

APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A	Order in the United States Court of Appeals for the Sixth Circuit (September 27, 2017)	App. 1
Appendix B	Order (1) Overruling Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (ECF #42), (2) Adopting the Magistrate Judge's Recommended Disposition, (3) Denying Plaintiff's Motion for Summary Judgment (ECF #31), (4) Granting Defendant UAW'S Motion to Dismiss (ECF #16), and (5) Dismissing Plaintiff's Claims Against UAW and Judgment in the United States District Court Eastern District of Michigan Southern Division (February 16, 2017)	App. 10
Appendix C	Report and Recommendation to Grant Defendant UAW's Motion to Dismiss [16] and to Deny Plaintiff's Motion for Summary Judgment [31] in the United States District Court Eastern District of Michigan Southern Division (October 26, 2016)	App. 41

APPENDIX A

**NOT RECOMMENDED FOR FULL-TEXT
PUBLICATION**

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-1189

[Filed September 27, 2017]

DAVID D. MARTIN,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
AK STEEL CORPORATION; UAW	)
INTERNATIONAL UNION,	)
	)
Defendants-Appellees.	)

**ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN**

O R D E R

Before: GIBBONS, SUTTON, and THAPAR, Circuit
Judges.

David D. Martin, a Michigan resident proceeding
pro se, appeals the district court's orders and judgment
dismissing his claims against the defendants in his

App. 2

lawsuit alleging a breach of a collective bargaining agreement (“CBA”) and a breach of the duty of fair representation under section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

On February 3, 2016, Martin filed a complaint against his former employer, AK Steel Corporation,¹ and the union that represented him, International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (“UAW”), alleging that AK Steel wrongfully terminated him in violation of the CBA and that the UAW breached its duty of fair representation in pursuing his grievance. Martin, who had worked as a scarfer for AK Steel for fifteen years, alleged that AK Steel suspended him and two other employees “for alleged time theft” and ultimately terminated his employment following an investigation.

With respect to his fair-representation claim, Martin alleged that the UAW settled his grievance in a manner that was not acceptable to him. He alleged that Reggie Ransom, his representative during the grievance process, erroneously concluded that his case lacked merit, failed to conduct an investigation, and “handle[d] [his] grievance in a perfunctory fashion.” He alleged that, although Ransom contended that his conduct violated a specific rule in the company’s Code of Conduct, Rule 25, AK Steel did not allege that he

¹ Martin was employed by Severstal Dearborn, LLC, but AK Steel purchased the Dearborn facility in September 2014 and became Severstal’s successor in interest.

App. 3

violated that rule. He argued that, by ignoring the positions of the local and regional UAW office, Ransom and the UAW acted against his best interests and made an arbitrary decision to settle his case.

AK Steel and the UAW moved to dismiss Martin's complaint. A magistrate judge recommended granting AK Steel's motion to dismiss because Martin's claims against the company were time-barred. Over Martin's objections, the district court adopted the magistrate judge's report and recommendation, noting that Martin failed to specifically object to the magistrate judge's time-bar determination. Martin then filed a motion for summary judgment.

The magistrate judge entered a second report and recommendation, in which he recommended granting the UAW's motion to dismiss because Martin's complaint contained no factual allegations to support his claim that the UAW handled his grievance arbitrarily. The magistrate judge recommended denying Martin's motion for summary judgment. Over Martin's objections, the district court adopted the magistrate judge's recommended disposition, denied Martin's motion for summary judgment, and granted the UAW's motion to dismiss. Ultimately, the district court concluded that Martin "failed to state a plausible claim that the UAW acted arbitrarily when it settled his grievance."

On appeal, Martin argues that: (1) AK Steel's termination of his employment violated the CBA, and the district court erred by failing to address this argument and by finding that his claims against AK Steel were time-barred; and (2) the UAW breached its duty of fair representation.

I. Claims Against AK Steel

The magistrate judge recommended dismissing Martin's claims against AK Steel because they were barred by the LMRA's six-month statute of limitations. The district court properly found that Martin's objections to the magistrate judge's report and recommendation wholly failed to address the magistrate judge's time-bar determination. Because the magistrate judge specifically warned Martin that failing to file timely and specific objections would waive appellate review of the issues to which he did not object, Martin waived appellate review of the dispositive finding that his claims against AK Steel were barred by the statute of limitations. *See Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995).

II. Claims Against the UAW

We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 433 (6th Cir. 2008). In order to state a claim upon which relief may be granted, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint must have "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556

U.S. 662, 678 (2009). “Conclusory allegations or legal conclusions masquerading as factual allegations will not suffice.” *Bright v. Gallia Cty.*, 753 F.3d 639, 652 (6th Cir. 2014) (quoting *Eidson v. Tenn. Dep’t of Children’s Servs.*, 510 F.3d 631, 634 (6th Cir. 2007)). A district court may consider “exhibits attached to [a] defendant’s motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein[]’ without converting the motion to one for summary judgment.” *Rondigo, LLC v. Twp. of Richmond*, 641 F.3d 673, 681 (6th Cir. 2011) (quoting *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008)).

To state a claim under § 301 of the LMRA, a plaintiff must allege facts demonstrating that the employer breached the CBA and that the union breached its duty of fair representation. *Vencl v. Int’l Union of Operating Eng’rs, Local 18*, 137 F.3d 420, 424 (6th Cir. 1998). “Liability attaches to neither employer nor union unless fault can be proved as to both.” *Courie v. Alcoa Wheel & Forged Prods.*, 577 F.3d 625, 630 (6th Cir. 2009). A union breaches its duty of fair representation if its conduct in representing a union member was arbitrary, discriminatory, or in bad faith. *Roeder v. Am. Postal Workers Union, AFL-CIO*, 180 F.3d 733, 737 (6th Cir. 1999). The union’s conduct is considered arbitrary only if it is “so far outside a ‘wide range of reasonableness’ that it was wholly ‘irrational’ or ‘arbitrary.’” *Courie*, 577 F.3d at 631 (quoting *Air Line Pilots Ass’n Int’l v. O’Neill*, 499 U.S. 65, 78 (1991)). Mere negligence or the failure “to exhaust every theoretically available procedure simply on the demand of a union member” does not rise to the level of arbitrary conduct. *Int’l Union, United Auto., Aerospace*

App. 6

& Agric. Implement Workers of Am. v. NLRB, 844 F.3d 590, 603 (6th Cir. 2016) (quoting *St. Clair v. Local Union, No. 515*, 422 F.2d 128, 130 (6th Cir. 1969)). However, the union must conduct “a ‘reasonable investigation to defend a member from employer discipline’” and may not ignore a grievance or process a grievance in a perfunctory manner. *Id.* (quoting *Driver v. U.S. Postal Serv., Inc.*, 328 F.3d 863, 869 (6th Cir. 2003)).

If a plaintiff shows that the union acted arbitrarily, discriminatorily, or in bad faith, he must then show that “the union’s actions or omissions ‘tainted the grievance procedure such that the outcome was more than likely affected by the Union’s breach.’” *Garrison v. Cassens Transp. Co.*, 334 F.3d 528, 539 (6th Cir. 2003) (quoting *Dushaw v. Roadway Express, Inc.*, 66 F.3d 129, 132 (6th Cir. 1995)); see *Blesedell v. Chillicothe Tel. Co.*, 811 F.3d 211, 221 (6th Cir. 2016). “The impact of the union’s breach must be substantial such that the plaintiff ‘must meet the onerous burden of proving that the grievance process was seriously flawed by the union’s breach’” *Garrison*, 334 F.3d at 539 (quoting *Black v. Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 585 (6th Cir. 1994)).

The district court properly found that Martin failed to state a claim for relief under the LMRA because he failed to show that the UAW breached its duty of fair representation. As the district court found, Martin’s complaint did not allege that the UAW acted in a discriminatory manner or in bad faith. Thus, Martin had to adequately allege that the UAW’s actions were so arbitrary as to be wholly irrational. See *Courie*, 577 F.3d at 631; *Roeder*, 180 F.3d at 737. He failed to do so.

App. 7

First, Ransom was able to obtain a generous settlement offer that would have allowed Martin to return to work in a different department and receive \$12,797.42 in back pay following a disciplinary suspension period and a relinquishment of his legal claims against AK Steel. Second, once Martin rejected this offer, he was allowed to appeal to the International Executive Board ("IEB") and Public Review Board ("PRB"), each of which issued a reasoned order explaining why his appeals were denied. The IEB even held an evidentiary hearing at which Martin testified. These facts do not support Martin's conclusory allegation that his grievance was processed in a perfunctory manner.

