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

LUIS MORALES,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
UFCW LOCAL 1776 AFL-CIO,	:	
Defendant.	:	**No. 04-5966**
	:	

MEMORANDUM AND ORDER

Schiller, J. **May 26, 2005**

Defendant United Food and Commercial Workers Local 1776 ("Local 1776") moves for summary judgment on pro se Plaintiff Luis Morales's claims that Local 1776 breached its duty of fair representation and that it unlawfully discriminated against him on the basis of his race and/or national origin in violation of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e–e-17 (2005). For the reasons set forth below, Defendant's motion is granted.

I. BACKGROUND

The following facts are undisputed. Plaintiff began working at Garden State Tanning, Inc.'s ("GST") factory in Reading, Pennsylvania in 1998.[1] (Def.'s Mot. for Summ. J. Ex. 2 (Deposition of Luis Morales [hereinafter "Morales Dep."]) at 25-26.) GST is a business engaged in, inter alia, the preparation of leather hides, including the cutting and drying of the hides. (*Id*. at 25.)

On January 29, 2003, GST and Local 1776 entered into a collective bargaining agreement ("CBA") in part "to provide for the prompt, peaceful and equitable adjustment of differences which

[1] GST was originally named by Plaintiff as a co-Defendant in this action. On April 26, 2005, Plaintiff and GST settled their differences, and the Court entered an Order dismissing GST. (*See* Order of April 26, 2005.)

may arise between the Employer and the Union and the employees." (Def.'s Mot. for Summ. J. Ex. 9 (Collective Bargaining Agmt.) § I.1.01.) The CBA includes a grievance adjudication process, and if no resolution has been achieved by the end of that process, the parties are required to submit their differences to arbitration before the American Arbitration Association. (*Id*. at § XVI.)

At GST, Plaintiff worked on a "toggle unit." (Morales Dep. at 26.) A toggle unit, composed of four employees, attends a heated "blower," which dries leather hides on a large metal frame. (*Id*. at 29.) Once one side of a hide is dry, the toggle unit removes the frame from the blower, flips it, and places it back in the blower to dry the other side of the hide. (*Id*.) This job is potentially dangerous, in that if the frame is flipped forcefully, someone on the toggle unit could be injured. (*Id*. at 31.)

One of Plaintiff's co-workers on his toggle unit was Alfred Battle. (*Id*. at 29.) The instant action arises out of two incidents between Plaintiff and Battle, one which took place on August 13, 2003, and the other on October 29, 2003. (*Id*. at 31-43, 121-128.)

A. The August 13, 2003 Incident

On August 13, 2003, Plaintiff became engaged in a heated argument with Battle while their toggle unit was flipping frames. (*Id*. at 31-43.) Battle accused Plaintiff of flipping the frame too hard on three consecutive occasions, warned him not to do so again, and then yelled at and cursed at Plaintiff. (*Id*. at 32; Def.'s Mot. for Summ. J. Ex. 5 (Battle Stmt.) at 4.) Plaintiff denies that he flipped the frame inappropriately, and claims that he was "embarrassed and . . . humiliated" by how Battle treated him. (Morales Dep. at 32.) At no time during the course of this incident did Battle, who is African-American, use any racial epithets or direct any racially derogatory terms toward Plaintiff, who is of Hispanic origin. (*Id*. at 42.)

That same day, Plaintiff submitted a written complaint to James Dawson, Local 1776's union steward for Plaintiff's shift. In this written complaint, Plaintiff stated that he felt Battle had "disrespected" him by "yelling boisterously" at Plaintiff and "using obscene language towards me . . . which was very profane." (Def.'s Mot. for Summ. J. Ex. 4 (Plaintiff's Written Complaint of 8/13/03) at 1.) This written complaint also averred that Dawson "prejudged" Plaintiff and told Plaintiff that "everything is going to fall back on" Plaintiff if he asked Local 1776 to submit a grievance on his behalf based on the incident. (*Id*. at 2.)

Dawson then convened two meetings to discuss the incident. (Morales Dep. at 42.) The first meeting took place on August 13, 2003, on the factory floor, and was attended by Dawson, Ken Weitzel (the toggle unit's supervisor), Plaintiff, Battle, and the other two members of Plaintiff's toggle unit, Richard Schaeffer and Terry Kulp. (*Id*. at 67-71.) Schaeffer and Kulp insisted that they had not seen or heard anything out of the ordinary, and the meeting ended. (*Id*. at 71.) Without any evidence of improper behavior, Dawson informed Plaintiff, there was nothing he could do at that time. (*Id*.)

