

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EILEEN A. WEAVER, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-1401 JJF
 :
 UNITED PARCEL SERVICE, INC. :
 and TEAMSTERS LOCAL UNION :
 NO. 355, :
 :
 Defendants. :

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Attorneys for Plaintiff.

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MEMORANDUM OPINION

January 30, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion Of Defendant Teamsters Local Union No. 355 ("Local 355") For Summary Judgment. (D.I. 97.) For the reasons discussed below, the Court will grant Local 355's Motion.

BACKGROUND

I. Facts

Plaintiff Eileen A. Weaver is an employee of Defendant United Parcel Service, Inc. ("UPS") in Harrington, Delaware. Local 355 represents UPS employees in the Harrington UPS facility pursuant to the terms of a collective bargaining agreement (the "Collective Bargaining Agreement"). In August of 2000, Plaintiff was injured while working. Under provisions of the Collective Bargaining Agreement, Plaintiff was allowed to perform light-duty work for thirty days. Following the expiration of the thirty-day period, a treating physician qualified Plaintiff to stand, sit, walk, or drive for five to eight hours in an eight hour work day. (D.I. 104 at B26.) However, Plaintiff's treating physician did not believe that Plaintiff was physically capable of driving a delivery truck for a continuous period of time. Id. Based on lingering physical limitations described by Plaintiff's physician, Plaintiff sought reassignment to a car wash position under Article 20, Section 4 of the Collective Bargaining Agreement.

Article 20, Section 4 of the Collective Bargaining Agreement provides, "a driver who is judged medically unqualified to drive, but is considered physically fit and qualified to perform other inside jobs, will be afforded the opportunity to displace the least senior full-time or part-time inside employee at such work until he/she can return to his/her driving job." (D.I. 99 at A48.) Various Local 355 officials gave Plaintiff conflicting views over whether Article 20, Section 4 of the Collective Bargaining Agreement applied to her situation because Article 20, Section 4 had previously only been applied to employees who failed Department of Transportation physicals because of conditions that would cause a driver to be medically unqualified to drive, such as diabetes, eyesight failure, or heart disease. Article 20, Section 4 had not been utilized for employees who were temporarily unable to drive. *Id.* at A6. UPS concluded that Article 20, Section 4 did not apply to Plaintiff's situation, and consequently denied Plaintiff the reassignment she sought. Plaintiff filed two grievances under the Collective Bargaining Agreement.

UPS and Local 355 held two grievance proceedings regarding Plaintiff's second grievance filing. Plaintiff was present only for the second hearing (the "second grievance hearing"). Plaintiff was denied reassignment in the second grievance hearing and her union representative, Ervin Williams filed an appeal with

the Atlantic Area Parcel Grievance Committee. Plaintiff alleges that Mr. Williams did not advocate for her reassignment under Article 20, Section 4 of the Collective Bargaining Agreement at the second grievance hearing. Plaintiff also alleges that during the hearing before the Atlantic Area Parcel Grievance Committee (the "Committee Hearing"), Mr. Williams again failed to adequately represent her interests and merely read from a statement she had prepared. Plaintiff alleges that the conduct of Mr. Williams establishes that Local 355 violated her rights under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., by failing to adequately represent her in the grievance process and by treating her differently than other similarly situated employees because of her gender.

II. Parties' Contentions

Local 355 contends that Plaintiff cannot establish, as a matter of law, that it breached its duty of fair representation or that it unlawfully discriminated against Plaintiff on the basis of her gender. Local 355 contends that the standard to establish a breach of a union's duty of fair representation is high, and Plaintiff has not met the standard. Local 355 contends that Mr. Williams's actions were not the cause of Plaintiff's failure to prevail in the grievance process and that Mr. Williams's representation at the Committee Hearing was error free. Further, Local 355 contends that Plaintiff cannot

establish that it discriminated against her based on her gender because she has not adduced evidence of comparable filers and that mere dissatisfaction with the outcome of a grievance procedure is not evidence of gender discrimination. Local 355 also contends that any disparate treatment in favor of male workers was the result of UPS's decision, not Local 355.

In response, Plaintiff contends that Mr. Williams's representation breached Local 355's duty of fair representation because at the second grievance hearing Mr. Williams did not argue in support of her reassignment. Plaintiff contends that this breach is further evidenced by Mr. Williams's actions at the Committee Hearing where Mr. Williams did nothing but read a statement Plaintiff had prepared. In addition, Plaintiff contends that she has identified male comparators which she contends were treated differently than her and that her claims involve more than mere dissatisfaction with the results of her grievance.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and the moving party is entitled to judgment as a

matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Id.

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . 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."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

DISCUSSION

I. Whether Local 355 Breached Its Duty Of Fair Representation

As the exclusive bargaining agent of an employee, a union undertakes various fiduciary duties, including the duty of fair representation. Riley v. Letter Carriers Local No. 380, 668 F.2d 224, 228 (3d Cir. 1981). The duty of fair representation is breached when the conduct of the union is arbitrary, discriminatory, or is provided in bad faith. Vaca v. Sipes, 386 U.S. 171, 190, 87 S. Ct. 903, 916 (1967). In addition, a union member's representative may not "process [his or her claim] in a perfunctory fashion." Id. The Third Circuit has advised that "[m]ere ineptitude or negligence in the presentation of a grievance by a union has almost uniformly been rejected as the type of conduct intended to be included within the term." Riley, 668 F.2d at 228. Applying this meaning to Mr. Williams's representation of Plaintiff leads the Court to conclude that the motion for summary judgment filed by Local 355 should be granted because Plaintiff has failed to present evidence that Local 355 breached its duty.

