issues of material fact." Boykins v. Lucent Technologies, Inc., 78 F. Supp. 2d 402, 407 (E.D. Pa. 2000). Indeed, evidence introduced to defeat or support a motion for summary judgment must be capable of being admissible at trial. Callahan v. AEV, Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999)(citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n. 9 (3d Cir. 1993)).

III. DISCUSSION

Plaintiff's Amended Complaint alleges both that the Hospital violated the CBA and that the Union breached its duty of fair representation. An employee who proves both that his employer violated the labor agreement and that his union breached its duty of fair representation "may be entitled to recover damages from both the union and the employer." Vavro v. Gemini Food Markets, Inc., 39 F. Supp. 2d 553, 561 (E.D. Pa. 1991) (citing Bowen v. United States Postal Service, 459 U.S. 212, 218 (1983); Vaca v.

Sipes, 386 U.S. 171 (1967)). Suits in which an employee brings concurrent causes of action against a union and an employer are referred to as "hybrid" lawsuits. Id. In hybrid suits, the causes of action are "inextricably interdependent" and a plaintiff must prove his claims against both parties in order to recover from either. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 164-65 (1983) ("To prevail against either the company or the Union, ... [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty by the Union.") (quotation omitted).

A. Duty of Fair Representation

In order to prove that a union has breached its duty of fair representation, a plaintiff must prove that the union's conduct "is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 at 190. In the context of a grievance procedure, the plaintiff must show bad faith or arbitrary conduct on the part of the union:

In the context of a grievance proceeding, the rule is that a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion. While the application of the "perfunctory" standard has proven difficult over time, we have recently made clear that whatever it may mean in other circumstances, mere ineptitude or negligence in the presentation of a grievance by a union has almost uniformly been rejected as the type of conduct intended to be included within the term "perfunctory." What is required is a showing of actual bad faith or arbitrary conduct. The fact that trained counsel would

have avoided the error or pursued a different strategy is not enough.

Riley v. Letter Carriers Local No. 380, 668 F.2d 224, 228 (3d Cir. 1981) (citations omitted). "A union's actions are arbitrary 'only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational.'" Schneider v. Stokes Vacuum, Inc., Civ.A.No. 94-0282, 1994 WL 698226, at *3 (E.D. Pa. Dec. 7, 1994) (citing Air Line Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65, 67 (1991)). A union's refusal to take a complaint to arbitration, by itself, "does not establish breach of duty, even if the member's claim was meritorious." Findley v. Jones Motor Freight, 639 F.2d 953, 958 (3d Cir. 1981). Moreover, "mere negligence or poor judgment on the part of a labor union does not suffice to support a claim of unfair representation." Connor v. Crowley American Transport, Inc., Civ.A.No. 92-5334, 1994 WL 59365, at *6 (E.D. Pa. Feb. 25, 1994) (citations omitted).

Plaintiff asserts that the Union breached its duty of fair representation by failing to pursue his grievances regarding his suspensions on December 17 and 31, 2001 and his termination to arbitration. Plaintiff does not assert a claim against the Union in connection with his November 13, 2001 suspension.

There is no evidence on the record of these Motions that Plaintiff asked the Union to pursue his grievance regarding his December 17 and 31, 2001 suspensions to arbitration. Accordingly,

the Court cannot find that the Union's failure to arbitrate Plaintiff's grievance with respect to these suspensions was arbitrary, discriminatory or in bad faith. Defendants' Motions for Summary Judgment are, therefore, granted with respect to the Union's failure to arbitrate Plaintiff's grievance with respect to his December 17 and 31, 2001 suspensions.

Plaintiff does not argue that the Union's failure to arbitrate his grievance over his termination was discriminatory. He must, therefore, establish that his termination was either arbitrary or in bad faith. Defendants argue that the Union's decision not to arbitrate Plaintiff's termination was not arbitrary under the circumstances. The record before the Court shows that the Union was aware of the following facts when it decided not to arbitrate Plaintiff's grievance over his termination.

The Union was aware that, prior to Plaintiff's November 13, 2001 suspension, Plaintiff had been suspended for insubordination on three previous occasions, and had received final written warnings that a future act of insubordination would result in his termination. (Union Exs. B, C and D.) Viewing the record in the light most favorable to Plaintiff, he was suspended on November 13, 2001 for refusing to assign a kitchen order to a co-worker. (Union Ex. A at 75.) The Union worked with the Hospital to have Plaintiff reinstated if he signed a Memorandum of Agreement. (Hospital Ex. I at 39-40, Hospital Ex. A ¶¶ 8-9.) Plaintiff refused to sign the

Memorandum of Agreement. (Union Ex. A at 109.) The Hospital agreed to reinstate Plaintiff on November 29, 2001, provided he complied with certain conditions of reinstatement. (Union Ex. A at 109, 121-22, 129, Hospital Ex. J-2 at 6, Hospital Ex. D ¶ 9, Hospital Ex. D-4.) When Plaintiff failed to comply with those conditions, the Hospital met with the Plaintiff and the Union and extended the time for his compliance twice, before finally terminating him for failure to comply on January 28, 2002. (Hospital Exs. A ¶¶ 15-19, A-8, A-9, D-5, D-7, Union Ex. A at 153-56.) The Union filed two grievances with respect to Plaintiff's termination and represented Plaintiff at a Third Step Grievance Hearing, taking the position that his termination was unjustified. (Hospital Ex. A-9, Union Ex. O.) Plaintiff has not challenged the quality of the Union's representation at that Hearing.

