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

JOSEPH IBBETSON	:	
Plaintiff,	:	
	:	
	:	
	:	NO. 06-cv-3661
v.	:	
	:	
TEAMSTERS LOCAL 384	:	
Defendant.	:	
	:	

MEMORANDUM AND ORDER

October 22, 2007 Brody, J.

I. Introduction

Joseph Ibbetson (Ibbetson) brought this action against Teamsters Local 384 (the Union) to collect wages missed during an 18-day suspension from his employment as a United Parcel Service (UPS) driver. Ibbetson claims that the Union is liable for his lost wages because Robert Keller (Keller), the President of the Union, did not fulfill the Union's duty of fair representation when Ibbetson was discharged. The Union moves for summary judgment claiming that Keller could not have shortened or prevented Ibbetson's suspension and that the Union fulfilled its duty of fair representation. I grant the Union's Motion for Summary Judgment.

This Court has jurisdiction pursuant to § 301 of the Labor Management Relation's Act, 29 U.S.C. § 185(a).

II. Facts

For purposes of summary judgment, the nonmoving party's evidence is to be believed, and all justifiable inferences are to be drawn in the nonmoving party's favor. *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Here, the facts are stated in the light most favorable to Ibbetson, the nonmoving party, and all reasonable inferences are drawn in Ibbetson's favor. Factual disputes are noted in footnotes.

Ibbetson was a UPS employee in good standing from 1996 until January 2006. On January 5, 2006, Ibbetson was on duty moving trucks. Because there was no work to do, Ibbetson chatted with a fellow employee.[1] Kevin Torrey (Torrey), the UPS Dispatch Manager, accused Ibbetson of "stealing time" by talking to a fellow employee instead of working. On January 11, 2006, Ibbetson received an Official Warning Notice about this incident.

Around the same period of time, Ibbetson noticed that UPS was contracting out work in violation of the collective bargaining agreement (CBA) between UPS and the Union. On February 1, 2006, Ibbetson filed a grievance complaining about the subcontracting and asking for the pay he lost to the non-UPS driver. UPS does not usually meet about a grievance on the day it is filed, but Torrey held a meeting about Ibbetson's grievance that same day. Torrey had evidence that Ibbetson was not available to drive the routes the non-UPS driver covered. Therefore, Torrey reasoned that Ibbetson either lied in his grievance or on his time-card. At the February 1, 2006 meeting, Torrey fired Ibbetson for dishonesty without giving Ibbetson a chance to present his side of the story.[2]

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[1] The Union disputes that there was no work to be done. The Union maintains that Ibbetson did not report to the on-sight boss who would have given him work.

[2] The CBA covers the terms and conditions for employment. Article 51 of the CBA provides that no employee may be discharged without just cause. The CBA and UPS's work

Upon an adverse employment action, union members are entitled to union representation. As a regular practice, after a UPS employee is fired, the Union President calls UPS and advocates for reinstatement. On January 31, 2006, the day before Ibbetson was fired, Keller filed internal Union charges against Ibbetson that were unrelated to his termination. Keller declined to represent Ibbetson because Keller did not want Ibbetson to feel that the Union's representation was "retaliatory or discriminatory" because of pending internal Union charges.[3] (Keller, pg. 44) Therefore, Keller reassigned the responsibilities to Brian Mitchell (Mitchell), another Union business agent. Keller wanted to ensure that the assigned business agent "had no dealings with [Ibbetson] personally, [and] could represent him and be fair and, you know, give it all the gusto he could give." (Keller, pg. 44)

On February 21, 2006 Mitchell represented Ibbetson at a meeting with UPS. At that meeting, Mitchell failed to get Ibbetson reinstated. Ibbetson was under the impression that it would take the weight of Keller's office as Union President to get him reinstated.[4]

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rules contain several "cardinal infractions" for which an employee is subject to immediate discharge, including dishonesty.

[3] The charges resulted from a conflict that started when Mark Capper (Capper) and his girlfriend went out to dinner with Chris O'Donnell (O'Donnell) and his wife at a Union conference in May 2002. O'Donnell charged his wife's dinner to the Union credit card even though Capper warned that the Union should not pay for it. Subsequently, Capper obtained a copy of the dinner receipt.

The dinner receipt surfaced during a 2006 Union election when the "Leadership Slate," including Keller, O'Donnell, and Brian Mitchell, opposed the "Integrity Slate," including Capper and Ibbetson. On January 22, 2006, the Integrity Slate distributed a two-page flyer that included a copy of the dinner receipt and an allegation that O'Donnell treats his wife to dinner with Union money. Ibbetson allegedly misused a Union financial document when he distributed the flyer.

[4] Torrey insists that UPS's decision to reinstate Ibbetson was independent of Keller's involvement and that Keller could not have changed when UPS reinstated Ibbetson.

