No. 25-

IN THE

Supreme Court of the United States

THOMAS SCHRAMM,

Petitioner,

v.

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, AKA UNITED STEELWORKERS, AKA USW,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Tom Schramm, a 30-year member of the United Steelworkers union (USW), was fired based on false rumors. Although wholly innocent, the USW accepted the company's version of events at face value and did not interview Schramm, otherwise investigate, or even file a step one grievance.

The Sixth Circuit affirmed summary judgment for the USW, giving deference to the union's decision in reliance on *Air Line Pilots* v. *O'Neill.* Four other circuits follow this approach; four do not (three are unclear).

The questions presented are:

1. Whether the same standards for determining a breach of the duty of fair representation in contract negotiations should be imposed upon unions for individual discharge and grievance cases.

2. Whether the duty of fair representation requires a union's decision-making to be based on objective competent evidence, or whether the union may decline to pursue a meritorious grievance for unjust discharge based on subjective information and belief.

PARTIES TO PROCEEDING

Petitioner Thomas Schramm was the appellant in the court below. Respondent is the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, AFL-CIO-CLC, ("United Steelworkers" or "USW") and was the appellee in the court below.

STATEMENT OF RELATED CASES

District Court for the Western District of Michigan, Northern Division, Thomas Schramm, plaintiff, v. Neenah Paper Michigan Inc., and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, commonly known as the United Steel Workers or USW, defendants, no. 2:22-cv-00047 (September 11, 2024)

Sixth Circuit Court of Appeals, Thomas Schramm, Plaintiff-Appellant, v. Neenah Paper Michigan, Inc., Defendant, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, aka United Steel Workers, aka USW, Defendant-Appellee, no. 24-1882 (October 6, 2025)

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INTRODUCTION

There are over 14 million unionized workers in the United States, almost ten percent of the workforce.[1] These workers rely on the "just cause" job security provided by their collective bargaining agreements, and depend on their unions to protect their job, "especially in the handling of a grievance based on discharge – the industrial equivalent of capital punishment." *Griffin* v. *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW,* 469 F.2d 181, 183 (4th Cir. 1972).

To protect these workers, unions are tasked with the "duty of fair representation," which serves as a "bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law." *Vaca* v. *Sipes*, 386 U.S. 171, 182 (1967).

When processing grievances, this duty affirmatively requires the union to "in good faith and in a nonarbitrary manner, make decisions as to the merits of particular grievances." *Id.* at 191-94. *Vaca* thus contemplated a reasoned decision-making process based on objective, competent facts.

Here, however, the USW failed to engage in this objective inquiry, accepting the Company's version of events at face value and as confirmation that rumors coming from the floor were, in fact, valid. Schramm's guilt was all but assumed prior to his termination. Through this lens, Schramm's pleas of innocence and attempt to reason

1. https://www.bls.gov/news.release/union2.htm, accessed 12/30/25.

with the decision-maker were viewed as confirmation of his guilt. And, when the company refused to produce evidence it claimed to have, the union folded – not even filing a step one grievance.

Instead of focusing on the union's objective obligation when reviewing discharge grievances, *Vaca* v. *Sipe*s, *supra,* which includes the affirmative duty to investigate the merits of a particular grievance, *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), the Sixth Circuit wrongfully relied on the more onerous test meant for contract negotiation cases, *Air Line Pilots Assn* v. *O'Neill*, 499 U.S. 65 (1991), to defer to the union's subjective justifications.

The Sixth Circuit is not alone – there are (at least) four other circuits that have similarly conflated the standards. The test they employ is so daunting, few who run the gauntlet are provided the opportunity to clear their name in court, effectively providing complete immunity to both the employer and the union alike.

This Court has not directly addressed the union's duty of fair representation in the context of a discharge case in 50 years. Lower courts, as well as unions, require guidance. There is no better case to provide it than this one, where a long-time union employee was discharged based on false rumors and harmed by his union, which neither investigated nor pursued his meritorious grievance.

OPINIONS BELOW

The opinion of the court of appeals (App.1a–21a) is unreported, as is the opinion of the district court (App.22a-41a).

JURISDICTION

The judgment of the court of appeals was entered on October 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Labor Management Relations Act, 1947, § 301, 29 U.S.C. § 185,

> SUITS BY AND AGAINST LABOR ORGANIZATIONS.