Martin also did not allege any facts to support his claim that Ransom failed to conduct a reasonable investigation. Martin acknowledged in his complaint that he spoke to Ransom several times on the telephone, and the IEB's summary of Ransom's evidentiary hearing testimony shows that Ransom reviewed relevant business records and case law, as well as Martin's disciplinary record, before concluding that "the instant grievance would not prevail before an Arbitrator." Moreover, Martin failed to allege any facts from which it could be inferred that Ransom's alleged failure to investigate his grievance more than likely affected the outcome of the grievance process. See *Blesedell*, 811 F.3d at 221; *Garrison*, 334 F.3d at 539.

Martin also argues on appeal that Ransom "cit[ed] a rule [he] was never charged with [violating] as the sole basis for settlement." In his complaint, Martin alleged that Ransom stated that his conduct violated "[r]ule twenty five, a rule the Company did not claim [he] violated." Throughout the grievance process, the

parties alternatively stated that Martin's conduct violated Rule 25 or Rules 1 and 2 of the company's Rules of Conduct. But regardless of the specific rule cited, all parties agreed, and the IEB and PRB found, that Martin's employment was terminated because AK Steel determined that Martin had committed time theft by leaving the premises of his workplace during his shift and returning shortly before his shift ended. Thus, even if Ransom at some point erroneously cited the exact rule that prohibited this conduct, Martin has not shown that this error more likely than not affected the outcome of the grievance process. *See Blestedell*, 811 F.3d at 221; *Garrison*, 334 F.3d at 539. Furthermore, mere negligence does not rise to the level of arbitrary conduct, and because "union agents are not lawyers," they "cannot be held to the same standard as that of licensed professionals." *Int'l Union*, 844 F.3d at 603 (quoting *Garrison*, 334 F.3d at 539).

Finally, Martin appears to argue on appeal that the UAW failed "to request all documentation before making a decision on whether to settle or go to arbitration." But Martin did not include this allegation in his complaint. Because Martin has not identified any exceptional circumstances or shown that failing to address this issue would result in a plain miscarriage of justice, he may not raise the claim for the first time on appeal. *See United States v. Ellison*, 462 F.3d 557, 560 (6th Cir. 2006); *Foster v. Barilow*, 6 F.3d 405, 407 (6th Cir. 1993). In any event, because Martin does not identify the specific documentation that the UAW allegedly failed to request, he cannot show that it is more likely than not that the result of the grievance process would have been different if the documents had

App. 9

been requested. *See Blasedell*, 811 F.3d at 221; *Garrison*, 334 F.3d at 539.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

/s/Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**Case No. 16-cv-10377
Hon. Matthew F. Leitman
[Filed February 16, 2017]**

DAVID D. MARTIN,	)
	)
Plaintiff,	)
	)
v.	)
	)
AK STEEL CORPORATION and	)
UNITED AUTO WORKERS	)
INTERNATIONAL UNION,	)
	)
Defendants.	)

**ORDER (1) OVERRULING PLAINTIFF'S
OBJECTIONS TO THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION (ECF #42),
(2) ADOPTING THE MAGISTRATE JUDGE'S
RECOMMENDED DISPOSITION, (3) DENYING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT (ECF #31), (4) GRANTING
DEFENDANT UAW'S MOTION TO DISMISS
(ECF #16), AND (5) DISMISSING PLAINTIFF'S
CLAIMS AGAINST UAW**

In this action, Plaintiff David Martin (“Martin”) alleges that his union, the United Autoworkers International Union (the “UAW”), breached the duty of fair representation imposed by the National Labor Relations Act when it chose to settle, rather than arbitrate, a grievance that had been filed against Martin’s employer on Martin’s behalf. (See Compl., ECF #1 at 4, Pg. ID 4.) The UAW has moved to dismiss Martin’s claim (ECF #16), and Martin has moved for summary judgment (ECF #31).

On October, 26 2016, the assigned Magistrate Judge issued a Report and Recommendation (the “R&R”) in which he suggested that the Court (1) grant the UAW’s motion and deny Martin’s motion. (See ECF #41.) Martin filed timely objections to the R&R (the “Objections”). (See ECF #42.) The Court has conducted a *de novo* review of the portions of the R&R to which Martin has objected. For the reasons below, the Court **OVERRULES** the Objections, **ADOPTS** the Magistrate Judge’s recommended disposition of the case, **GRANTS** the UAW’s Motion to Dismiss, and **DENIES** Martin’s Motion for Summary Judgment.

RELEVANT FACTUAL BACKGROUND

In 2013, AK Steel Corporation (“AK Steel”) terminated Martin’s employment on the ground that Martin engaged in a theft of time scheme. (See Compl., ECF #1 at 4, Pg. ID 4.) AK Steel concluded that as part of this scheme, Martin left work in the middle of his shift and then returned to “clock out” minutes before the end of his shift. (See Third Stage Grievance Fact Sheet, ECF #16-1 at 163-164, Pg. ID 448-449.)

After AK Steel fired Martin, the UAW then filed a grievance against AK Steel on Martin's behalf under the controlling collective bargaining agreement (the "CBA"). (*See id.* at 6-8, Pg. ID 6-8.) The UAW assigned one of its representatives, Reggie Ransom ("Ransom"), to handle the grievance on Martin's behalf. (*Id.*) Ransom ultimately negotiated a settlement of the grievance. (*See* Settlement Letter, ECF #16-1 at 167-68, Pg. ID 452-53.) The settlement provided for Martin's reinstatement to a different position at AK Steel, restoration of certain seniority rights, and \$12,897 in back pay. (*See id.*)

Martin did not accept the settlement because he believed that the UAW should have pursued arbitration of his grievance on his behalf. (*See* Compl., ECF #1 at 7, Pg. ID 7.) Martin appealed Ransom's decision to settle his grievance to the UAW's Internal Executive Board (the "IEB"). The IEB held an evidentiary hearing on Martin's appeal and denied relief in a written decision dated April 30, 2015 (the "IEB Decision"). (*See* ECF #16-1 at 171-88, Pg. ID 456-73.) The IEB Decision stated, among other things, that:

Representative Ransom, after a thorough review of the grievance record, concluded he could not prevail before an Arbitrator and we see no reason to disagree with that decision.

Based on the case record and testimony received at the evidentiary hearing, the decision of the National UAW Ford Department was proper and not devoid of rational basis. In addition, there is no evidence that collusion with management,

App. 13

discrimination, or fraud improperly motivated the decision.

(*Id.* at 188, Pg. ID 473.)

Martin then appealed the IEB Decision to the UAW's Public Review Board (PRB), and that board affirmed the decision on September 29, 2015. (*See* PRB Decision, ECF #16-1 at 190-203, Pg. ID 475-88.) The PRB found that:

The company's records confirmed that Martin habitually left the plant and returned to check out toward the end of his shift. Time theft is a dischargeable offense. Despite powerful evidence of Martin's severe misconduct, Representative Ransom convinced the Company not only to reinstate him, but also to pay him a cash settlement. Martin's response to the settlement achieved on his behalf is difficult to understand. We do not know what else Martin hoped to achieve through arbitration of his grievance. He cannot reasonably have expected an arbitrator to order a continuation of the practices that had been discovered in the slab yard.

* * *

Nothing in this record supports a conclusion that Martin was singled out for disparate treatment. Representative Ransom testified before the IEB that the company's assessment of relative fault was reasonable. Martin's examples of employees who might have received more severe penalties do not

establish selective application of penalties. These examples would also have been unlikely to persuade an arbitrator to order Martin's reinstatement, particularly in a situation where the company was less than enthusiastic about having this employee back.

* * *

The only basis Martin can assert for relief from this Board is that Ransom's decision to settle the grievance was so irrational it constituted a failure of the union's duty to represent him. The record will not support that claim because the settlement obtained by Representative Ransom was not only rational; it was excellent under the circumstances. The chance of obtaining any remedy from an arbitrator was remote in light [of] Martin's clear violation of the company's rules. It was entirely responsible for the union to decide it would not risk Martin's reinstatement in order to pursue arbitration of the kinds of arguments he has raised.

(*Id.* at 202-203, Pg. ID 487-88.)