Ibbetson called Keller and set up a meeting for February 23, 2006 at the Union hall. At that meeting, Keller told Ibbetson that Ibbetson needed to sign some affidavits that were unrelated to Ibbetson's termination. Ibbetson was under the impression that he needed to sign the affidavits before Keller would get him reinstated.[5] Ibbetson signed the affidavits. Ibbetson remembers that meeting as conflict-ridden; he recalls Keller saying that, "he could not believe that he was going to do this, make a deal with labor, as much as he hated me."[6] (Ibbetson, pg. 79)

On February 27, 2006, UPS reduced Ibbetson's discharge to an 18-day suspension. Ibbetson accepted the 18-day suspension and returned to work soon thereafter. Ibbetson then filed this suit against the Union alleging that the Union breached its duty of fair representation. The Union moves for summary judgment.

III. Legal Standard for Summary Judgment

Summary judgment must be granted if "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). Facts are material if they might affect the outcome of the case. *Anderson*, 477 U.S. at 248. A genuine issue exists when the evidence is such that a

[5] Keller maintains that his request for Ibbetson to sign the affidavits was unrelated to Ibbetson's reinstatement. There is a dispute as to whether Keller spoke to UPS about getting Ibbetson reinstated before or after the February 23, 2006 meeting.

[6] Keller has a very different recollection of that meeting. Keller recalls that the meeting was positive and he maintains that he would never say such negative things. Also, Keller explains that the meeting was for discussing when Ibbetson would return to work, not for determining if Ibbetson would return to work.

reasonable jury could return a verdict in favor of the nonmoving party. *Id.* at 248-52. Mere speculation does not create a genuine issue of material fact. *Lexington Ins. Co. v. Western Pa. Hosp.*, 423 F.3d 318, 333 (3d Cir. 2005). Summary judgment is appropriate as a matter of law when the nonmoving party has failed to make an adequate showing on an essential element of his case, as to which he has the burden of proof at trial. *See Cleveland v. Policy Management Sys. Corp.*, 526 U.S. 795, 804 (1999).

IV. Discussion

The duty of fair representation is a judicially created doctrine that requires unions to provide fair representation for their members because unions are their authorized exclusive bargaining agents. *Findley v. Jones Motor Freight*, 639 F.2d 953, 957 (3d Cir. 1981). A duty of fair representation claim against a union has two elements: (1) the union's conduct must have been arbitrary, discriminatory, or in bad faith, *Vaca v. Sipes*, 386 U.S. 171, 190 (1967), and (2) the union's conduct must have seriously undermined the arbitral process. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 567 (1976) (discussing both grievance and arbitration proceedings). *See also Barr v. United Parcel Service, Inc., et al.*, 868 F.2d 36, 43 (2d Cir. 1989) (articulating the elements of the duty of fair representation).[7] A union's tactical decision made in the course of representation needs to be an egregious error of judgment to seriously undermine the arbitral process. *Barr*, 868 F.2d at 43. Consequently, a union is accorded a wide range of reasonableness to perform effectively. *Findely*, 639 F.2d at 957.

[7] In *Barr*, the Second Circuit articulated the elements of a duty of fair representation claim in the context of allegedly insufficient representation at both the grievance and arbitration stages. 868 F.2d at 43. Accordingly, I consider the two elements applicable in this case even though Ibbetson settled before arbitration.

Ibbetson argues that the Union breached its duty of fair representation when it handled his termination grievance. Ibbetson alleges that Keller, the Union President, always represents terminated employees and that Keller's involvement was necessary to get him reinstated. Instead of representing Ibbetson himself, and to avoid the appearance of impropriety, Keller reassigned the grievance to Mitchell. Eventually, UPS offered to change Ibbetson's termination into an 18-day suspension. By accepting the 18-day suspension, Ibbetson ended the grievance process before reaching arbitration. Without providing any non-speculative evidence that Keller could have gotten him reinstated sooner, Ibbetson maintains that Keller's failure to represent him prolonged the suspension.

Ibbetson provides no evidence that a Union representative inhibited his access to arbitration or that the hybrid Keller/Mitchell representation undermined the grievance process. Keller's tactical decision to have Mitchell represent Ibbetson is the sort of decision making that the wide range of reasonableness awarded to unions ought to protect. *See Barr*, 868 F.2d 43 ("Tactical errors are insufficient to show a breach of the duty of fair representation . . ."). It is not clear that Keller's decision to recuse himself from representing Ibbetson was even a tactical error because Ibbetson has not demonstrated that Keller's full representation could have changed the outcome. As the Supreme Court explained in *Hines*, "The grievance process cannot be expected to be error free." 424 U.S. at 571 Accordingly, Ibbetson cannot use the clarity of hindsight to guide how the Union officials should have treated his claim.

Ibbetson did not make an adequate showing that the Union's behavior was outside the wide range of reasonableness awarded to unions so as to seriously undermine the arbitral process, an essential element of Ibbetson's claim to which he has the burden of proof at trial. Therefore, I

need not discuss whether the Union's conduct was arbitrary, discriminatory, or in bad faith, and the Union is entitled to summary judgment.

ORDER

AND NOW, this ____ day of October 2007, it is **ORDERED** that Defendant Teamsters Local 384's Motion for Summary Judgment (Doc. # 14) is **GRANTED**.

ANITA B. BRODY, J.

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