

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50094
Summary Calendar

JAIME J. TUCKER,

Plaintiff-Appellant,

versus

LOCAL UNION NO. 606, UNITED
FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CO,

Defendants-Appellees.

Appeal from the United States District Court for
the Western District of Texas
(EP-93-CV-268)

(September 28, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

REAVLEY, Circuit Judge:*

Jaime J. Tucker brought suit against Local Union, No. 606, United Food and Commercial Workers International Union, AFL-CIO (the "Union") seeking damages for alleged breach of the Union's duty of fair representation. Tucker appeals the district court's grant of summary judgment in favor of the Union. We affirm.

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

Tucker was formerly employed as a grocery checker at Furr's Supermarket in El Paso, Texas. At the time of his employment, Tucker was also a member of the Union, which had negotiated a collective bargaining agreement with Furr's. In January 1993, security for Furr's informed Tucker that they had videotaped him failing to charge a customer for milk. Tucker contacted the Union and asked for assistance in preserving his rights.

Furr's then terminated Tucker's employment. Tucker alleged that the Union breached its duty to fairly represent him by refusing to arbitrate the termination issue. The district court granted the Union's motion for summary judgment.

DISCUSSION

We find that no material issues of fact are in dispute in this case and, as a matter of law, the Union did not breach its duty to fairly represent Tucker. A union has broad discretion in deciding whether it will arbitrate a case. See Freeman v. O'Neal Steel, Inc., 609 F.2d 1123, 1126 (5th Cir.), cert. denied, 449 U.S. 833 (1980). A union breaches its duty of fair representation only when it fails to administer the arbitration machinery in good faith, when it processes a grievance in a perfunctory fashion, or when it acts based on hostile or discriminatory motives. See Vaca v. Sipes, 386 U.S. 171, 191-94 (1967); Freeman, 609 F.2d at 1125. Even a union's erroneous conclusion that an employee claim has no merit will be protected,

if the union acts within its discretion. See Freeman at 1126, n.4.

The Union complied with its "obligation to investigate and to ascertain the merit of employee grievances," and so did not treat Tucker's grievance in bad faith or in a perfunctory manner. Turner v. Air Transport Dispatchers' Ass'n, 468 F.2d 297, 299 (5th Cir. 1972). The Union president viewed the videotape and met with Tucker several times to ask whether Tucker could explain the occurrence on the tape. Union representatives evaluated the tape and other evidence held by Furr's and discussed Tucker's case. Finally, the Union concluded that Tucker did not have any defense against termination. The Union still urged management at Furr's to retain Tucker but decided, in the end, not to take the termination issue to arbitration.

The record raises no issue that the Union was guilty of hostility, discrimination, or other improper reasoning in deciding not to arbitrate. The evidence, viewed in the light most favorable to Tucker, shows that the Union considered finances and previous unfavorable experiences with grievances related to employee theft in making its decision. Consideration of these factors is permissible and does not prove hostility. See Freeman, 609 F.2d at 1127-28. The Union decided not to pursue Tucker's grievance, though it had pursued similar claims in the past, because it did not want to repeat embarrassments which might weaken its power as a negotiator with Furr's. The Union has a legitimate interest in maintaining "the employer's

confidence" in the Union. See Vaca, 386 U.S. at 191. Tucker also alleges that the Union decided not to arbitrate, because it wished to be rid of Tucker, because he frequently filed complaints. Tucker offers no evidence that such hostile motives formed the basis for the Union's decision.

AFFIRMED.