On February 3, 2013, Martin filed suit in this Court against AK Steel and the UAW under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (hereinafter, "Section 301"). (*See* Compl., ECF #1 at 4, Pg. ID 4.) Martin claims that (1) AK Steel wrongfully terminated his employment in violation of the CBA and (2) the UAW breached its duty of fair

representation by pursuing his wrongful termination grievance against AK Steel in a “perfunctory fashion.” (*Id.* at 4-8, Pg. ID 4-8.)¹ Martin sets forth his criticisms of the UAW in the following paragraphs of his Complaint:²

I received a phone call from Reggie Ransom telling me he would be handling my grievance from that point to its conclusion. I never met him until after he settled my grievance and he never asked a single question about my situation. On our first phone conversation he asked me what I wanted. I told him I wanted nothing short of arbitration. He told me he would consider my opinion but that the Union had the final decision. The next phone call I got from him he told me the offer I had already rejected was still on the table. Once again I rejected it and told him all I wanted was for a judge to hear the facts of the case and decide, no matter what I may possibly lose. A few months later, out of nowhere, I received another call from Reggie Ransom telling me he had settled my grievance, and that the matter was done. He gave no explanation or reasoning for his decision.

¹ On July 08, 2016, the Court dismissed Martin’s claim against AK Steel. (*See* ECF #24.) All that remains is Martin’s breach of the duty of fair representation claim against the UAW.

² The paragraphs are reproduced verbatim (including any typographical errors).

The terms he agreed to were almost identical to the offer I had twice rejected. The Union told me my only options were to adhere to the terms of the settlement, or I could appeal his decision to the International Executive Board (IEB). I appealed to them and they eventually sided with Reggie Ransom. I then made my last appeal to the Public Review Board (PRB) who did the same.

In his briefing to the IEB in response to my appeal, Reggie Ransom claims my case lacked merit. He cites three court precedents granting the Union leeway in settling grievances, then one case similar to mine yet under much different circumstances, a case he himself lost. He also claims I was in violation of rule twenty five in the Code of Conduct.

What Reggie Ransom, the IEB, and the PRB seem to have forgotten is that the Union is only granted this great leeway once minimum standards have been met. They satisfied none of them.

As a Union member in good standing, I had the right to expect that the CBA be fairly and uniformly administered. If that was not to be the case, the grievance process was there to protect against any abuses or inequality in its administration. During the grievance process, I had the right to expect that an investigation would be conducted on my behalf, that due process would be followed,

and that it would be conducted with care as my livelihood and future were at stake.

Reggie Ransom and the UAW cannot claim there was a rational basis for concluding that my case lacked merit. He was supposed to conduct an investigation, investigate the facts, then draw his conclusions based on the particulars on my individual case. Instead he cites case law and a grievance unrelated and not germane to my case because he conducted no investigation whatsoever. And in so doing, Reggie Ransom did handle my grievance in a perfunctory fashion and did breach his duty and my right to fair representation.

By citing Rule twenty five, a rule the Company did not claim I violated, by willfully ignoring the positions of both Local 600 and Region 1A, and being unable to point to a single act they performed on my behalf, Reggie Ransom and the UAW International did act against and not for my best interests. For these reasons Reggie Ransoms decision to settle must be considered arbitrary.

On April 14, 2016, the UAW moved to dismiss Martin's claims (the "Motion to Dismiss"). (See ECF #16.) Martin responded to the Motion to Dismiss on April 26, 2016. (See ECF #19.) On August 31, 2016, Martin also filed a Motion for Summary Judgment in which he asks the Court to enter a judgment in his favor in excess of \$1,200,000. (See ECF #31.)

The Court referred the parties' motions to the assigned Magistrate Judge. On October, 26 2016, the Magistrate Judge issued the R&R, in which he recommended that the Court grant the UAW's motion and deny Martin's motion. (See ECF #41.) The Magistrate Judge determined that "several portions of Martin's complaint – as well as documents referenced therein – undermine his conclusory allegation that the [UAW]'s decision to settle his grievance was arbitrary." (*Id.* at 11, Pg. ID 667.) On October 31, 2016, Martin filed the Objections, which consist of ten individually-numbered objections to the R&R. (ECF #42.)

LEGAL STANDARD GOVERNING REVIEW OF OBJECTIONS

When a party has objected to portions of a Magistrate Judge's R&R, the Court reviews those portions *de novo*. See Fed. R. Civ. P. 72(b)(3); *see also Lyons v. Comm'r of Soc. Sec.*, 351 F.Supp.2d 659, 661 (E.D. Mich. 2004). The Court has no duty to conduct an independent review of the portions of the R&R to which a party has not objected. See *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

LEGAL STANDARDS FOR A MOTION UNDER RULE 12(b)(6)

Rule 12(b)(6) provides for dismissal of a complaint when a plaintiff fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss" under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (quoting *Twombly*, 550 U.S. at 555). A claim is facially plausible

when a plaintiff pleads factual content that permits a court to reasonably infer that the defendant is liable for the alleged misconduct. *Id.* (citing *Twombly*, 550 U.S. at 556). When assessing the sufficiency of a plaintiff's claim, a district court must accept all of a complaint's factual allegations as true. *See Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 512 (6th Cir. 2001). "Mere conclusions," however, "are not entitled to the assumption of truth. While the Court must liberally construe documents filed by a *pro se* plaintiff, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), a complaint filed by such a plaintiff must still plead sufficiently specific factual allegations, and not just legal conclusions, in support of each claim. *See Iqbal*, 556 U.S. at 678–679.

**LEGAL STANDARDS GOVERNING A CLAIM
UNDER SECTION 301 OF THE LMRA**

"The National Labor Relations Act imposes a duty of fair representation on unions that are selected as the exclusive representatives of employees in a bargaining unit." *Renner v. Ford Motor Co.*, 516 Fed. Appx. 498, 502-03 (6th Cir. 2013) (citation omitted). "This duty is not expressly stated in the statute, but derives from 'the union's status as the employees' exclusive bargaining representative.'" *Id.* (quotation omitted). Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185, authorizes a union member to bring a claim against his union for breach of the duty of fair representation.

To prevail on his Section 301 claim against the UAW, Martin must prove both that AK Steel breached the CBA and that the UAW breached its duty of fair representation. *See DelCostello v. Int'l Bhd. of*

Teamsters, 462 U.S. 151, 164 (1983). A union breaches its duty of fair representation when its “conduct toward a member . . . is arbitrary, discriminatory, or in bad faith.” *Vaca v. Sipes*, 385 U.S. 171, 190 (1967). “Each of these wrongs is mutually independent, meaning, that ‘the three named factors are three separate and distinct possible routes by which a union may be found to have breached its duty.’” *Garrison v. Cassens Transport Co.*, 334 F.3d 528, 538 (6th Cir. 2003) (quotation omitted).

Here, Martin is proceeding solely under the theory that the UAW’s decision to settle his grievance was “arbitrary.” (See Compl., ECF #1 at 8, Pg. ID 8.) In order to prevail on such a claim of arbitrariness, a union member must establish that “in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior [was] so outside ‘a wide range of reasonableness’ as to be irrational.” *Id.* (quotation omitted). In reviewing for arbitrariness, the Court’s “substantive examination of a union’s performance . . . must be highly deferential.” *Air Line Pilots Ass’n Int’l v. O’Neill*, 499 U.S. 65, 78. “Mere negligence on the part of the union does not satisfy this requirement. Moreover, ordinary mistakes, errors, or flaws in judgment also will not suffice.” *Garrison v. Cassens Transport Co.*, 334 F.3d 528, 538 (6th Cir. 2003) (internal citations omitted). “Even an unconsidered decision by the union is not necessarily an irrational decision.” *Id.* at 540 (citing *Walk v. P*I*E Nationwide, Inc.* 958 F.2d 1323, 1326 (6th Cir. 1992.)). Finally, “[u]nion representatives are not held to the same standard as lawyers.” *Baker v. Lear Corp.*, 2016 WL 4493669, at *8 (E.D. Mich. Aug. 26, 2016) (citing *Garrison*, 334 F.3d at 539).

ANALYSIS

I

Martin has raised a number of specific objections which the Court addresses below. Before turning to those objections, the Court explains why Martin has failed to state a plausible claim that the UAW acted arbitrarily when it settled his grievance.

Martin's initial complaint here is that the UAW settled his grievance even though he unequivocally expressed his desire to arbitrate. Martin highlights that he "told [Ransom] that I wanted *nothing short of arbitration*" and that he repeated to Ransom that "all I wanted was for a judge to hear the facts of the case and decide, *no matter what I may possibly lose*." (ECF #1 at 7, Pg. ID 7; emphasis added.)³ But the Supreme Court has flatly rejected the notion that a union member has an "absolute right" to have his union pursue his grievance. *See Vaca v. Sipes*, 386 U.S. 171, 190-91 (1967). Thus, Martin's allegations that the UAW settled his grievance against his wishes, standing alone, does not state a plausible claim for relief under Section 301.