The second meeting was convened the next day in a conference room at GST, and was attended by Dawson, Plaintiff, Battle, Schaeffer, Kulp, Weitzel, Arnold Much (the department supervisor) and another employee named "Santos." (*Id*. at 77-88.) Plaintiff and Battle gave their conflicting accounts of the incident, while the other attendees stated either that Plaintiff had flipped the frames too hard or that they had not seen or heard anything out of the ordinary. (*Id*. at 83-84; Def.'s Mot. For Summ. J. Ex 6 (Kulp Stmt.); *id*. Ex. 7 (Schaeffer Stmt.).) The meeting ended with Dawson and Much telling Plaintiff that there was nothing they could do because all other witnesses either supported Battle's account or did not see or hear anything noteworthy. (*Id*. at 87-88.) Dawson

also advised Plaintiff not to pursue his written complaint because, under the CBA, two Union employees cannot file grievances against one another. (*Id*. at 105.)

Plaintiff did, however, submit his written complaint regarding the incident to James Hunt, Local 1776's service representative. Hunt received Plaintiff's written complaint on August 15, 2003. (Def.'s Mot. For Summ. J. Ex. 3 (Hunt Aff.) ¶ 3.) Hunt then investigated the incident by separately interviewing Battle, Kulp, Schaeffer, Dawson, and Weitzel. (*Id*. ¶¶ 5-6.) Schaeffer stated that Plaintiff "flipped the first three frames hard," and that Battle then told Plaintiff "[d]on't do that again!" (*Id*. Ex. 7 (Schaeffer Stmt.).) Kulp stated that the incident between Plaintiff and Battle was precipitated when Plaintiff "recklessly flipped the toggle frame 3 times in a row." (*Id*. Ex. 6 (Kulp Stmt.).) Hunt knew from his experience at the factory that this "could create a dangerous situation for the other team members." (*Id*. Ex. 3 (Hunt Aff.) ¶ 8.) Dawson and Weitzel both stated to Hunt that it was unclear who was in the wrong, and that the August 14, 2003 meeting had arrived at the same conclusion. (*Id*. ¶ 10.)

Based on this information, Hunt decided that the company had followed the correct procedures, and that therefore "there was no basis upon which I could file a grievance against GST." (*Id*. ¶ 12.) Moreover, Hunt determined that "because Mr. Morales was not disciplined and no other adverse action was taken against him, there was no basis to file a grievance." (*Id*.) Hunt also concluded that "the incident was not racially motivated because there was no evidence that Mr. Battle's actions, even in Mr. Morales's version of events, had any racial element at all," (*id*. ¶ 15), and that GST's response to the incident was reasonable and nondiscriminatory (*id*. ¶ 16). Finally, Hunt informed Plaintiff that "the Union cannot file grievances on behalf of one member against another member. Rather, the Union can investigate the member's complaint, and, where warranted,

file a grievance with the company alleging the company's act or failure to act violated the CBA." (*Id*. ¶ 13.)

B. The October 29, 2003 Incident

The second incident between Plaintiff and Battle occurred on October 29, 2003, when Battle threatened Plaintiff with toggles, which are pieces of metal equipment that clamp the hides onto a frame. (Morales Dep. at 122.) Battle was angry with Plaintiff because he felt that Plaintiff was taking an excessive number of breaks. (*Id*. at 123.) Plaintiff summoned Weitzel over to the toggle unit, and Dawson also came by and asked the other members of the toggle unit what had happened, but again the other employees did not believe that anything extraordinary had occurred. (*Id*. at 126, 133-34.) The next day, Weitzel called another meeting, much like the one that had followed the August 13, 2003 incident. The meeting was attended by Plaintiff, Battle, Kulp, Schaeffer, and Much, as well as Dawson and Bob Kock (another Local 1776 union steward). (*Id*. at 135.) At the meeting, Plaintiff asked to be transferred from the toggle unit. (*Id*. at 139.) "Pretty soon" after Plaintiff made this request, he was transferred to another job. (*Id*. at 141, 143.)

C. Plaintiff's Layoff

In February of 2004, GST closed the Reading, Pennsylvania factory, and laid off all the factory's employees, including Plaintiff. (*Id*. at 156-58.) GST moved the factory to Maryland, and offered Plaintiff a job at that location, but Plaintiff refused to relocate because of concerns about his family and also because of the unsatisfactory conditions of his employment at GST. (*Id*. at 158.) On December 23, 2004, Plaintiff filed the instant action.

