

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 06-2734

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Bruce Kelley,	*	
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Plaintiff /Appellant,	*	
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	*	Appeal from the United States
[NSP/Xcel] Pension Plan, Northern	*	District Court for the
States Power Company, now known as	*	District of Minnesota.
Xcel Energy, Inc.; International	*	
Brotherhood of Electrical Workers,	*	[UNPUBLISHED]
AFL-CIO, Local 23,	*	
	*	
Defendants/Appellees.	*	

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Submitted: January 11, 2007  
Filed: January 24, 2007

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Before MURPHY, HANSEN, and SMITH, Circuit Judges.

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PER CURIAM.

Bruce Kelley appeals from the district court's dismissal of this hybrid action under § 301 of the Labor-Management Relations Act (LMRA). Mr. Kelley sued his former employer, Northern States Power Company n/k/a Xcel Energy and the [NSP/Xcel] Pension Plan, alleging among other things that they failed to pay the amount due under his disability/retirement plan in violation of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461 (2006). He also

brought claims against the IBEW Local No. 23, his former union that refused to proceed to arbitration with his grievance, alleging that it breached its duty of fair representation and discriminated against him on the basis of his disability in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213 (2006), and the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.41 (2004).

The district court<sup>1</sup> granted summary judgment in favor of the defendants on all claims, finding that Mr. Kelley presented no evidence that would allow a reasonable fact finder to conclude that the union's handling of his grievance was arbitrary, discriminatory, or in bad faith, *see Martin v. Am. Airlines, Inc.*, 390 F.3d 601, 606 (8th Cir. 2004), or that the union discriminated against him on the basis of his disability. Having found no breach of duty by the union, the court also dismissed his ERISA claims against his employer in accordance with *Waldron v. Boeing Co.*, 388 F.3d 591, 594 (8th Cir. 2004). We find no error in the district court's decision, but we decline appellees' request to remand for an award of attorney fees for the filing of a frivolous lawsuit.

The judgment of the district court is accordingly affirmed pursuant to Eighth Circuit Rule 47(B).

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<sup>1</sup>The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.