³ Martin now says that he "understand[s] [that he] did not have an absolute right to have [his] grievance taken to arbitration, and that the Union had to take all factors into account when deciding whether or not to settle or proceed with [his] case." (Objections, ECF #42 at 5, Pg. ID 674.) Martin says he simply "assumed it would be done in a fair and thoughtful manner." (*Id.*) Martin's newfound recognition that he could not force the UAW to arbitrate his grievance does not save his Complaint because, as described below, he has not plausibly alleged that the UAW acted arbitrarily or that, in his words, the UAW failed to act "in a fair and thoughtful manner."

The few other specific factual allegations in Martin's Complaint likewise fall far short of stating a plausible claim against the union. Martin alleges that Ransom conducted "no investigation" into his grievance, but the materials referenced in Martin's own Complaint – which this Court may consider in the context of a motion under Rule 12(b)(6), *See In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 466 (6th Cir. 2014) – belie that allegation.⁴ For instance, the IEB Decision rejecting Martin's appeal identifies testimony from Ransom concerning the content of (1) the employer's "Time Card Analysis" from June 1, 2012 to March 9, 2013," (2) "Payroll Summaries from June 1, 2012 to March 8, 2013," and (3) "Transactions into the plant via 'Reader Description' from June 1, 2012 to March 9, 2013." (*See* IEB Decision, ECF #16-1 at 187, Pg. ID 472.) Moreover, the IEB Decision identifies Ransom's testimony about "previous arbitration cases and [Martin's] disciplinary record...." (*Id.*) Ransom could not have provided information concerning the content of the records and the prior cases unless he had conducted at least some review of them. Indeed, Martin *admits* that Ransom investigated and considered the prior cases; Martin simply takes issue with Ransom's assessment of the prior cases. (*See* Compl., ECF #1 at 7, Pg. ID 7.) Thus, the record available to the Court proves the falsity of Martin's allegation that Ransom conducted "no investigation."

And even if Ransom had failed to investigate and develop a factual record against which to assess

⁴ Martin's Complaint references the decisions of the IEB and PRB affirming Ransom's decision to settle the grievance. (*See* Compl., ECF #1 at 7, Pg. ID 7.)

Martin's claim (which he did not), the materials available to the Court make clear that the IEB and PRB – the entities that made the penultimate and ultimate decision that the UAW would not pursue arbitration of Martin's grievance – made their decisions based upon a developed factual record. In fact, the IEB heard testimony from Martin and permitted Martin to introduce documentary evidence in support of his claims, and the PRB considered that testimony and evidence.⁵ (See IEB Decision at 7, ECF # 16-1 at Pg. ID 462; PRB Decision at 8, ECF 16-1 at Pg. ID 482). Given that the IEB gave Martin an opportunity to include in the record whatever facts and evidence he deemed relevant, Martin cannot plausibly complain that the UAW's ultimate decision not to pursue arbitration was made without any inquiry into the pertinent facts. Moreover, the IEB and PRB decisions refer to other evidence in the record – such as Martin's inculpatory admissions to an AK Steel representative (*see, e.g.*, PRB Decision at 1-3, ECF #16-1 at Pg. ID 475-77) – and the references to such evidence further demonstrate the implausibility of Martin's charge that the UAW conducted “no investigation” into his grievance.

Finally, Martin complains that during the internal appeal process to the IEB and PRB, Ransom said that Martin had violated “rule twenty five in the [employer's] Code of Conduct,” (Compl., ECF #1 at 7, Pg. ID 7), when, in fact, Martin was accused of violating a different rule. (See Objections, ECF #42 at 3-4, Pg. ID 672-73.) The rule that Martin was actually

⁵ The IEB held its evidentiary hearing on December 1, 2014, in Taylor, Michigan. (IEB Decision at 1, ECF #16-1 at Pg. ID 456.) Martin attended and brought a supporting witness with him. (*Id.*)

accused of violating was a rule prohibiting the theft of time. (See ECF #16-1 at 186, Pg. ID 471.) However, when the IEB and the PRB affirmed Ransom's decision to settle Martin's grievance, they well understood that Martin had been accused of "theft of time." (See IEB Decision, ECF #16-1 at 172, Pg. ID 457; PRB Decision, ECF #16-1 at 202-03, Pg. ID 487-88.) Thus, even if Ransom erroneously referenced the incorrect rule number from the employer's code of conduct, the IEB and PRB correctly understood the gist of the allegations against Martin, and any error by Ransom had no effect on the union's ultimate decision to affirm Ransom's decision to settle. Martin cannot show that Ransom's misidentification of the relevant rule so "tainted the grievance procedure such that the outcome was more than likely affected," and, for that reason, Martin cannot state a plausible Section 301 claim based upon the alleged citation error. See *Dushaw v. Roadway Express*, 66 F.3d 129, 132 (6th Cir. 1995) (holding that in order to prevail on a Section 301 claim, a plaintiff must show that union's alleged breach more than likely affected the outcome of the grievance procedure).

Simply put, the written decisions of the IEB and PRB affirming Ransom's decision to settle Martin's grievance definitively refute Martin's conclusory allegation that the UAW acted arbitrarily. The decisions reveal that the UAW carefully considered and weighed a number of entirely appropriate factors – including Martin's inculpatory statements to AK Steel, the favorable terms of the settlement, and the low likelihood of success at an arbitration hearing – and reasonably concluded that these factors supported Ransom's decision to settle the grievance. This

deliberative process is the *opposite* of an arbitrary action. In short, on the record that is properly before this Court, Martin cannot plausibly allege that the UAW acted arbitrarily. Accordingly, the Magistrate Judge correctly recommended that the Court should dismiss Martin's claim against the union.

II

The Court now turns to Martin's specific objections. None have merit. The Court reproduces below each of Martin's individually-numbered objections verbatim (including any typographical errors). The Court then explains why it is overruling each objection.

Objection #1:

Objection #1 reads:

On page 2 of his ruling, [Magistrate Judge] Grand recites the charge that "Martin and other hourly employees were engaged in a theft of time scheme" and that we left the plant "in the middle of our shift only to return minutes before the shift ended". I have shown that the CBA clearly states that we were entitled to relief, at our own discretion, provided that it did not affect operations. Furthermore, I have shown that by the nature of my job, crane time at the end of my shift after I had met my production quota was the most opportune time for me to take relief. I did not leave in the middle of the shift, and the company never proved otherwise. The company had proof that those with drive in passes were gone for hours a day, every day, but chose not to fire them

since their jobs weren't slated to be replaced by a machine.

(ECF #42 at 2, Pg. ID 671.)

This objection relates to a single sentence in the factual background section of the R&R in which the Magistrate Judge is simply describing the reason given by AK Steel for Martin's termination. This sentence from the R&R does not relate to the Magistrate Judge's analysis of the plausibility of Martin's claim that the UAW acted arbitrarily, and it is that analysis on which this Court must focus in determining whether to accept the Magistrate Judge's recommendation to dismiss.

Moreover, while this objection asserts Martin's view that AK Steel erred when it fired him, it does not focus on whether the UAW acted arbitrarily when it decided to settle. For instance, the objection says nothing about the issues and factors that the UAW considered and says nothing about the process undertaken by the UAW.

For these reasons, this objection does not establish that the Court should reject the R&R or that the Court should deny the Motion to Dismiss. Accordingly, Objection #1 is **OVERRULED**.

Objection #2:

Objection #2 reads:

On page 3 of his ruling, [Magistrate Judge] Grand quotes the IEB decision when he states that "Martin maintained that he had permission to leave the plant" and the company denied that was the case. What

does the collective bargaining agreement say? Shouldn't the CBA have been the deciding factor in this dispute, since it is binding on all parties? Again, it states we could take our relief at our discretion provided it did not affect operations. I lived up to its' requirements yet was still terminated, while the UAW did fail to have the CBA equally enforced.

(ECF #42 at 2-3, Pg. ID 671-72.)

This objection is similar to Objection #1 in that it (1) focuses on a single sentence from the R&R quoting a document in the record and (2) does not demonstrate any arbitrary conduct by the UAW. While this objection does contain a passing reference to the UAW's conduct, it is a wholly-conclusory reference that lacks any specific factual allegations that, if proven, would establish that the UAW acted arbitrarily.

Accordingly, the Court **OVERRULES** Objection #2 for the same reasons that it overruled Objection #1.

Objection #3:

Objection #3 reads:

On page 4 [Magistrate Judge] Grand again quotes from the Union "the IEB was persuaded by Ransom's conclusion that employees were disciplined based on the severity of the alleged infraction" while on page 7 he writes that I "must show that the Union's actions or omissions tainted the grievance procedure such that the outcome was more than likely affected by the Union's

breach.” Since the IEB was persuaded by Ransom, and Ransom deliberately misrepresented the facts of my case; citing a rule I was never charged with; how is that not proof of the Union’s breach of its duty of fair representation as well as proof that the entire appeals process was tainted? How could it not taint the appeals process, when it altered the very nature of my case?