II. STANDARD OF REVIEW

Summary judgment is appropriate "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). The moving party bears the initial burden of identifying those portions of the record that it believes illustrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the moving party makes such a demonstration, then the burden shifts to the nonmovant, who must offer evidence that establishes a genuine issue of material fact that should proceed to trial. *Id.* at 324; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). "Such affirmative evidence – regardless of whether it is direct or circumstantial – must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." *Williams v. Borough of West Chester*, 891 F.2d 458, 460-61 (3d Cir. 1989).

When evaluating a motion brought under Rule 56(c), a court must view the evidence in a light most favorable to the nonmovant and draw all reasonable inferences in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see also Pollock v. Am. Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d Cir. 1986). A court must, however, avoid making credibility determinations or weighing the evidence in ruling on summary judgment. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

III. DISCUSSION

As noted, Plaintiff asserts two claims against Local 1776. First, he alleges that Local 1776 breached its duty of fair representation, and second, that it discriminated against him in violation of Title VII. The Court will discuss each claim in turn.

A. Duty of Fair Representation

Because a union is authorized to act as the exclusive bargaining agent for its members, it has a "duty to provide fair representation in the negotiation, administration, and enforcement of the collective bargaining agreement." *Findley v. Jones Motor Freight,* 639 F.2d 953, 957 (3d Cir. 1981). A union breaches this duty only if its conduct towards a member is "arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Even "proof that the union may have acted negligently or exercised poor judgment is not enough to support a claim for unfair representation." *Bazarte v. United Transp. Union*, 429 F.2d 868, 872 (3d Cir. 1970). Instead, "courts will interfere with union decisions about employee grievance proceedings only if a union shows reckless disregard for the rights of an employee." *Castenada v. Dura-Vent Corp.*, 648 F.2d 612, 618 (9th Cir. 1981).

Plaintiff claims that Local 1776 breached its duty of fair representation by its conduct in connection with the two incidents with Battle. Defendant argues that there is no evidence of such a breach. The Court now proceeds to analyze whether Defendant's conduct was "arbitrary, discriminatory, or in bad faith." *Vaca*, 386 U.S. at 190.

1. Arbitrary Conduct

A union is accorded a "wide range of reasonableness" in handling grievances. *Hines v. Anchor Motor Freight*, 424 U.S. 554, 563-64 (1976). Union conduct is arbitrary only if it is "so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots Ass'n, Int'l v. O'Neill*,

499 U.S. 65, 67 (1991). Plaintiff argues that Local 1776's conduct was arbitrary because, in the course of his investigation, James Hunt did not interview two employees that Plaintiff thought had information relating to the August 13, 2003 incident. (Morales Dep. at 99.)

If a plaintiff alleges that a union acted arbitrarily by not pursuing the possibility of interviewing other witnesses, "there must be a demonstration that the omission damaged the grievance presentation." *Findley*, 639 F.2d at 959. In other words, the plaintiff is "required to produce at least the substance of the witness's knowledge of the incident." *Id*. Plaintiff, though, has not submitted any evidence whatsoever regarding what, if anything, those two other witnesses might have seen or heard that could have changed the outcome of the Union's investigation of the incident. *Id*. Instead, he has merely asserted that two other employees, who may or may not have witnessed the incident, were not interviewed. This does not constitute evidence sufficient to survive a motion for summary judgment. *Masy v. New Jersey Transit Rail Operations, Inc.*, 790 F.2d 322, 328 (3d Cir. 1986) (holding that "bare assertions" of arbitrary conduct by union do not constitute reason to deny summary judgment).

Here, Hunt interviewed the other three members of Plaintiff's toggle unit, as well as Dawson and Weitzel. (*See* Def.'s Mot. for Summ. J. Ex 3 (Hunt Aff.) ¶¶ 5-6.) Each person interviewed stated either that it was unclear who was at fault between Plaintiff and Battle or that Plaintiff had precipitated the incident between them. (*See id*. ¶ 10.) Hunt concluded that no basis existed for proceeding to arbitration both because of the results of the interviews and also because GST did not take any adverse action against Plaintiff for the incident. (*See id*. ¶ 12.) Given the wide latitude afforded unions in investigating and pursuing grievances, *see Findley*, 639 F.2d at 958-59, the Court

concludes that no reasonable fact finder could find that Local 1776's conduct was "so far outside a wide range of reasonableness as to be irrational." *O'Neill*, 499 U.S. at 67.

