

LEXSEE 1997 US DIST LEXIS 12127

**DWIGHT OWENS, Plaintiff, v. LEAR SEATING CORPORATION, a Michigan Corporation; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW and its LOCAL 174, Defendants.**

Case No. 96-74718

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN**

1997 U.S. Dist. LEXIS 12127

June 23, 1997, Decided

June 23, 1997, Filed

**DISPOSITION:** [\*1] Defendant's motion for summary judgment granted. All of plaintiff's claims dismissed with prejudice.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Defendants, an employer and unions, filed a motion for summary judgment in an unfair labor action brought by plaintiff employee.

**OVERVIEW:** The employee brought an action against his employer, alleging that he was wrongfully discharged. The employee also brought the action against his unions, asserting that they had breached their duties of fair representation in the grievance procedure. Defendants filed a motion for summary judgment, and the court granted the motion. The court noted that a hybrid 301 action occurred where an employee sues his employer under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C.S. § 185, for breach of a collective bargaining agreement, and his union for breach of the duty of fair representation. Failure to satisfy the burden of proof in either regard would lead to dismissal of the entire action. The union did not breach its duty of fair representation unless its conduct toward its member was arbitrary, discriminatory, or in bad faith. The union could not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion. However, a union acted arbitrarily only if it handled the grievance in a perfunctory manner with caprice or without rational explanation. This was not the case here, according to the arbitrator's findings.

**OUTCOME:** The court granted the defendants' motion for summary judgment and dismissed all of plaintiff's claims with prejudice.

**LexisNexis(R) Headnotes**

*Civil Procedure > Summary Judgment > Summary Judgment Standard*

[HN1] See Fed. R. Civ. P. 56.

*Civil Procedure > Summary Judgment > Burdens of Production & Proof*

*Civil Procedure > Summary Judgment > Summary Judgment Standard*

[HN2] Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.

*Civil Procedure > Summary Judgment > Burdens of Production & Proof*

*Civil Procedure > Summary Judgment > Summary Judgment Standard*

[HN3] There is no triable issue unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. A mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient; there must be some evidence on which the jury could reasonably find for the non-moving party.

*Labor & Employment Law > Collective Bargaining & Labor Relations > Fair Representation*

[HN4] Hybrid 301 actions occur where employees sue their employers under section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C.S. § 185, for breach of a collective bargaining agreement and their union for breach of the duty of fair representation. Failure to satisfy the burden of proof in either regard leads to dismissal of the entire action.

*Labor & Employment Law > Collective Bargaining & Labor Relations > Fair Representation*

[HN5] A union does not breach its duty of fair represen-

tation unless its conduct toward its members is arbitrary, discriminatory, or in bad faith. 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. Any substantive review of a union's performance must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities. A union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion. However, a union acts arbitrarily only if it handles a grievance in a perfunctory manner with caprice or without rational explanation.

***Labor & Employment Law > Collective Bargaining & Labor Relations > Arbitration > Exhaustion of Remedies***

***Labor & Employment Law > Collective Bargaining & Labor Relations > Fair Representation***

[HN6] The failure to present favorable evidence at an arbitration proceeding may give rise to a breach of the duty of fair representation if this evidence could have caused the arbitrator to reach a different conclusion.

***Labor & Employment Law > Collective Bargaining & Labor Relations > Arbitration > Enforcement***

***Labor & Employment Law > Collective Bargaining & Labor Relations > Enforcement***

[HN7] See 29 U.S.C.S. § 173(d).

**COUNSEL:** For DWIGHT OWENS, plaintiff: Larry R. Polk, Neal, Holliday, Detroit, MI.

For LEAR SEATING CORPORATION, defendant: John C. Cashen, Bodman, Longley, Troy, MI.

For UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION, defendant: Jordan Rossen, Georgi-Ann A. Oshagan, UAW International Union, Detroit, MI.

For UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 174, defendant: Jordan Rossen, Georgi-Ann A. Oshagan, UAW International Union, Detroit, MI.

**JUDGES:** John Feikens, United States District Judge.

**OPINIONBY:** John Feikens

**OPINION:**

**OPINION and ORDER**

## I. INTRODUCTION

Before me are motions for summary disposition submitted by defendants Lear Seating Corporation ("Lear"), International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") n1, and Local 174. Pursuant to *Fed.R.Civ.P. 56*, the motions are granted. Plaintiff's claims are dismissed with prejudice.

n1 Plaintiff has already agreed to dismiss the International Union from the case.