After Plaintiff's grievance was denied, the Union decided not to arbitrate due to Plaintiff's failure to comply with the conditions of his reinstatement. (Union Ex. M at 83.) Plaintiff does not dispute that he failed to comply with the conditions imposed on his reinstatement by the Hospital and, in fact, maintains, to date, that those conditions were unreasonable. Plaintiff appealed the Union's decision not to arbitrate to the Union's Executive Board Appeals Committee, where it was heard by Union members, and the Committee turned down his appeal. (Union Ex. A at 179-80, 188-89, Union Ex. S.) The Appeals Committee

informed Plaintiff that, “[i]t is the unanimous belief of the members of the Appeals Committee that, based on the available evidence, an arbitration on your behalf could not be won.” (Union Ex. S.) Plaintiff has submitted no evidence that the Union’s decision not to arbitrate his termination “was so far outside a wide range of reasonableness as to be irrational,” given his history of insubordination and refusal to comply with the conditions of his reinstatement. Schneider, 1994 WL 698226, at *3. Accordingly, there are no genuine issues of material fact with regard to the reasonableness of the Union’s decision not to pursue Plaintiff’s grievance over his termination to arbitration.

Plaintiff argues that the Motions for Summary Judgment should be denied because the Union made its decision not to arbitrate his grievance in bad faith. Plaintiff maintains that the Union acted in retaliation for the charges he filed against the Union with the NLRB and because of personal hostility against him on the part of certain Union employees. There is evidence that Union organizer Fields, who made the initial determination that Plaintiff’s grievances should not be arbitrated, was aware that he had filed a charge against the Union with the NLRB. (Pl. Ex. C at 44-45, Pl. Exs. C-1 - C-3.) Plaintiff claims that Union organizer Fields, Union representative Cunningham, and Union organizer Fisher harbored feelings of hostility toward him resulting from confrontations which occurred after his November 13, 2001

suspension from the Hospital. Plaintiff relies on evidence that he threatened Cunningham and Fields and that he had a loud argument with Fisher, to establish the existence of personal hostilities between Plaintiff and the Union officials who made the decision not to arbitrate his grievance.

Fields testified about a confrontation she witnessed between Plaintiff and Cunningham, during which Cunningham believed Plaintiff threatened his children:

And he says, you know man, you know, you're hurting - he was making reference - you're making this bad for yourself because you're not cooperating.

And Sean said, well, I shouldn't have to cooperate or something along those lines.

And he said, your job is on the line. We're trying to get you back to work. You can grieve it afterwards. And he said, all I was trying to do was help you.

And then Sean said something about his kids and he really got upset about it.

And he says, are you threatening me.

And Sean said, no, I'm just speaking the facts.

And he said, don't talk about my kids. They went back and forth.

(Pl. Ex. C at 71-72.) Fields also testified about an incident in which she believed Plaintiff threatened her:

I forgot how he phrased it, but I asked him, I said are you threatening me. And he said no, I'm not threatening you. I'm just letting you know, that if I need you, that I could come here.

(Pl. Ex. C at 114.) Fisher testified about the argument between himself and Plaintiff:

Q. At any point did you have a heated argument with Mr. Johnson?

A. I saw it as my attempt to intervene. He came to the union hall one day long after he was terminated, no appointment, he just came and that's not uncommon, because our members just pop in at times. Ms. Fields was not available on that day. The receptionist called in to our unit to see if anyone was there, she said it was a member from Jefferson. I said who is the member. She said Sean Johnson.

I already had some meetings with Sean Johnson, so I came down and talked with him. Sean was extremely irate when I came down, talking extremely loud, boisterous. I'm trying to calm him down, right, and I wasn't getting anywhere with him.

My question was, Sean, why would you come in this building, and raise all this ruckus when you wouldn't go to any other buildings and do that. Sean's response was I'm a union member, I can do whatever I want to do.

I'm trying to talk to Sean. This is Sean, no one's trying to help me, no one wants to hear my side of the story.

I said, Sean, you can't cut up in here like that. If you are going to act like that, you have to go outside.

Sean didn't want to hear anything I had to say. I said, Sean, look, I tried to talk to you, I'm going back upstairs. He said, go the hell back upstairs, you're no use anyway.