(ECF #42 at 3, Pg. ID 672.)

This objection focuses on Ransom’s citation of the wrong rule. But as explained in detail above, that misidentification was not material to the proceedings before the UAW because both the IEB and PRB accurately understood the basis on which AK Steel fired Martin – for theft of time, not for a violation of the specific rule misidentified by Ransom.⁶ Accordingly, Objection #3 is **OVERRULED**.

Objection #4:

Objection #4 reads:

In his ruling, [Magistrate Judge] Grand states there is “no factual support for” my “conclusory allegation” that the Union handled my grievance in a perfunctory manner and that “notably absent from Martin’s complaint... are any factual

⁶ The Court also notes that Martin does not allege in his Complaint that Ransom deliberately misidentified the rule under which AK Steel fired him, nor does Martin make any specific factual allegations from which a deliberate intent to misidentify could be inferred.

allegations regarding how his grievance was handled in a perfunctory fashion, or why the decision to settle his grievance was either arbitrary or irrational.” Apparently Grand did not read Exhibit P, which I included in my response to the Union’s clarification letter, which occurred after he granted their motion but before I knew he interjected himself. It shows in the Union’s own words their “reason and the contractual basis for the settlement.” They then list Rule 25 as the sole reason for settlement, a rule I was never charged with. Apparently Grand believes a deliberate misrepresentation is not a breach of the Union’s duty of fair representation, and that such a deliberate misrepresentation is well within the “wide range of reasonableness afforded to unions in grievance handling”, shows good faith, and provides a rational basis for settlement! The Union settled because they could, irrespective of the merits of my case or what was in my best interests. That is perfunctory handling of my grievance, and the decision to settle is arbitrary.

(ECF #42 at 3-4, Pg. ID 672-73.)

Like Objection #3, this objection relates, in part, to the misidentification of the rule under which AK Steel fired Martin, and the Court overrules this objection for the same reason that it overruled Objection #3.

The Court adds that Martin’s suggestion that the Magistrate Judge did not read “Exhibit P” is demonstrably false. “Exhibit P” is the first page of a

memorandum from UAW Vice President Jimmy Settles ("Settles") to the IEB (the "Settles Memorandum"). (See ECF #40 at 6, Pg. ID 654.) A review of the R&R indicates that the Magistrate Judge read the *entire* Settles Memorandum (not just the first page) and concluded that Settles put forth a detailed rationale in support of the UAW's decision to settle Martin's grievance. (See R&R, ECF #41 at 10, Pg. ID 666.)

Finally, Martin's allegation of "perfunctory" conduct by the UAW in this objection is wholly conclusory and not supported by any specific factual allegations that, if proven, would establish that the UAW's investigation and analysis of Martin's grievance was insufficient and/or arbitrary.

Accordingly, Objection #4 is **OVERRULED**.

Objection #5:

Objection #5 reads:

Over and over again [Magistrate Judge] Grand takes excerpts from my grievance process to justify his ruling, accepting the Union's words as fact. Yet when I cite the exact same source material, my complaints are dismissed "on grounds that it fails to comport sufficiently with basic pleading requirements." I fail to see how my complaint is not accepted as plausible when it is based on intra Union memos or how deliberate misrepresentation does not make the Union liable for misconduct.

(ECF #42 at 4, Pg. ID 673.)

This objection misses the point of the Magistrate Judge's conclusion that Martin failed to plead a plausible claim. The Magistrate Judge did not fault Martin for relying on any particular source material. Instead, he faulted Martin for not pleading sufficient specific facts to support a plausible claim that the UAW acted arbitrarily.

Accordingly, the Court **OVERRULES** Objections #5.

Objection #6:

Objection #6 reads:

On page 7 [Magistrate Judge] Grand quotes the Sixth Circuit on arbitrary conduct. He cites how "ordinary mistakes, errors or flaws in judgement...will not suffice." Then on the same page he states how a "tactical decision . . . is not a breach of the duty of fair representation." If a tactical decision to deliberately misrepresent a grievant is not a breach, what in the world is?

(ECF #42 at 4, Pg. ID 673.)

Like Objections #3 and #4, this objection rests on Martin's allegation that Ransom cited the wrong rule when describing why AK Steel terminated his (Martin's) employment. This objection is overruled for the same reasons that the prior objections were overruled. (*See also* footnote 5, *supra*.)

Accordingly, Objection #6 is **OVERRULED**.

Objection #7:

Objection #7 reads:

On page 8 [Magistrate Judge] Grand chronicles the stages of my grievance procedure as proof the Union satisfied its duty of fair representation. What it really shows is that at the lower levels of the process, the Union supported my position. Reggie Ransom settled my grievance claiming it lacked merit shortly after UAW International accepted it and assigned it to him believing it was a meritorious grievance.

(ECF #42 at 4, Pg. ID 673.)

Here, Martin fails to make a specific objection to the R&R. Moreover, even if the UAW *initially* supported Martin's grievance at lower levels of the grievance process, this would not establish that the IEB and/or PRB acted arbitrarily when – after an evidentiary hearing and further development of the facts and issues – they *later* affirmed the decision to settle the grievance.

Accordingly, Objection #7 is **OVERRULED**.

Objection #8:

Objection #8 reads:

On the same page [the Magistrate Judge] cites the Union position about how Ransom's settlement were "by any objective measure...favorable to Martin under the circumstances." If you were fired based on an allegation, while others whom the company

had proof against were not fired, would you feel you were fired for just cause? I refused the settlement because I refuse to be held to a different standard and refuse to accept being called a thief. There was no "theft of time scheme." The Union and Magistrate Grand tout the term "restoration of full seniority." It is misleading. Plant seniority means nothing. The only thing that matters inside the plant was date of entry on your job. Since the settlement called for us to have a different job within the plant, we lost our bids, essentially starting over. If you saw some employees the company knew were gone for hours a day only get suspended, and get to keep their jobs; while you are fired on an allegation and forced to start over, would any objective observer feel the results were in their favor? Had the company treated everyone the same, there would have been no disparate treatment. Had there been no disparate treatment, the CBA would have been enforced equally. Had I been treated equally, I would not have a legitimate grievance. But I was treated differently, and held to a different standard. And so I do have a legitimate grievance. I thought the Union would be there to ensure my rights, as I thought that was the sole purpose of the Union. I kept good faith through the entire appeals process. I understand I did not have an absolute right to have my grievance taken to arbitration, and that the Union had to take all factors into account when deciding whether or not to settle or proceed with my

case. But I assumed it would be done in a fair and thoughtful manner. I never would have suspected they would ignore my grievance and settle just because thats [sic] what was in their best interests; then misrepresent the facts of my case and cite case law telling me they can do whatever they want.

(ECF #42 at 4-5, Pg. ID 673.)

Here, Martin fails to make a specific objection to the R&R. Likewise, he fails to identify any facts showing that the UAW acted arbitrarily. He primarily criticizes the actions of AK Steel and makes conclusory assertions that the UAW “ignored” his grievance – an assertion that is flatly contradicted by the materials before the Court.

Accordingly, Objection #8 is **OVERRULED**.

Objection #9:

Objection #9 reads:

[Magistrate Judge] Grand says that there are “no facts that are missing” that “would have surfaced during a new investigation” and that by my own admission I do “not allege the Ransom ignored, overlooked, or failed to follow up on any new information provided by Martin.” I most certainly do. As I have already shown, in the case of Grievant Walker (Exhibit F) which Reggie Ransom uses as his excuse for justify his actions, Reggie Ransom was the Union Rep assigned to handle the Walker case. Walker had a drive in pass, allowing the company to know

when he left and reentered the plant. Having received the case record where an entire department was accused of time theft, Ransom could have simply asked the company if any of the employees had gate passes. Then he would have seen the disparate punishment meted out by the company. But he couldn't even bring himself to ask a single question on my behalf, and did ignore information that would have at this point been favorable to those whose grievances had been entrusted to his care. His failure at this stage to do a single act on our behalf most certainly altered the outcome of my grievance since he knew firsthand that Walker was fired because of the proof the company had against him because of his drive in pass. He could have at this point had the CBA and the punishments equally enforced, but chose to do nothing. That is the definition of perfunctory handling of a grievance.

(ECF #42 at 6, Pg. ID 675.)