[\*2]

## II. FACTS

Plaintiff began his employment with Lear in September 1990. A collective bargaining agreement between defendants Lear and UAW governed his employment. The agreement provided for mandatory arbitration of grievances. Pursuant to that agreement, plaintiff grieved his discharge for violation of a shop rule that prohibited "threatening, intimidating, coercing, or interfering with employees or supervision at any time." The union's handling of this grievance and Lear's disciplinary action provoking it are at the heart of the present suit. Plaintiff claims that the union breached its duty of fair representation in its handling of the grievance and that Lear's disciplinary action violated the collective bargaining agreement because it was without just cause.

The events underlying plaintiff's grievance occurred on October 3, 1995. On that day plaintiff went to Lear's personnel office on company time to request a transfer to another department within the same plant. What happened next is a matter of some dispute.

Terry Roach, a plant supervisor at the center of this controversy, recorded his version of events in a memorandum. According to that memorandum, Roach ordered plaintiff [\*3] to leave the personnel office and return to his work area several times. The memorandum also stated that Plaintiff did not immediately comply with the order, but responded in a threatening way by yelling and pointing his finger at Roach. The episode escalated, Roach alleged, culminating when plaintiff shoved Roach into a wall as Roach tried to walk past plaintiff.

Plaintiff denied much of Roach's account, including Roach's allegation that plaintiff shoved Roach into a wall. Plaintiff also testified at his arbitration hearing that Roach had called him a "fuckin' nigger." Plaintiff maintains that he told his union steward, Gary Strong, about Roach's alleged use of the slur, but the Local never called Strong

as a witness at plaintiff's grievance hearing.

However, in issuing his decision, the arbitrator made it clear that calling Strong would have made no difference in his finding that Roach had not used a slur:

I conclude that Roach did not utter any racial slurs. Owens testified that he told his steward that a racial slur had been made but the steward was not called as a witness to corroborate that claim. Moreover, even if the grievant had said something to his steward at that [\*4] time, I would still not be persuaded that Roach was untruthful in denying making a slur. I conclude that the claim of a racial slur is, in effect, a red herring invented by Owens to shift his own responsibility for what occurred to Roach.

Arbitrator's decision at 21.

The arbitrator handed down this decision on January 2, 1996. It denied plaintiff's grievance and ordered that plaintiff's discharge be sustained.

Plaintiff responded by filing the present law suit in Wayne County Circuit Court on July 2, 1996. The complaint, which alleged wrongful discharge, breach of the duty to represent, negligence, and fraud and collusion, was removed to this court by defendants on October 11, 1996. n2 UAW and Local 174 moved for summary judgment on February 10, 1997. Lear followed with its own motion for summary judgment on March 13, 1997.

n2 Jurisdiction is premised on 28 USC 1331 (federal question) because plaintiff raised federal claims under 29 USC 185.

### III. LAW AND ANALYSIS

#### A. Standard of Review [\*5]

*Fed.R.Civ.P.* 56 provides in pertinent part:

[HN1] The [summary] judgment sought shall be rendered forthwith 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. . .

The United States Supreme Court interpreted this lan-

guage in *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), on remand, 807 F.2d 44 (CA 3 1986):

[HN2] Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for trial." 106 S. Ct. at 1356.

The United States Court of Appeals for the Sixth Circuit pointedly followed another of the so-called *Celotex* n3 trilogy, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), by holding that [HN3] there is no triable issue:

unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. . . . Thus, the [Supreme] Court concluded, [\*6] "The mere existence of a scintilla of evidence in support of the [non-moving party] plaintiff's position will be insufficient; there must be some evidence on which the jury could reasonably find for the [non-moving party]. . . "

*Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (CA 6 1989) (Citations omitted.)

n3 *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)

#### B. Hybrid 301 Actions

Suits like plaintiff's are referred to as "hybrid 301 actions." [HN4] Hybrid 301 actions occur where employees sue their employers under section 301 of the Labor Management Relations Act (LMRA), 29 USC 185, for breach of a collective bargaining agreement and their union for breach of the duty of fair representation. Failure to satisfy the burden of proof in either regard leads to dismissal of the entire action. *Hines v. Anchor Motor Freight*, 424 U.S. 554, 570-571, 96 S. Ct. 1048, 1059, 47 L. Ed. 2d 231 (1976), *Linton v. United Parcel Service*, 15 F.3d 1365, 1369 (CA 6 1994).