I told him you have to leave this building. He gets more and more irate. I said you walk out or you'll be escorted out. So, he invites me outside. I'll go outside and you can come to.

He walks outside and goes about three buildings down the street and start [sic]

yelling profanities, the Union ain't this, Henry Nicholas ain't this. You all think you're big shots because you have big cars with New Jersey tags on it. I remember it like it was yesterday.

I said, Sean, fine, just don't come back here. This is not the place to bring that nonsense. Don't come back in here. Call Linda, make an appointment. That's what I said at that point.

(Pl. Ex. D at 14-16.) Fisher attended the meeting of the Appeals Panel in place of Fields. (Pl. Ex. A-4 ¶¶ 10-11.) Plaintiff claims that Fisher sought to turn the Appeals Panel against him:

12. Fisher was the first of us to speak at the hearing. Fisher acted as though he had a chip on his shoulder and was trying to turn the panel against me by making it seem as though I was anti-union. Although I do not recall word-for-word what he said, the essence of it was that all I have done is criticized the Union and complained about what the Union has not done for me.

13. During the hearing, Fisher stated several times that I needed to attend anger management, the employer was justified in imposing a course of anger management therapy upon me, and the employer was justified in disciplining me for not attending anger management. Furthermore, Fisher repeatedly interrupted as I tried to explain to the panel what actually happened and why Jefferson's treatment toward me was wrong.

14. The Appeals Committee ruled against me and decided not to take my case to arbitration.

(Pl. Ex. A-4 ¶¶ 12-14.) Plaintiff argues that a jury could reasonably conclude from this evidence that the Union breached its

duty to fairly represent him by choosing not to arbitrate his grievance in bad faith. Although there is evidence on the record on which a jury could conclude that the Union representatives and organizers who had argued with Johnson, or who knew about his complaint to the NLRB, might have had reason to be personally hostile to him, there is no evidence on the record of these Motions that the Union's Appeals Committee, which made the final decision not to arbitrate Plaintiff's grievances, made its decision in bad faith, or was even aware of the conflicts between Plaintiff and Cunningham, Fields and Fisher.

Consequently, Plaintiff has failed to establish the existence of a genuine issue of material fact with regard to the existence of bad faith on the part of the Union in its decision not to arbitrate his grievance over his termination. Defendants' Motions for Summary Judgment are, therefore, granted with respect to Plaintiff's claim that the Union breached its duty of fair representation.

B. Breach of the Collective Bargaining Agreement

The Hospital has moved for summary judgment on Plaintiff's claim, pursuant to Section 301, that it breached the CBA by first suspending and then terminating him. Plaintiff cannot maintain his Section 301 action against the Hospital unless he has first established that the Union breached its duty of fair representation. Teamsters Local 391 v. Terry, 494 U.S. 558, 564

(1990) ("an employee normally cannot bring a § 301 action against an employer unless he can show that the union breached its duty of fair representation in its handling of his grievance."). Since Defendants' Motions for Summary Judgment with respect to Plaintiffs' claim that the Union breached its duty of fair representation are granted, the Court must also grant the Hospital's Motion for Summary Judgment with respect to Plaintiff's claim that the Hospital breached the CBA. See Black v. Ryder/P.I.E. Nationwide, Inc., 930 F.3d 505, 510 (6th Cir. 1991) ("when the union cannot be held liable for unfair representation, of course, the employer cannot be held liable for breach of the collective bargaining agreement.") (citing Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 570-72 (1976)). Accordingly, the Hospital's Motion for Summary Judgment on Plaintiff's Section 301 claim is granted.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN JOHNSON : CIVIL ACTION
: :
v. : :
: :
THOMAS JEFFERSON UNIVERSITY : :
HOSPITAL, ET AL. : NO. 02-7303

ORDER

AND NOW, this 1st day of October, 2003, in consideration of the Motions for Summary Judgment filed by Thomas Jefferson University Hospital (Docket No. 27) and National Union of Hospital and Healthcare Employees District 1199C (Docket No. 28), the papers filed in support thereof, Plaintiff's response thereto, and the oral argument held on the Motions on September 22, 2003, **IT IS HEREBY ORDERED** as follows:

1. Thomas Jefferson University Hospital's Motion for Leave to File a Reply Brief (Docket No. 38) is **GRANTED**.
2. Thomas Jefferson University Hospital's Motion for Summary Judgment (Docket No. 27) is **GRANTED**.
3. Judgement is entered on behalf of Thomas Jefferson University Hospital and against Plaintiff.
4. National Union of Hospital and Healthcare Employees District 1199C's Motion for Summary Judgment (Docket No. 28) is **GRANTED**.
5. Judgement is entered on behalf of National Union of Hospital and Healthcare Employees District 1199C and

against Plaintiff.

6. The Clerk of Courts shall **CLOSE** this case for statistical purposes.

BY THE COURT:

John R. Padova, J.