

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

| | | |
|----------------------------|---|--------------|
| GLENN ALLEN, | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | NO. 99-2540 |
| | : | |
| v. | : | |
| | : | |
| UNIVERSITY OF THE SCIENCES | : | |
| IN PHILADELPHIA, et al., | : | |
| Defendants. | : | |

MEMORANDUM

BUCKWALTER, J.

December 1, 1999

Plaintiff Glenn Allen (“Plaintiff”) brought the within action against his union, United Industrial, Service, Transportation, Professional and Government Workers of North America (“Union”) for breach of its duty of fair representation and against his former employer University of Sciences in Philadelphia (“University”) for wrongful discharge in violation of the collective bargaining agreement. The summary judgment motion filed by defendant will be denied for the following reasons.

While the Union and the University have stated that no genuine issue of material fact exists, Plaintiff, through his own sworn affidavit, has raised several issues that this Court has deemed to be genuine when considering this motion. For example, Plaintiff claims that the Union failed to allow him to speak with Jon Spadaro, the union representative responsible for filing grievances, until thirty minutes before the grievance meeting.¹ Plaintiff claims that this

1. The Union claims that Plaintiff and Jon Spadaro met for sixty minutes prior to the grievance meeting.

was not sufficient, in that, most of the time was spent discussing the Union's prior attempt to have him replaced, therefore, limiting the relevant discussion to ten minutes.

Plaintiff also claims that Timothy Michener, Director of Security at the University, personally approved the purchase that led to Plaintiff's termination of employment. Thirdly, Plaintiff contends that the Union's own representative, George Gallo, rather than arranging for a meeting between Plaintiff and Jon Spadaro, offered Drew Meiers, Acting Director of Facilities Management to have Plaintiff replaced prior to the grievance meeting.

While this Court recognizes that "proof that the union may have acted negligently or exercised poor judgment is not enough to support a claim of unfair representation," Findley v. Jones Motor Freight, Division Allegheny Corp., 639 F.2d 953, 959 (3d Cir. 1981) it is understood that in order to state a claim for breach of the duty of fair representation, "it is essential that the plaintiffs allege a bad faith motive on the part of the union." Id. (quoting Medlin v. Boeing Vertol Co., 620 F.2d 957, 961 (3d Cir. 1980)). Although but one of the facts in dispute, Plaintiff's factual contention that a Union representative actively recommended that Plaintiff be replaced--prior to any grievance meeting--raises an issue that should be decided by a jury.

While the facts presented within this Memorandum are not all-inclusive, they are a sample of the material facts that may be in dispute.

An order follows.

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ORDER

AND NOW, this 1st day of December, 1999, upon consideration of Defendants University of the Sciences in Philadelphia, et al's Motion for Summary Judgment, and Plaintiff Glenn Allen's response thereto, it is hereby ORDERED and DECREED that said Motion is DENIED.

All parties are hereby ORDERED to provide the Court with a Stipulated Amended Case Management Order. If the parties are unable to agree on the terms of that Order, the Court will order a scheduling conference at the request of one or all of the parties.

BY THE COURT:

RONALD L. BUCKWALTER, J.