2. Discrimination

To determine whether there has been discrimination, courts look to the union's subjective intent in pursuing its representation of its members. *Adams v. Budd Co.*, 846 F.2d 428, 433-34 (7th Cir. 1988). Just as an employer cannot discriminate based upon an impermissible consideration, neither may a union. *See McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 285 (1976). Thus, "a union cannot discriminate in the application of the terms of its collective bargaining agreement." *Scott v. Graphic Communs. Int'l Union, Local 97-B*, Civ. A. No. 02-0806, 2003 U.S. Dist. LEXIS 24985, at *9-10 (M.D. Pa. Mar. 10, 2003). To defeat a motion for summary judgment, "the plaintiff must show subjective hostility toward the plaintiff or the plaintiff's class and that the hostility adversely affected the union's representation." *Bell v. Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union*, Civ. A. No. 00-1693, 2002 U.S. Dist. LEXIS 27703, at *14 (W.D. Pa. Aug. 29, 2002).

Plaintiff has admitted that, at no time during the course of either of the two incidents with Battle, nor at any point in Local 1776's investigation of those incidents, did anyone involved make any racially derogatory statements whatsoever. (Morales Dep. at 42.) Indeed, Hunt investigated this possibility, and concluded that "the incident was not racially motivated because there was no evidence that Mr. Battle's actions, even in Mr. Morales's version of events, had any racial element at all." (Def.'s Mot. for Summ. J. Ex. 3 (Hunt Aff.) ¶ 15.) The only suggestion of discrimination anywhere in the record is Plaintiff's unsupported assertion that he felt discriminated against because both Dawson and Battle are African-American, and because Weitzel, although not African-

American, "is really good friends with James Dawson." (Morales Dep. at 108.) This statement regarding the race of Dawson and Battle is merely a conclusory allegation, and such an unsupported belief is insufficient to raise a genuine issue pursuant to Rule 56(e). *See* FED. R. CIV. P. 56(e). The record is devoid of any showing that Dawson's race had any effect on his conduct during the four meetings that he called to inquire about Plaintiff's incidents with Battle. Moreover, there is no evidence that Hunt, acting as Local 1776's service representative, was motivated by racial hostility toward Hispanics. Therefore, the Court holds that Plaintiff's allegations of discrimination do not present a triable issue.

3. Bad Faith

"To demonstrate bad faith, the plaintiff must show that the union had hostility toward plaintiff . . . and that the hostility negatively affected the union's representation of the plaintiff." *Boyer v. Johnson Matthey, Inc.*, Civ. A. No. 02-8382, 2005 U.S. Dist. LEXIS 171, at *32 (E.D. Pa. Jan. 6, 2005). Plaintiff asserts that Local 1776 acted in bad faith by treating him differently from other employees. (Morales Dep. at 58.) This differential treatment, according to Plaintiff, resulted from Plaintiff's support of another employee named Dimas Santiago. (*Id*. at 60.) Plaintiff alleges that, after Santiago filed a grievance against GST, Much and Dawson tried to get employees to testify against Santiago. (Pl.'s Compl. (Supp. Stmt.) ¶ 6.) Plaintiff stated to Dawson that he would, instead, testify on Santiago's behalf. (*Id*.) Plaintiff admits, however, that no one at GST ever asked him why he was testifying for Santiago. (*Id*. at 61.) Moreover, Local 1776 actually filed a grievance *on behalf of* Santiago, pursued that grievance to arbitration, and obtained a favorable result for Santiago. (Def.'s Mot. for Summ. J. Ex. 3 (Hunt Aff.) ¶ 4.)

"The finding of animosity on the part of a union representative alone does not constitute a breach of the duty of fair representation, but rather, Plaintiff must establish that the way in which the union handled his grievance was materially deficient." *Maksin*, 136 F. Supp. 2d at 382 (quotation omitted). Here, Plaintiff does not make any such showing of a negative effect on Local 1776's representation of him. Local 1776 adhered to the procedures for resolution of grievances set forth in the CBA. (*See* Def.'s Mot. for Summ. J. Ex. 9 (Collective Bargaining Agmt.) § XVI.16.01 (providing for adjudication process regarding employee grievances).) It is undisputed that Local 1776 followed steps one and two in the grievance process of the CBA, by holding two meetings involving Plaintiff, the union steward, and the department supervisor, and then by having Hunt conduct an investigation. (Morales Dep. at 42, 67-71; Def.'s Mot. for Summ. J Ex. 3 (Hunt Aff.) ¶ 5-6.) As noted above, Hunt determined that because the company "followed the correct procedures," that "there was no basis upon which I could file a grievance against GST." (*Id*. ¶ 12.)