Objection #9 is not clearly written, but it appears that Martin is making the following multi-step argument: (1) in a past arbitration case involving a "Grievant Walker," AK Steel relied upon "gate pass" records to prove that Walker engaged in theft of time, (2) in this case, Ransom failed to investigate whether Martin and the other employees in his department who were terminated for theft of time used a "gate pass" or "drive in pass," and (3) such an investigation would have revealed that AK Steel did not have "gate pass"

evidence in its case against Martin and the other employees in his department. (See ECF #42 at 6, Pg. ID 675.)⁷

The Court rejects this argument. Even if Ransom did not request “gate pass records,” the UAW’s decision to settle Martin’s grievance was based on other “powerful evidence of Martin’s severe misconduct” such as “company[] records [that] confirmed that Martin habitually left the plant and returned to check out toward the end of his shift.” (ECF #16-1 at 202, Pg. ID 487.) Martin offers no support for his apparent assertion that AK Steel could not have fired him for theft of time without the type of “gate pass” evidence it had against Grievant Walker. Finally, the Court notes that the UAW was not required to exhaust every possible angle of investigation before settling Martin’s case. See *Blesedell v. Chillicothe*, 811 F.3d 211, 220-21 (6th Cir. 2016) (“The duty of fair representation requires a union to undertake a reasonable investigation to defend a union member, not an error-free” or “perfect investigation.”). Martin has not persuaded the Court that the UAW’s investigation was unreasonable on the ground that it did not request “gate pass” records.

Accordingly, the Court **OVERRULES** Objection #9.

⁷ Martin made an identical argument in his response to the Motion to Dismiss. (See ECF #19 at 4, Pg. ID 533.)

Objection #10:

Objection #10 reads:

On page 10 [Magistrate Judge] Grand states that “Martin never denied that he left the premises or that he was paid for time not worked.” Yes I have. I have repeatedly stated that nowhere in the case record does the company ever state that I did not meet my daily quota or otherwise perform my job to the best of my ability. They suffered no injury. As for leaving the premises, I have already shown that that was permissible under the CBA.

(ECF #42 at 6, Pg. ID 675.)

In this objection, Martin mischaracterizes the quote from the R&R. The Magistrate Judge did not contend that “Martin never denied that he left the premises or that he was not paid for time not worked.” Instead, the Magistrate Judge was describing one rationale put forth in the Settles Memorandum in support of settlement: “Vice President Jimmy Settles noted that, as to culpability, during the processing of the grievance, Martin never denied that he had left the premises or that he was paid for work not performed.” (R&R, ECF #41 at 10, Pg. ID 666.)

Moreover, even in this objection, Martin fails to “deny” that he left company premises or that he was paid for time not worked. Instead, he attempts to justify his actions by arguing that he met his daily quota, that AK Steel was not harmed, and that the CBA allowed him to leave. At most these arguments go to the merits of his grievance. He fails to put forth any

App. 38

specific argument or facts that show that the UAW's decision to settle was arbitrary.

Accordingly, Objection #10 is **OVERRULED**.

CONCLUSION

For the reasons stated above, **IT IS HEREBY ORDERED** that:

- Martin's Objections (ECF #42) to the R&R (ECF #41) are **OVERRULED**;
- The Magistrate Judge's recommended disposition in the R&R is **ADOPTED**;
- The UAW's Motion to Dismiss (ECF #16) is **GRANTED**;
- Martin's claims against the UAW are **DISMISSED**; and
- Martin's Motion for Summary Judgment (ECF #31) is **DENIED**.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: February 16, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 16, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(313) 234-5113

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**Case No. 16-cv-10377
Hon. Matthew F. Leitman**

[Filed February 16, 2017]

DAVID D. MARTIN,	)
	)
Plaintiff,	)
	)
v.	)
	)
AK STEEL CORPORATION, et al.,	)
	)
Defendants.	)
	)

JUDGMENT

In accordance with the Order (1) Overruling Plaintiff's Objections to the Magistrate Judge's Report and Recommendation, (2) Adopting the Magistrate Judge's Recommended Disposition, (3) Denying Plaintiff's Motion for Summary Judgment, (4) Granting Defendant UAW's Motion to Dismiss, and (5) Dismissing Plaintiff's Claims Against UAW, dated February 16, 2017,

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Defendant and against Plaintiff.

App. 40

DAVID J. WEAVER
CLERK OF COURT

By: s/Holly A. Monda
Deputy Clerk

Approved:

s/Matthew F. Leitman
MATTHEW F. LEITMAN
United States District Judge

Dated: February 16, 2017
Detroit, Michigan

APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**Case No. 16-cv-10377
Honorable Matthew F. Leitman
Magistrate Judge David R. Grand**

[Filed October 26, 2016]

DAVID D. MARTIN,	)
	)
Plaintiff,	)
	)
v.	)
	)
AK STEEL CORPORATION and	)
UNITED AUTO WORKERS	)
INTERNATIONAL UNION,	)
	)
Defendants.	)
	)

**REPORT AND RECOMMENDATION TO
GRANT DEFENDANT UAW'S MOTION TO
DISMISS [16] AND TO DENY PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT [31]**

Before the Court is a Motion to Dismiss filed by Defendant International Union, UAW (the "Union" or "UAW") on April 14, 2016. (Doc. #16). *Pro se* Plaintiff

David Martin (“Martin”) filed a response to this motion on April 26, 2016 (Doc. #19), and no reply was filed.

Additionally, on August 31, 2016, Martin filed a document entitled “Request for Summary Judgment,” in which he asks the Court both to grant “Summary Judgement [sic] against the UAW” and to enter a default judgment in his favor in excess of \$1,000,000. (Doc. #31).¹

An Order of Reference was entered on February 25, 2016, referring all pretrial matters to the undersigned pursuant to 28 U.S.C. §636(b). (Doc. #8). The Court dispenses with oral argument pursuant to E.D. Mich. L.R. 7.1(f).

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that the UAW’s Motion to Dismiss [16] be **GRANTED** and Martin’s Motion for Summary Judgment [31] be **DENIED**.

¹ On September 20, 2016, the UAW moved for an extension of time to respond to Martin’s motion (Doc. #32), which the Court granted on September 22, 2016 (Doc. #36). Subsequently, Martin submitted a letter, asserting that the Court’s “urgent” ruling on this motion “left [him] convinced that [he] will not receive a fair and impartial hearing from Magistrate David Grand”; thus, he requests that the undersigned “disqualify himself” so that he may “appeal now directly to Judge Leitman.” (Doc. #38 at 1, 2). The Court notes that it acted expeditiously on the UAW’s motion because it sought extension of a deadline that was fast approaching, and only after receiving and reviewing Martin’s “objection” to this request (Doc. #33). Thus, the Court sees no basis for disqualification under the circumstances.

II. REPORT

A. Factual Background²

On February 3, 2016, Martin filed the instant action under Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), asserting a breach of contract claim against his former employer, AK Steel Corporation (“AK Steel” or the “Company”), for its alleged wrongful termination of his employment, and a breach of the duty of fair representation claim against his union, the UAW. (Doc. #1). Martin’s claims stem from his 2013 discharge from AK Steel, when the Company discovered that Martin and other hourly employees were engaged in a theft of time scheme (leaving the facility in the middle of their shift, only to return minutes before their shift ended to clock out, thus receiving pay for working the entire shift). (*Id.* at 4-6).

Martin disagreed with the Company’s decision to terminate his employment and challenged his

² Generally, in ruling on a motion to dismiss, a court will look only to the allegations in the complaint. But, when a complaint refers to documents outside the pleadings, and the contents of those documents are central to the plaintiff’s claims, it is appropriate for the court to consider such documents in the context of a motion to dismiss. *See, e.g., Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007) (“[W]hen a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment.”); *Young v. United Auto Workers*, 2015 WL 7733449, at *4 (E.D. Mich. Dec. 1, 2015) (such an approach is “especially relevant ... where Plaintiffs provide no documents with their Complaint, yet reference a plethora of agreements and correspondence that are central to their claims”).

discharge under the grievance procedure contained in the applicable collective bargaining agreement ("CBA"). (*Id.* at 6; Doc. #16-1 at 44-58). According to Martin, after his discharge, the Union "immediately" filed a grievance on his behalf, advancing this grievance through various steps of the grievance procedure until it reached the National Ford Department level, where it was assigned to International Representative Reggie Ransom ("Ransom"). (Doc. #1 at 6). It is at this stage that Martin challenges the Union's handling of his grievance.