The relevant sections are:

> (a) VENUE, AMOUNT, AND CITIZENSHIP
>
> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> (b) RESPONSIBILITY FOR ACTS OF AGENT, ENTITY FOR PURPOSES OF SUIT, ENFORCEMENT OF MONEY JUDGMENTS
>
> Any labor organization which represents employees in an industry affecting commerce

> as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.
>
> (c) JURISDICTION
>
> For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

STATEMENT OF CASE

I. Factual Background

In 1986, Thomas Schramm began working for Neenah Paper Company in Munising, Michigan. App.2a. As of 2021, Schramm was the plant's Fire Chief and a member of the United Steelworker's Union (USW), District 2, Local 2-96, which represented the plant's maintenance workers. *Id.* By year end, he had been terminated twice.

First, he was terminated March 1, 2021, for reporting a chemical spill to the Michigan Department of Environment, Great Lakes, and Energy, allegedly in violation of Neenah's confidentiality policies. App.3a. Consistent with the grievance procedures set forth in the collective bargaining agreement, Local 2-96 filed a grievance for unjust discharge on his behalf. *Id.*

The grievance was processed through the third step, at which time Schramm filed suit in federal court, alleging violation of Michigan's Whistleblower Protection Act. App.3a. The parties agreed to stay the litigation, pending arbitration. App.4a. Prior to arbitration, Neenah agreed to unconditionally reinstate Schramm with backpay effective October 18, 2021. App.4a, 26a. Separately, Schramm and Neenah settled their lawsuit and agreed that Schramm would return to work January 3, 2022 instead of October 18, 2021, due to a previously scheduled vacation. App.26a, 30a.

Shortly after Neenah agreed to Schramm's reinstatement (mid-October), Local 2-96 union president Josh Trader began to hear concerns from union members about Schramm's return to work. App.30a–31a. He alleged that some employees heard that Schramm had a "hit list." App.31a. Trader said he heard "concerns" from "dozens of people." *Id.* Trader passed these concerns along to USW international rep Chris Haddock and the mill's human resources manager Kathy Hill but declined to provide the names of any of the people who allegedly approached him. App.31a–32a. At his deposition, he could not recall a single name of anyone with personal knowledge of any threat or the hit list. R.1578-79.[2]

2. All references to the district court record are noted as R. Page numbers correspond to the electronic court filing (ECF)

Other union officials "heard similar rumors" from employees at the plant. App.31a. Mike Peters was the president of Local 2-87, which represented the production employees at the plant. App.2a, 31a. Like Trader, Peters said that mill employees approached him with concerns about Schramm's return to work. Peters recalled hearing that Schramm had a "list" of five people in management with whom he was unhappy. App.31a. Peters also passed these concerns along to Haddock and Hill. App.31a-32a. After Schramm was terminated, Greg Murk assumed his role as fire chief. App. 31a. Like Peters, Murk recalled hearing that Schramm had a "list" of five people in management with whom he had issues. *Id.* Murk also raised these concerns with Haddock and Hill. App.31a-32a.

During his deposition, Haddock "recalled hearing from Trader that dozens of people had expressed concerns" about Schramm's return to work. App.32a. He also heard that Schramm had a "list of five people." *Id*. He confirmed that he was not provided with any names, allegedly out of fear of repercussions. *Id.* Haddock heard similar concerns from Peters and Murk. *Id.*; R.1379.

As of October 13, 2021, Hill became aware of a rumor that "Schramm was 'going around telling people he's going to [get]' her and multiple other colleagues 'fired when he gets back to work.'" App.5a-6a. During that same time, she heard concerns from Trader, Peters, and Murk about what would happen when Schramm returned to work.

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system PageID number. So, for example, R.1578-79 corresponds to PageID.1578-79 in the district court's ECF system.

App.32a. Hill responded by passing the concerns along to mill manager Brian Houghton, and Neenah's vice president of human resources Monica Howe. *Id.*

Things escalated on November 17, 2021 when Trader and Murk expressed concern to Hill over texts from Schramm wondering if she was in the office. App.6a. Unaware that Schramm was trying to get his backpay and insurance issues straightened out, Hill emailed her concerns to Howe and relayed that she had shared her concerns with Haddock, who was "very supportive and said [she] had to do what was right for [her] and the Munising employees." *Id.*

On December 21, 2021, Howe met with two other members of Neenah's corporate team and they made a "business decision," to terminate Schramm's employment. App.6a; R.1495-96.

Howe drafted a "Communication Plan" explaining the reasons for Schramm's termination. "The Plan cited Schramm's '[e]xcessive phone calls or text messages' and repeated 'reference[s]' to 'a hit list with [five] names on it,' and it stated that Schramm's fellow employees were afraid of him and were 'looking for places to hide.'" App.6a-7a. Howe shared the plan with Haddock, who "'supported the company's decision,'" and emailed him the Communication Plan. App.7a.