Considering Plaintiff's evidence, the Court is not persuaded by Plaintiff's contention that Mr. Williams's failure to argue at the second grievance hearing that the Collective Bargaining Agreement covered an individual in Plaintiff's position is evidence of arbitrary or bad faith handling of Plaintiff's

grievance. In her deposition, Plaintiff testified that at the second grievance hearing Mr. Williams remained silent while a shop steward argued for her interpretation of the Collective Bargaining Agreement. Plaintiff contends that Mr. Williams's handling of her grievance constituted bad faith because Plaintiff contends that Mr. Williams treated Plaintiff less favorably than male employees for whom he argued "vehemently." (D.I. 103 at 27.) Although Plaintiff's allegations of disparate treatment could suffice to preclude the entry of summary judgment if supported by sufficient evidence, here, Plaintiff directs the Court to no specific evidence supporting her allegations of Local 355's favorable treatment of comparable male employees. The evidence Plaintiff offers in support of her contention is an assertion based on second-hand knowledge that various male employees were successful in grievance proceedings under the Collective Bargaining Agreement and she was not. (D.I. 99 at A260-61.) The Court concludes that taking this evidence with all inferences drawn in Plaintiff's favor would not reasonably support a finding of discrimination on the basis of gender.

Likewise, the Court concludes that Mr. Williams's actions at the Committee Hearing does not establish a breach of Local 355's duty of fair representation. Plaintiff contends that at the Committee Hearing Mr. Williams simply read from a statement Plaintiff prepared "and did not defend her position." (D.I. 103

at 27.) The Court concludes that this conduct, when construing all inferences in the light most favorable to Plaintiff, is insufficient to establish a breach of Local 355's duty of fair representation. Instead, the Court views Plaintiff's allegations as supporting at best a conclusion that "ineptitude or negligence [occurred] in the presentation of [Plaintiff's] grievance" by Mr. Williams, which under the precedent of this Circuit does not amount to a breach of the duty of fair representation. Riley, 668 F.2d at 228. Accordingly, the Court will grant Local 355 judgment on Plaintiff's breach of the duty of fair representation claim.

II. Whether Plaintiff Has Established A Prima Facie Case Of Disparate Treatment

In a Title VII employment discrimination action, courts utilize the three-step burden shifting analysis set forth by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). The Third Circuit has recognized that the facts necessary to establish the prima facie elements in each case will necessarily vary because of differing fact scenarios. Pivrotto v. Innovative Systems, Inc., 191 F.3d 344, 352 (3d Cir. 1999) (citing McDonnell Douglas, 411 U.S. at 802 n. 13). The plaintiff has the initial burden of establishing a prima facie case of discrimination. In order to establish a prima facie case of disparate treatment Plaintiff must prove that she: 1) is a member of a protected class; 2) is qualified for the sought after

position; 3) suffered adverse employment action; and 4) similarly situated non-members of the protected class were treated more favorably than her. Local 355 contends that Plaintiff has failed to establish the fourth element of the McDonnell Douglas test.

For an alleged comparator to be considered similarly situated, a plaintiff must present evidence that the individuals with whom he or she wishes to be compared are similarly situated in all material aspects. Miller v. Delaware Dep't of Probation & Parole, 158 F. Supp. 2d 406, 411 (D. Del. 2001) (citation omitted). Stated another way, "to be deemed similarly situated, the individuals with whom a plaintiff seeks to be compared must 'have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.'" Id. (quoting Anderson v. Haverford College, 868 F. Supp. 741, 745 (E.D. Pa. 1994) (citations omitted). Applying these principles to Plaintiff's evidence, the Court concludes that Plaintiff has not identified similarly situated male comparators sufficient to satisfy the last prong of her prima facie case of discrimination.

In her deposition, Plaintiff concedes that the contract provision at issue in the instant case, Article 20, Section 4, was not involved in the grievance proceedings of Mr. Rodgers, Mr. Hammil, and Mr. Hogan, Plaintiff's three purported comparators. Instead, Mr. Rodgers, Mr. Hammil, and Mr. Hogan were all involved

in disciplinary proceedings with UPS, and not seeking reassignment for medical reasons.¹ The Court concludes that differences in the nature of the grievances between Plaintiff and her alleged comparators demonstrates that the comparators are not similarly situated in all material aspects.

In addition, at Plaintiff's deposition, Plaintiff testified that she has no knowledge of the circumstances surrounding her purported comparators grievance proceedings. Plaintiff merely contends that Local 355 advocated for a reduction in their discipline, which was granted, even though Plaintiff contends the comparators should have been terminated. (D.I. 103 at 27.) Considering the record evidence presented, the Court concludes that Plaintiff's assertions are insufficient to establish the absence of "differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Miller, 158 F. Supp. 2d at 411 (citation omitted). At most, Plaintiff's allegations evidence that the purported comparators were successful in their grievances while Plaintiff was not.

Therefore, the Court concludes that Plaintiff has not

¹ The circumstances surrounding another of Plaintiff's purported comparators, Mr. Dotson, are distinguishable from Plaintiff altogether. According to Plaintiff, Mr. Dotson received an accommodation from UPS that enabled him to watch his son play high school baseball. However, Mr. Dotson never filed a grievance to get this accommodation, and thus, was never represented by Local 355.

established the fourth element of her prima facie case of disparate treatment, and therefore, the Court will grant the summary judgment motion of Local 355.

An appropriate Order will be entered.

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 NO. 355, :
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 Defendants. :

ORDER

At Wilmington, this 30th day of January, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that the Motion For Summary Judgment filed by Defendant Teamsters Local Union No. 355 (D.I. 97) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

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JUDGMENT IN A CIVIL CASE

For the reasons stated in the Court's Memorandum Opinion and Order issued on January 30, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of Defendant Teamsters Local Union No. 355 (D.I. 97.)

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: January 30, 2004

Anita Bolton
(By) Deputy Clerk