While a union must act fairly under a CBA, it "may not assert or press grievances which it believes in good faith do not warrant such action." *George v. Northwest Airlines, Inc.*, 351 F. Supp. 2d 310, 316 (E.D. Pa. 2005). Moreover, it is clear that a union has "broad discretion in its decision whether and how to pursue an employee's grievance against an employer," *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 567-68 (1990), and may even "settle or even abandon a grievance, so long as it does not act arbitrarily," *Bazarte*, 429 F.2d at 872. Here, Local 1776 followed the procedures set out in the CBA, conducted an investigation, and used its discretion not to pursue a grievance that Hunt did not believe had merit. Plaintiff does not present any evidence that Local 1776 failed to investigate his grievances or otherwise failed to act in good faith. Given

the uncontradicted evidence of Local 1776's investigations, no reasonable fact finder could determine that Local 1776 acted in bad faith towards Plaintiff.

In sum, because Plaintiff has failed to cite any evidence that establishes a genuine issue of material fact that Defendant breached its duty of fair representation, summary judgment is granted on his fair representation claim. *See Celotex*, 477 U.S. at 324.

B. Title VII Discrimination

This Court analyzes claims of Title VII discrimination under the burden-shifting analysis first articulated by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). To prevail under the burden shifting analysis, plaintiff must first establish a prima facie case of discrimination. *Shaner v. Synthes (USA)*, 204 F.3d 494 (3d Cir. 2000). To establish a prima facie claim under Title VII against a labor organization, a plaintiff must prove that: 1) the organization committed a violation of the CBA with respect to the plaintiff; 2) the union permitted that breach to go unrepaired, thus breaching its own duty of fair representation; and 3) there was some indication that the Union's actions were motivated by some discriminatory animus. *See York v. Am. Tel. & Tel.*, 95 F.3d 948, 955-56 (10th Cir.1996); *Bell*, 2002 U.S. Dist. LEXIS 27703, at *11; *Webb v. Merck & Co.*, Civ. A. No. 99-413, 1999 U.S. Dist. LEXIS 7742, at *8 (E.D. Pa. May 19, 1999). The failure to establish even one of these elements is grounds for granting the defendant summary judgment. *See Bell*, 2002 U.S. Dist. LEXIS 27703, at *11. In this case, the Court need only analyze Plaintiff's assertion that GST committed a violation of the CBA with respect to Plaintiff.

As noted above, GST and Local 1776 signed a five-year CBA on January 29, 2003. (Def.'s Mot. for Summ. J. Ex. 9 (Collective Bargaining Agmt.) at 1.) The CBA included a process for adjustment of grievances. (*Id*. at § XVI.) Step one of the process provides that "an earnest attempt

shall be made to settle . . . grievances . . . [b]etween the employee, Shift Steward, and the department supervisor." (Id. at § XVI.16.01(1).) After each incident that gave rise to this action, Plaintiff sought out the department supervisor, Weitzel, who: 1) brought over Dawson, Local 1776's shift steward, and 2) conducted an impromptu meeting with all members of Plaintiff's toggle unit, as well as Dawson. (Morales Dep. at 67-71, 126, 133-34.) This process accorded exactly with step one of the grievance adjustment process set forth in the CBA. Moreover, after each incident, step one was actually repeated in a more formal fashion: meetings were held on August 14, 2003 and October 30, 2003 that were attended by all the eyewitnesses to each incident, as well as by Weitzel, Dawson, and Much. (*Id*. at 77-88, 135.) Accordingly, because the procedures followed by GST conformed precisely with those outlined in the CBA, no reasonable fact finder could conclude that GST committed a violation of the CBA with respect to the Plaintiff. As failure to establish any one element of the prima facie claim is grounds for summary judgment, summary judgment is granted on Plaintiff's Title VII claim. *Bell*, 2002 U.S. Dist. LEXIS 27703, at *11.

IV. CONCLUSION

For the reasons set forth above, Defendant's motion for summary judgment is granted. An appropriate Order follows.

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

LUIS MORALES,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
UFCW LOCAL 1776 AFL-CIO,	:	
Defendant.	:	**No. 04-5966**
	:	

ORDER

AND NOW, this **26th** day of **May, 2005**, upon consideration of Defendant's Motion for Summary Judgment (Document No. 17), and for the foregoing reasons, it is hereby **ORDERED** that Defendant's motion is **GRANTED**. The Clerk of Court is instructed to close this case.

BY THE COURT:

_____
Berle M. Schiller, J.