With [\*7] regard to the second prong, the United States Court of Appeals for the Sixth Circuit has held:

[HN5] A union does not breach its duty of fair representation unless its conduct toward its members is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S. Ct. 903, 916, 17 L. Ed. 2d

842 (1967). As the Supreme Court held in *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 111 S. Ct. 1127, 113 L. Ed. 2d 51 (1991), "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." *Id.* at 67, 111 S. Ct. at 1130. (citation omitted). Any substantive review of a union's performance "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *Id.* at 78, 111 S. Ct. at 1135.

Specifically, the Supreme Court in *Vaca v. Sipes* held that "a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion." *Vaca*, 386 U.S. at 191, 87 S. Ct. at 917. And, a panel of this Court in *Poole v. Budd Co.*, 706 F.2d 181, 183 (6th Cir. 1983), stated that a union acts arbitrarily only if "it handles a grievance in a 'perfunctory' manner with caprice or without rational explanation." *Id.*

*Linton* at 1369-1370

Evidence of conduct required by *Linton*, *supra.*, to establish a breach of the duty of fair representation does not exist in this case. Plaintiff alleges that the union breached its duty of fair representation because the union failed to call Gary Strong, a witness that plaintiff claims possessed evidence favorable to him, in the arbitration proceeding. [HN6] "The failure to present favorable evidence at an arbitration proceeding may give rise to a breach of the duty of fair representation if this evidence could have caused the arbitrator to reach a different conclusion." *Thompson v. Lindberg Heat Treating Co.*, 1991 U.S. Dist. LEXIS 4159, 139 L.R.R.M. 2347, 2349 (W.D. MI 1991) *aff'd* 958 F.2d 372, 139 L.R.R.M. 2936 (CA 6 1992), citing *Taylor v. Ford Motor Co.*, 866 F.2d 895, 898-899 (CA 6 1989). But in the present set of circumstances, the arbitrator explicitly ruled that the failure to call Mr. Strong would not have altered his opinion. See [\*9] Arbitrator's decision at 21. n4 Thus, the Local's failure to call Strong did not amount to a breach of its duty of fair representation. Dismissal of plaintiff's action is warranted on this ground alone.

n4 I must give great deference to the arbitrator's finding because the parties to the collective bargaining agreement covering plaintiff's

employment voluntarily agreed to be bound by the decisions reached by arbitrators they select. See *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 566, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960).

Dismissal of plaintiff's action is justified by his failure to proffer evidence establishing that Lear violated the collective bargaining agreement. The arbitrator, who had the opportunity to observe the parties' witnesses and to hear their testimony, found that Lear had just cause under the collective bargaining agreement to discharge plaintiff. Plaintiff has pointed to no irregularities from which I could infer that the arbitrator erred in reaching [\*10] this result. Accordingly, I have no reason to set aside the arbitrator's decision. A finding to the contrary would undermine the federal policy favoring the settlement of disputes by arbitration. See, *United Steel Workers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, 80 S. Ct. 1358, 1360, 4 L. Ed. 2d 1424 (1960). n5

n5 See also, 29 U.S.C. 173(d) which provides:

[HN7] Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

#### IV. Conclusion

Viewing the record evidence before me in a light most favorable to Defendant, I find that no reasonable jury could find for plaintiff. Plaintiff showed neither a breach of the duty of fair representation by his union nor a breach of the collective bargaining agreement by Lear. Both failures serve as an independent ground on which to dismiss plaintiff's suit. Defendant's [\*11] motion for summary judgment is hereby granted. All of plaintiff's claims are hereby dismissed with prejudice.

IT IS SO ORDERED.

John Feikens

United States District Judge

Dated: June 23, 1997

1075QR

\*\*\*\*\* Print Completed \*\*\*\*\*

Time of Request: February 15, 2005 11:22 AM EST

Print Number: 1862:31904244

Number of Lines: 204

Number of Pages: 4

Send To: MILLER, KRISTEN  
BODMAN LLP  
100 RENAISSANCE CTR FL 34  
DETROIT, MI 48243-1001