



MALLARD v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 57

2014 | Cited 0 times | E.D. Pennsylvania | July 28, 2014

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA KENNETH MALLARD,

Plaintiff, v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 57,
Defendant.

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CIVIL ACTION

No. 13-774

MEMORANDUM OPINION Timothy R. Rice July 28, 2014 U.S. Magistrate Judge Plaintiff Kenneth Mallard, a former employee of Westminster Cemetery and member of alleges that Local 57 breached its duty of fair representation by Ans. (doc. 32) at ¶ 7; see Compl. (doc. 1-4). Local 57 seeks summary judgment. at 8-9. I grant its motion because Mallard has failed to present any evidence to support his claim.

d. R. Civ. P. 56(a). The evidence and any inferences from the evidence must be viewed in the light most favorable to the non-moving party. See Ray v. Warren, 626 F.2d 170, 173 (3d Cir. 2010). If reasonable minds could conclude that there are sufficient facts to support a , summary judgment should be denied. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

A. Material Undisputed Facts Mallard was employed at Westminster Cemetery from November 2007 until his termination on May 22, 2009 for insubordination. 1

Local

Facts at ¶ 7. ctive Bargaining Agreement has a three-step grievance process: (1) the union steward and employee meet with the superintendent; (2) if not resolved, the union business representative meets with the general manager; and (3) if still not resolved, within 10 days of step two, the matter may be referred to arbitration. 13. Pursuant to that procedure, a Local 57 representative, Esteban Vera, met with general manager s grievance. 2



MALLARD v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 57

2014 | Cited 0 times | E.D. Pennsylvania | July 28, 2014

-32 (quoting Compl.); -40. Westminster denied the grievance and refused to permit Mallard to return to work t 25-32 (citing Compl.). Vera told Mallard that Westminster would not change its termination decision and manager, Richard McCurdy, would decide whether to request arbitration, but Local 57 would not win at arbitration. -24; Mallard Dep. at 39-40. Mallard claims Vera did not tell him about the 10-day time requirement to request arbitration. -22; see

1 Mallard also had numerous previous write-ups, including: (1) a June 2008 violation of the 24-hour notice requirement, oc. 31-2) at 15-16; (2) a July 2008 violation for wearing an incorrect uniform, id. at 19; (3) an August 2008 violation for responding to an inquiry as to we id. at 20- 21; (4) a January 2009 verbal warning for calling out, id. at 22-23, 25; and (5) a February 2009 verbal warning for insubordination, id. at 26-28. 2 Mallard testified at his deposition that he does not believe a grievance meeting occurred. In his brief, however, Mallard explained the crux of his claim is not that Local 57 failed to initiate the grievance process, but that it did not request arbitration. Id. at ¶ 7.

Compl. at ¶ 14. On June 25, 2009, Mallard met with McCurdy. at ¶¶ 7-88. McCurdy did not request arbitration. Mallard filed this action, arguing Local 57 failure to demand arbitration was irrational, arbitrary, discriminatory, and in bad faith. 3

See ; Compl. at ¶ 16. B. Discussion Air Line Pilots Assn Intern. v. , 499 U.S. 65, 67 (1991)

(quoting Vaca v. Sipes

Id. (quoting Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953)). [A] union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion, [but] the individual employee [does not have] an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement. Vaca, 386 U.S. at 191.

3 On June 1, 2010, Mallard filed charges against Local 57 pursuant to its constitution. An independent hearing officer found McCurdy breached his duty of fair representation to Mallard. , and on September 21, 2012, an appellate officer reversed, finding no constitutional violation or breach of duty. Facts at ¶¶ 54- -55.

Local 57 initially argued judicial deference must be given to the appellate o -24. o a is Exec. Bd. of Transp. Workers Union, 338 F.3d 166, 170 (3d Cir. 2003). l issue of whether Local 57 arbitrarily purely legal question of patent unreasonableness Local 334, United n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. of U.S. & Canada v. United n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. of U.S. & Canada, AFL-CIO, 669 F.2d 129, 131 (3d Cir. 1982). Thus, I will not defer to the appellate o

without hostility or discrimination toward any, to exercise its discretion with complete good faith Marquez v. Screen Actors Guild, 525 U.S. 33, 44 (1998) (quoting Vaca, 386 U.S. at 177)). exercised poor



MALLARD v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 57

2014 | Cited 0 times | E.D. Pennsylvania | July 28, 2014

judgment is not enough to support a claim of unfair representation, iscretionary power to settle or even to abandon a grievance,

so Bazarte v. United Transp. Union, 429 F.2d 868, 872 (3d com Klimek v. Sunoco

Partners LLC, No. 11-CV-01988, 2014 WL 2937926, at *16 (D.N.J. June 27, 2014) (quoting Bazarte, 429 F.2d at 872).

Mallard cites no arbitration on his grievance was arbitrary, discriminatory, or in bad faith. Local 57, however, has he explained he did not request arbitration because: (1) the arbitrator generally would not reinstate a short-term, low-seniority employee, with a history of several disciplinary infractions, like Mallard; (2) union members are often reluctant to be witnesses in arbitration because employer ; and (4) he did not believe he would be representing Local 5 if he spent funds on what he believed would be an unsuccessful arbitration. McCurdy Aff. at ¶ 4. s reasons for not pursuing arbitration were reasonable, and Mallard has not presented any contrary evidence. See Air Line Pilots Intern, 499 U.S. at 67. Mallard has no absolute right to arbitration. Vaca, 386 U.S. at 191;

Klimek, 2014 WL 2937926, at *16. He cites no evidence showing any Local 57 representative wrongly sided with Westminster.

Mallard further claims failed to follow grievance protocol or properly inform him of his rights and the deadline for the grievance process. See

and said he would call back next week to set up an Based on the standard for determining whether a union breached its duty to represent a member, however, the evidence does not show that Local 57 ignored the process or acted arbitrarily, discriminatorily, or in bad faith. See Air Line Pilots Intern., 499 U.S. at 67; Vaca, 386 U.S. at 191. Similarly, although there is some dispute as to whether Local 57 representatives discussed arbitration with him, Mallard fails to cite any evidence that the union had a duty to inform its members of the deadline for requesting arbitration. Even assuming Local 57 negligently decided not to request arbitration, such evidence is insufficient to establish a breach of representation. See Bazarte, 429 F.2d at 872.

Based on the undisputed facts, Mallard has failed to establish a fact finder could conclude Local 57 breached its duty to represent him by failing to request an arbitration. 4

Summary judgment is granted and judgment is entered in favor of Local 57 and against Mallard. The Clerk of Court is directed to close this case for statistical purposes.

An appropriate Order follows.

4 Local 57 also argues no reasonable jury would be able to rule in -45. Because I find Mallard failed to



MALLARD v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 57

2014 | Cited 0 times | E.D. Pennsylvania | July 28, 2014

show Local 57 breached its duty to represent him, I need not address the alleged inconsistencies. Moreover, although Local 57 claims Mallard raised a new claim during his deposition no grievance meeting took place he stated in his brief opposing that he was challenging only the failure to arbitrate. See Facts at ¶ 7. Moreover, Mallard cites only his Complaint for a factual recitation of the facts, even though he contradicted many of those facts in his deposition.

