

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3138

PAMELA G. LOWREY,

Plaintiff-Appellant,

versus

EXXON CORPORATION, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-91-626-B-M1)

(March 10, 1994)

Before REAVLEY, GARWOOD, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

I.

Pamela Lowrey worked as a maintenance specialist at Exxon. Upon the request of Exxon, she submitted to a drug test under the Employee Alcohol and Drug Use Policy. The test disclosed that Lowrey had used marijuana. As a result, Exxon fired her. Lowrey had a right under a collective bargaining agreement to file a timely grievance contesting her termination. She pursued her

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

grievance through the union, which reviewed the test results and evaluation procedures and decided not to pursue the case.

Lowrey sued both Exxon and the union under section 301 of the Labor Management Relations Act. She alleged that Exxon had breached the CBA by testing her under a drug policy that had not been properly implemented. She also contended that Exxon had violated the CBA by firing her without just cause. Lowrey argued that the union had breached its duty of fair representation by not adequately pursuing or investigating her grievance. The district court granted summary judgment in favor of Exxon, and dismissed the claims against the union. Lowrey appealed. We affirm.

II.

Lowrey urges that although Exxon had the authority to fire her for a positive test result under the drug policy, it breached the CBA by doing so because the policy had not been properly approved by the union membership. Exxon had met with union representatives and had bargained over the terms of the policy. After several months of negotiations, Exxon and the union agreed to its terms, which then went into effect. The union membership at large did not vote to accept or reject the policy. Under the policy, certain employees were subject to random drug and alcohol testing. Any employee testing positive for drug or alcohol use was subject to discipline, including termination. All employees had to sign a statement of compliance acknowledging that they had read the policy and understood it. Lowrey had signed such a statement prior to the drug test that eventually led to her discharge. Under the terms of

the policy, then, Lowrey could have been discharged. The question remains whether the policy had binding effect because it had not been ratified by the union membership at large. We are persuaded that the summary judgment must be affirmed. The inescapable fact is that Lowrey's firing and the union's refusal to pursue her grievance was not so arbitrary as to support a claim under § 301 of the Labor Management Relations Act. Exxon's and the union's positions were rational on the facts of this case, and we need not go further.

AFFIRMED.