

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICARDO APOLINARIO,
Plaintiff,
v.
UNITED HEALTHCARE WORKERS--
WEST, SERVICE EMPLOYEES
INTERNATIONAL UNION CTW, CLC,
Defendant.

Case No. 3:13-cv-04219-JST

**ORDER GRANTING DEFENDANT
UNITED HEALTHCARE WORKERS -
WEST'S MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

RE: ECF No. 11

Before the Court is United Healthcare Workers — West’s (“UHW”) motion to dismiss the First Amended Complaint. Mot., ECF No 11; FAC, ECF No. 10. The Court will grant the motion.

I. BACKGROUND

This action arises out of Seton Medical Center’s termination of Plaintiff, Ricardo Apolinario, and United Healthcare Workers West, Service Employees International Union’s (UHW) failure to maintain a grievance on behalf of Apolinario.

The Court draws the following facts from Apolinario’s First Amended Complaint and Construes them in the light most favorable to Apolinario. Apolinario was employed by Seton Medical Center from 1993 to 2013. In 2012, Seton issued Apolinario a “NOTICE OF FINAL WRITTEN WARNING AND THREE (3) DAY SUSPENSION” for “repeated rude and offensive conduct” and “demeaning and disrespectful comments about supervisory personnel.” FAC ¶ 11. Related to this disciplinary action, Apolinario was required to sign a “Last Chance Agreement” or face “immediate termination.” Id. ¶ 12.

1 In 2013, Apolinario was terminated based on the allegation that he again “engaged in rude
2 conduct toward a co-worker in violation of said Last Chance Agreement.” Id. ¶ 16. UHW
3 initially lodged a grievance on behalf of Apolinario, but subsequently withdrew it. Id. ¶ 17.
4 Apolinario appealed the UHW’s decision and UHW denied the appeal. Id. ¶¶ 19–20.

5 Apolinario subsequently brought this action alleging that, in failing to pursue his
6 grievance, UHW breached its duty of fair representation. Plaintiff also named as a Defendant
7 Seton Medical Center, which answered on January 16, 2014.

8 **II. JURISDICTION**

9 Section 301 of the Labor Management Relations Act (“LMRA”) grants federal district
10 courts original jurisdiction over claims for violations of contracts between an employer and a
11 union. 28 U.S.C. § 185(a). Since this case is founded on a claim arising under federal law,
12 jurisdiction is proper pursuant to 28 U.S.C. § 1331.

13 **III. LEGAL STANDARD**

14 In a motion to dismiss, courts accept the material facts alleged in the complaint, together
15 with reasonable inferences to be drawn from those facts, as true. Navarro v. Block, 250 F.3d 729,
16 732 (9th Cir. 2001). However, “the tenet that a court must accept a complaint’s allegations as true
17 is inapplicable to threadbare recitals of a cause of action’s elements, supported by mere conclusory
18 statements.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In addition, to survive a motion to
19 dismiss, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.”
20 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). Plausibility does not mean
21 probability, but it requires “more than a sheer possibility that a defendant has acted unlawfully.”
22 Iqbal, 556 U.S. at 678. “A claim has facial plausibility when the plaintiff pleads factual content
23 that allows the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged.” Id.

25 **IV. ANALYSIS**

26 Apolinario alleges that UHW breached its duty of fair representation by failing to pursue a
27 grievance on his behalf. FAC ¶¶ 24–25. He alleges that UHW’s conduct was undertaken
28 “maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and

1 from an improper and evil motive amounting to malice, and in conscious and reckless disregard of
2 his rights as an employee.” Id. ¶ 31. UHW moves to dismiss on the grounds that Apolinario
3 failed to plead sufficient facts to survive a motion to dismiss. ECF No. 11 at 5.

4 “As the exclusive bargaining representative of [its] employees” a union has “a statutory
5 duty fairly to represent all of [its] employees, both in its collective bargaining . . . and in its
6 enforcement of the resulting collective bargaining agreement.” Vaca v. Sipes, 386 U.S. 171, 176
7 (1967) (citations omitted). “An employee has no absolute right to have a grievance taken to
8 arbitration.” Castelli v. Douglas Aircraft Co., 752 F.2d 1480, 1482–83 (9th Cir. 1985). “Unions
9 need not arbitrate every case.” Indeed, they “may screen grievances and arbitrate only those they
10 believe are meritorious.” Johnson v. U.S. Postal Serv., 756 F.2d 1461, 1465 (9th Cir. 1985). A
11 union breaches its duty of fair representation “only when [its] conduct toward a member . . . is
12 arbitrary, discriminatory, or in bad faith.” Vaca, 386 U.S. at 190.