In his complaint, Martin indicates that Ransom sought out his wishes with respect to the outcome of the grievance. (*Id.* at 6-7). According to Martin, although he indicated he "wanted nothing short of arbitration," Ransom stated that "he would consider [Martin's] opinion but that the Union had the final decision." (*Id.* at 7; *see also* Doc. #16-1 at 51 (granting the National Ford Department authority to withdraw or settle a grievance at any time before the matter is heard by an arbitrator)). Ultimately, on July 7, 2014, Ransom negotiated a settlement of Martin's grievance that provided for reinstatement to a different position within the Company, restoration of full seniority, and more than \$12,000 in back pay. (Doc. #1 at 7; Doc. #16-1 at 167-68).

Martin disagreed with the UAW's decision to settle his grievance, however, and refused to return to work under the terms of the settlement. Instead, Martin appealed through the UAW's internal appeal process the Union's decision not to advance his grievance to arbitration. (Doc. #1 at 7). Martin first appealed to the UAW's International Executive Board ("IEB"). (*Id.*). A

hearing was held on December 1, 2014, after which the IEB issued a decision dated April 30, 2015, denying Martin's appeal. (*Id.*; Doc. #16-1 at 171-88). In its written decision, the IEB found that, although Martin maintained that he had permission to leave the plant without notice, the Company denied that this was the case. (Doc. #16-1 at 187). As to Martin's claim of disparate treatment (i.e., that some employees were discharged while others were only suspended), the IEB was persuaded by Ransom's conclusion that employees were disciplined based on the severity of the alleged infraction. (*Id.* at 188). The IEB also considered Martin's complaint that he only spoke to Ransom on a few occasions, finding that Martin and Ransom had "multiple phone conversations" and that the "lines of communication were open between them." (*Id.*). In conclusion, the IEB stated:

Representative Ransom, after a thorough review of the grievance record, concluded he could not prevail before an Arbitrator and we see no reason to disagree with that decision.

Based on the case record and testimony received at the evidentiary hearing, the decision of the National UAW Ford Department was proper and not devoid of rational basis. In addition, there is no evidence that collusion with management, discrimination, or fraud improperly motivated the decision.

(*Id.*).

After the IEB upheld Ransom's decision to settle the grievance, Martin filed an additional appeal to the

UAW's Public Review Board ("PRB"). (Doc. #1 at 7-8). On September 29, 2015, the PRB affirmed the decision of the IEB, denying Martin's appeal, and concluding that his "violation of the rule against time theft was firmly established." (*Id.*; Doc. #16-1 at 190-203). The PRB further found that:

The company's records confirmed that Martin habitually left the plant and returned to check out toward the end of his shift. Time theft is a dischargeable offense. Despite powerful evidence of Martin's severe misconduct, Representative Ransom convinced the company not only to reinstate him, but also to pay him a cash settlement. Martin's response to the settlement achieved on his behalf is difficult to understand. We do not know what else Martin hoped to achieve through arbitration of his grievance.

* * *

Nothing in this record supports a conclusion that Martin was singled out for disparate treatment. Representative Ransom testified before the IEB that the company's assessment of relative fault was reasonable. Martin's examples of employees who might have received more severe penalties do not establish selective application of penalties. These examples would also have been unlikely to persuade an arbitrator to order Martin's reinstatement, particularly in a situation where the company was less than enthusiastic about having this employee back.

* * *

The only basis Martin can assert for relief from this Board is that Ransom's decision to settle the grievance was so irrational it constituted a failure of the union's duty to represent him. The record will not support that claim because the settlement obtained by Representative Ransom was not only rational; it was excellent under the circumstances. The chance of obtaining any remedy from an arbitrator was remote in light [of] Martin's clear violation of the company's rules. It was entirely responsible for the union to decide it would not risk Martin's reinstatement in order to pursue arbitration of the kinds of arguments he has raised.

(Doc. #16-1 at 202-03). As such, the PRB affirmed the decision of the IEB. (*Id.*).

Having exhausted his internal union appeals, Martin filed the instant federal court lawsuit against both the UAW and AK Steel on February 3, 2016. (Doc. #1). Martin's breach of contract claim against AK Steel has been dismissed by this Court (Docs. #21, 24); thus, all that remains is Martin's breach of the duty of fair representation claim against the Union.

B. The UAW's Motion to Dismiss

1. Standard of Review

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests a complaint's legal sufficiency. "To survive a motion to dismiss, a complaint must contain

sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The plausibility standard “does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct].” *Twombly*, 550 U.S. at 556. Put another way, the complaint’s allegations “must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief.” *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (emphasis in original) (citing *Twombly*, 550 U.S. at 555-56).

In deciding whether a plaintiff has set forth a “plausible” claim, the Court must accept the factual allegations in the complaint as true. *Id.*; see also *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). That tenet, however, “is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” to prevent a complaint from being dismissed on grounds that it fails to comport sufficiently with basic pleading requirements. *Iqbal*, 556 U.S. at 678; see also *Twombly*, 550 U.S. at 555; *Howard v. City of Girard, Ohio*, 346 F. App’x 49, 51 (6th Cir. 2009). Ultimately, “[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its

judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

Pleadings filed by *pro se* litigants are entitled to a more liberal reading than would be afforded to formal pleadings drafted by lawyers. See *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2007). Nonetheless, “[t]he leniency granted to *pro se* [litigants] ... is not boundless,” *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004), and “such complaints still must plead sufficient facts to show a redressable legal wrong has been committed.” *Baker v. Salvation Army*, 2011 WL 1233200, at *3 (E.D. Mich. Mar. 30, 2011).

2. *Martin’s Claim for Breach of the Duty of Fair Representation Should be Dismissed*

Martin styles this case as a “classic hybrid” action, brought pursuant to Section 301 of the LMRA, 29 U.S.C. §158. (Doc. #1 at 4). As such, Martin must prove both a breach of contract by the Company, and that the Union breached its duty of fair representation to him. See *DelCostello v. Int’l Bhd. of Teamsters*, 462 U.S. 151, 164 (1983). To prove a breach of the duty of fair representation, Martin must demonstrate that, in settling his grievance, the Union acted in an arbitrary, discriminatory, or bad faith manner. See *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Moreover, judicial review of a union’s performance is “highly deferential.” *Air Line Pilots Ass’n Int’l v. O’Neill*, 499 U.S. 65, 78 (1991). “Union representatives are not held to the same standard as lawyers.” *Baker v. Lear Corp.*, 2016 WL 4493669, at *8 (E.D. Mich. Aug. 26, 2016) (citing *Garrison v. Cassens Transp. Co.*, 334 F.3d 528, 539 (6th Cir. 2003)).

In this case, Martin's complaint alleges only that the Union's conduct was "arbitrary." (Doc. #1 at 8). According to the Sixth Circuit, a union's actions are arbitrary:

... only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational. Moreover, ordinary mistakes, errors or flaws in judgment also will not suffice.... In essence then, to prevail, a plaintiff has the difficult task of showing that the union's actions were wholly irrational.

Plunkett v. Smurfit-Stone Container Corp., 247 F. App'x 604, 607-08 (6th Cir. 2007) (internal citations and quotations omitted); *see also Air Line Pilots Ass'n*, 499 U.S. at 67. In other words, "A 'tactical decision,' even if it proves to be a 'devastating' miscalculation of strategy, is not a breach of the duty of fair representation." *Baker*, 2016 WL 4493669, at *8 (quoting *Garrison*, 334 F.3d at 541). Moreover, even if Martin could show that the Union acted contrary to its legal duty, he also must show that the Union's actions or omissions "tainted the grievance procedure such that the outcome was more than likely affected by the Union's breach." *Dushaw v. Roadway Express, Inc.*, 66 F.3d 129, 132 (6th Cir. 1995). Applying these standards, it is clear that Martin's claims against the Union are subject to dismissal.

In his complaint, Martin alleges that the Union breached the duty of fair representation when it arbitrarily decided to settle his grievance, rather than

proceeding to arbitration.³ Specifically, in the crux of his complaint, Martin asserts that Ransom “handle[d] [his] grievance in a perfunctory fashion,” conducting “no investigation whatsoever” into the facts of his situation. (Doc. #1 at 8). Martin further alleges that, as a result, there was no “rational basis” for Ransom’s conclusion that his grievance “lacked merit,” and that the decision to settle his grievance was “arbitrary.” (*Id.*).