13 A union’s conduct is discriminatory if there is “substantial evidence of discrimination that
14 is intentional, severe, and unrelated to legitimate union objectives.” Amalgamated Ass’n of St.,
15 Elec., Ry. & Motor Coach Emp. of Am. v. Lockridge, 403 U.S. 274, 301 (1971). Its conduct is in
16 bad faith if there is “substantial evidence of fraud, deceitful action or dishonest conduct.” Id. And
17 finally, its conduct is “arbitrary only if, in light of the factual and legal landscape at the time of
18 the union's actions, the union's behavior is so far outside a “wide range of reasonableness,” as to
19 be irrational.” Pegany v. C&H Sugar Co., Inc., 201 F.3d 444 (9th Cir. 1999) (quoting Air Line
20 Pilots Ass'n., Int'l v. O'Neill, 499 U.S. 65, 67 (1991)). See also Peterson v. Kennedy, 771 F.2d
21 1244, 1253 (9th Cir. 1985) (noting union’s actions may constitute arbitrary conduct if it simply
22 ignores a meritorious claim, if it fails to conduct even a minimal investigation of a grievance, or if
23 its actions evince “reckless disregard” for the rights of the employee).

24 Here, Apolinario has not pled facts upon which the Court can draw a reasonable inference
25 that UHW violated its duty of representation by any of these measures. Though Apolinario asserts
26 that UHW “failed and refused . . . to provide Plaintiff effective representation,” the FAC indicates,
27 to the contrary, that the union reviewed his case. FAC ¶¶ 15, 17–20. UHW initially filed a
28 grievance on his behalf, which it later chose to withdraw. Id. ¶ 17. Upon its withdrawal, the

1 UHW notified Apolinario of his right to appeal its decision. Id. ¶ 18. Apolinario subsequently
2 appealed, and his appeal was denied. Id. ¶ 20.

3 Nothing in the complaint evinces “reckless disregard” for Apolinario’s rights, nor does it
4 indicate that the UHW failed to take action. See Peterson, 771 F.2d at 1254. At most, Apolinario
5 has alleged that he was terminated, and that the UHW chose not to pursue a grievance to the extent
6 that he desired. FAC ¶¶ 17–20. Unions have wide discretion in deciding whether to pursue a
7 grievance, so long as their conduct is not arbitrary, discriminatory, or in bad faith. See Peterson,
8 771 F.2d at 1253; Vaca, 386 U.S. at 190. Apolinario has alleged no facts from which the Court
9 can reasonably infer that the union acted arbitrarily, irrationally, and Plaintiff has failed to allege
10 “substantial evidence” of bad faith or discrimination. Instead, Plaintiff’s claim is founded on
11 “threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.”
12 See Iqbal, 566 U.S. 678. He pleads no other facts that may give context or explanation to the
13 events of which he complains. It is not clear to the Court, nor could it be to UHW, what precisely
14 is the nature of Plaintiff’s claim that UHW breached the duty of fair representation — that is,
15 whether UHW acted arbitrarily, in a discriminatory manner, or in bad faith.¹

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17 ¹ The decision in Grotz v. Kaiser Found. Hospitals, Case No. C-12-3539 EMC, 2012 WL 5350254
18 (N.D. Cal. Oct. 29, 2012), provides an example of the kind of specific allegations that suffice to
allege a violation of the duty of representation. In that case,

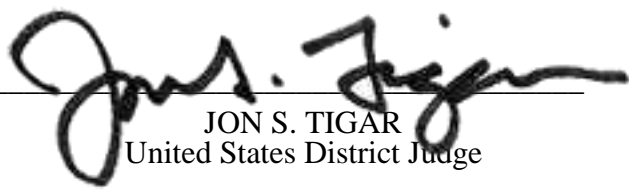
19 plaintiff “offer[ed] several specific allegations to support her argument that the
20 UHW breached its duty by handling her grievance in a perfunctory manner. First,
21 she allege[d] that the UHW failed to make reasonable efforts to secure
22 documentation related to her timecards to rebut the allegations against her. As
23 Plaintiff was facing discipline because of allegedly fraudulent timecard entries,
24 even a perfunctory investigation arguably required that the union examine the
25 records on which the allegations were based, especially since she allege[d] that she
26 had no prior disciplinary problems, that Ms. Taylor had engaged in a pattern of
27 retaliatory conduct, and that Ms. Taylor had access to her time records. Yet
28 Plaintiff was not permitted to view the timecard records herself and the union never
tried to secure them for examination. Second, throughout the grievance process,
the union did not raise the issue of retaliation. Nor was Plaintiff permitted to raise
the issue. Third, two union representatives encouraged Plaintiff to sign a “last
chance” agreement, despite the fact Plaintiff told them that it contained false
statements, and the fact that one of them had not read it. Fourth, Plaintiff was not
permitted to talk at the Step II meeting about her grievance, and she did not
participate in the Step III grievance proceedings, contrary to the terms of the

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Accordingly, the Court GRANTS UHW’s motion to dismiss. Plaintiff may file an amended complaint addressing the deficiencies identified in this Order by no later than thirty days from the date of this Order. A failure to file an amended complaint by the deadline may constitute grounds for dismissal for failure to comply with a Court order and failure to prosecute pursuant to Federal Rule of Civil Procedure 41.

IT IS SO ORDERED.

Dated: April 10, 2014



JON S. TIGAR
United States District Judge

[collective bargaining agreement]. Finally, several union representatives were “openly hostile towards the plaintiff and/or indifferent” during the course of the investigation.

Id. at *9. Plaintiff here makes no such specific allegations.