Notably absent from Martin’s complaint, however, are any factual allegations regarding *how* his grievance was handled in a perfunctory fashion, or *why* the decision to settle his grievance was either *arbitrary* or *irrational*. Indeed, the facts that Martin has included in his complaint show conclusively that the Union did not breach its duty of fair representation. For example, at the same time Martin claims that his grievance was handled in a “perfunctory” fashion, he also chronicles the many steps in the procedure through which his grievance passed. (*Id.* at 6-7). According to Martin, the grievance was first filed at the local level and, from there, was sent up to Region 1A. (*Id.* at 6). As Martin indicates in his complaint, similar employees’ grievances were settled at that stage. (*Id.*). From there, however, Martin’s grievance went “still higher” to the

³ To the extent Martin believes he had an absolute right to have his grievance arbitrated, that is not the case, as the United States Supreme Court long ago recognized that a union is not obligated to process every grievance to arbitration. *See Vaca*, 386 U.S. at 190 (stating that, although a union may not arbitrarily ignore a meritorious grievance, or process it in a perfunctory fashion, an individual employee does not have the “absolute right” to have his grievance taken to arbitration).

National Ford Department, where it was settled by Ransom on terms (reinstatement with back pay and restoration of full seniority), which by any objective measure were favorable to Martin under the circumstances. Where Martin's grievance was processed in accordance with the steps set forth in the applicable grievance procedure (Doc. #16-1 at 44-58), there simply is no factual support for his conclusory allegation that it was handled in a "perfunctory" manner.

In his complaint, rather than focusing on the totality of the grievance procedure, Martin alleges that Ransom, after receiving the grievance at the National Ford Department level, should have re-investigated the case, rather than relying on the grievance record as he received it.⁴ (Doc. #1 at 6-8). Martin points to no statutory or case law, however, that requires the Union to conduct an independent review of a grievance at every step of the grievance procedure, and the Court is aware of none. Moreover, Martin points to no facts that are missing from the grievance record presented to Ransom that would have surfaced during a new

⁴ Martin also takes issue with the fact that Ransom did not meet with him personally, claiming he must not have felt the situation "worthy of a face to face meeting," and asserting that such a failure constitutes a violation of the CBA. (Doc. #19 at 3, 6). Indeed, Martin asserts that the CBA provides that "once a grievance reaches the International level the Union will 'send an International Representative to the plant to investigate the grievance.'" (*Id.* at 6 (quoting Doc. #16-1 at 55)). This portion of the CBA, however – Article VIII, Section 20(C)(1) – provides for "Special Procedures" that apply only to health and safety grievances; thus, it has no bearing on Martin's discharge grievance.

investigation. And, indeed, despite the fact that Martin alleges in his complaint that he talked to Ransom throughout the process (*Id.* at 6-7), he does not allege that Ransom ignored, overlooked, or failed to follow up on any new information provided by Martin. Thus, by Martin's own admission, Ransom's investigation was sufficient to satisfy the duty of fair representation. See *Blesedell v. Chillicothe Tel. Co.*, 811 F.3d 211, 220-21 (6th Cir. 2016) (union merely required to conduct reasonable investigation, not one that is "error-free" or "perfect").⁵

Likewise, Martin's assertion that the decision to settle his grievance was "arbitrary" and lacked a "rational basis" is without merit, as the complaint and the documents referenced therein detail with specificity the Union's rational reasons for settling the grievance. Specifically, Martin acknowledges in his complaint that:

In his briefing to the IEB in response to my appeal, Regie [sic] Ransom claims my case lacked merit. He cites three court precedents granting the Union leeway in settling grievances, then one case⁶ similar to mine yet

⁵ Moreover, even if Martin could show that Ransom's investigation was so deficient as to constitute a breach of the duty of fair representation, his claim would nevertheless fail because he cannot establish that this breach so seriously flawed the grievance procedure as to make it "more than likely" that the outcome was affected. *Dushaw*, 66 F.3d at 132.

⁶ Martin attached a copy of an arbitration decision to his response to AK Steel's motion to dismiss. (Doc. #14 at 14-23). Although several pages of the decision are missing, it is nevertheless clear

under much different circumstances, a case he himself lost.

(Doc. #1 at 7 (footnote added)). A review of the “briefing”⁷ referenced by Martin in his complaint, however, fully sets forth the Union’s rationale for settling Martin’s grievance, belying any claim that this decision was arbitrary or irrational. Specifically, in a September 29, 2014 memorandum drafted in response to an inquiry from the IEB, UAW Vice President Jimmy Settles noted that, as to culpability, during the processing of the grievance, Martin never denied that he had left the premises or that he was paid for work not performed. (Doc. #16-1 at 205). And, as Martin pointed out, in further support of the reasonableness of the decision to settle Martin’s grievance, Vice President Settles cited a recent arbitration case evidencing the seriousness with which arbitrators treat allegations of time theft, as well as a recent grievance arbitration between the Company and the Union, with similar facts, where the arbitrator denied the Union’s grievance. (*Id.* at 205-06). As such, Vice President Settles reiterated his belief that the settlement negotiated on Martin’s behalf “trump[ed] the unlikely possibility of prevailing at arbitration.” (*Id.* at 206).

Moreover, in denying Martin’s appeal, the IEB specifically found that, “Representative Ransom, after

that the arbitration was very similar to the issue in Martin’s grievance (theft of time) and, thus, was properly considered by the Union in deciding how to proceed on Martin’s grievance.

⁷ Although Martin mistakenly attributes this “briefing” to Ransom, the document at issue was actually prepared by UAW Vice President Jimmy Settles. (Doc. #16-1 at 205-08).

a thorough review of the grievance record, concluded he could not prevail before an Arbitrator and we see no reason to disagree with that decision.” (Doc. #16-1 at 188). Likewise, the PRB found that:

The only basis Martin can assert for relief from this Board is that Ransom’s decision to settle the grievance was so irrational it constituted a failure of the union’s duty to represent him. The record will not support that claim because the settlement obtained by Representative Ransom was not only rational; it was excellent under the circumstances. The chance of obtaining any remedy from an arbitrator was remote in light [of] Martin’s clear violation of the company’s rules. It was entirely responsible for the union to decide it would not risk Martin’s reinstatement in order to pursue arbitration of the kinds of arguments he has raised.

(*Id.* at 203). Thus, it is clear from the face of Martin’s complaint, as well as from documents referenced therein, that the Union’s decision to settle Martin’s grievance was well-reasoned and well within the “wide range of reasonableness” afforded to unions in grievance handling.

In summary, several portions of Martin’s complaint – as well as documents referenced therein – undermine his conclusory allegation that the Union’s decision to settle his grievance was arbitrary. Specifically, Martin acknowledges that the Union processed his grievance throughout the grievance procedure; sought his input as to the outcome of the grievance before final

settlement; reached a favorable settlement (which was aptly described as “excellent under the circumstances”); and explained its rationale in great detail during the internal union appeal process. (Doc. #1 at 6-7; Doc. #16-1 at 202-03, 205-08). For all of these reasons, Martin’s breach of duty of fair representation claim against the UAW fails as a matter of law, and the UAW’s motion to dismiss should be granted.

C. Martin’s Motion for Summary Judgment

Lastly, as set forth above, on August 31, 2016, Martin filed a document entitled “Request for Summary Judgment,” in which he asks the Court both to grant “Summary Judgement [sic] against the UAW” and to enter a default judgment in his favor in excess of \$1,000,000. (Doc. #31). Courts have recognized that where the party with the burden of proof (typically the plaintiff) moves for summary judgment, “his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986) (internal citations omitted). Here, where, for all of the reasons stated above, Martin’s claim against the Union should be dismissed, it is equally clear that Martin’s motion for summary judgment (Doc. #31) should be denied.

III. CONCLUSION

For the foregoing reasons, Martin’s complaint fails to state a claim against the UAW. Therefore, **IT IS RECOMMENDED** that the UAW’s Motion to Dismiss [16] be **GRANTED** and Martin’s Motion for Summary Judgment [31] be **DENIED**.

Dated: October 26, 2016
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING
OBJECTIONS**

Within 14 days after being served with a copy of this Report and Recommendation and Order, any party may serve and file specific written objections to the proposed findings and recommendations and the order set forth above. *See* 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(2); E.D. Mich. LR 72.1(d)(1). Failure to timely file objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, (1985); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). Only specific objections to this Report and Recommendation will be preserved for the Court's appellate review; raising some objections but not others will not preserve all objections a party may have. *See Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); *see also Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). Copies of any objections must be served upon the Magistrate Judge. *See* E.D. Mich. LR 72.1(d)(2).

A party may respond to another party's objections within 14 days after being served with a copy. *See* Fed. R. Civ. P. 72(b)(2); 28 U.S.C. §636(b)(1). Any such response should be concise, and should address

App. 58

specifically, and in the same order raised, each issue presented in the objections.

* * *

*[Certificate of Service Omitted in
the Printing of this Appendix]*