On December 28, 2022, days before his scheduled return to work, Schramm was terminated for the second time on a phone call with Haddock and Howe. App.33a. When Howe informed Schramm that he was terminated,

Schramm was genuinely surprised, R.1842, while Haddock pretended to be. App.20a. Howe generally followed the communication plan, mentioning excessive calls and texts and "multiple comments and threats" Schramm allegedly made regarding a "hit list". App.7a. Schramm confirmed he was angry with Hill and four other employees but denied there was any hit list. *Id.* Toward the end of the call, Schramm reiterated there was no "hit list" and voiced his opinion that the only one at the mill who was afraid of him was Hill because "the day I come back to work that's the day that … you know what, I'm [just] going to let Chris deal with it because Chris knows what's in the wind when I come back to work for [K]athy Hill." App.8a; R.1857-58. Howe shared the plan with Haddock, who "'supported the company's decision,'" and emailed him the Communication Plan. App.7a.

Immediately after, in a brief follow-up call with Schramm, Haddock expressed concern about Schramm's "in the wind" comment, but assured Tom he knew he didn't mean anything by it and promised to file an information request and a grievance. App.8a; R.1858. Haddock also informed Trader that he would handle Schramm's grievance. App.8a.

Schramm received his termination letter on December 31, 2021 and immediately forwarded it to Haddock to grieve. App.8a-9a. Under the CBA, the grievance deadline was January 4, 2022. App.9a. On January 3, 2022, Haddock emailed Howe an information request and to extend the deadline. Howe denied both requests on January 5, one day after the deadline. On receipt of this email, Haddock notified Howe and Schramm that the union would not be filing a grievance. *Id.*

II. Procedural History

A. District court proceedings

Schramm filed suit against his employer Neenah Paper Michigan, Inc. (Neenah) March 2, 2022, and added the USW as a party June 28, 2022. App.9a. His second amended complaint asserts a hybrid claim under § 301 of the Labor Management Relations Act ("LMRA") against Neenah for breach of the collective bargaining agreement and against the USW for breach of the duty of fair representation. App.10a, 23a.

All three parties filed cross-motions for summary judgment. While the motions were pending, Schramm and Neenah reached a confidential settlement agreement. The settlement was accepted by the district court and Neenah dismissed from the action contemporaneous with the court's decision granting the union's motion for summary judgment. App.23a.

In granting the union's motion, the district court found that Haddock did not act arbitrarily or in bad faith when he refused to file a grievance challenging Schramm's second termination. The court fully credited Haddock's subjective justifications for not filing the grievance. App.34a-36a. Citing standards from *O'Neill*, App.29a, the court explained that Haddock's decision "falls within the range of reasonableness" and was not "wholly irrational" because "Haddock had to make a decision about filing the grievance … with the information available to him at the time." App.36a-37a.

Despite submission of the transcript and recording of the actual termination call refuting Haddock's version

of events, R.1842-63 (transcript), R.1870 (recording), the court nonetheless found that Schramm had put forth no evidence to undermine Haddock's subsequent explanation for declining to file a grievance and thus there was no evidence of bad faith. App.38a.

B. Sixth Circuit decision

The Sixth Circuit affirmed, also applying *O'Neill's* deferential standard to conclude that Haddock's determination that "Schramm would not prevail in his grievance" was not "wholly irrational" based on Schramm's alleged statements on the termination call as well as information gained from prior discussions with local union and company officials. App.12a-13a, 15a.

Similarly, the court agreed there was no evidence of bad faith on Haddock's part, despite privately supporting his termination, feigning surprise on the call, and misrepresenting his plans to secure evidence and file a grievance. App.16a. Throughout its opinion, the court fully credited Haddock's subjective justifications for his decisions. App.17a-21a. The Court reasoned that he was motivated by a desire to protect other members from perceived threats, which required a balancing of interests. App.19a. Additionally, the court found that Haddock provided a reasonable explanation for his actions, that Haddock's deception was not serious or material, and that Schramm had not put forth any evidence that Haddock was motivated by any "improper intent, purpose, or motive." *Id.*20a-21a.

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit's Application of *O'Neill* Swallows *Vaca* Whole and Exposes a Deep Circuit Split

A. This Court's precedent recognizes a heightened duty of fair representation in discharge grievances

Over eighty years ago, in rejecting union practices that discriminated on the basis of race, this Court held that bargaining representatives had a "duty to exercise fairly the power conferred upon it on behalf of all those for whom it acts, without hostile discrimination against them." *Steele* v. *Louisville & N.R. Co.*, 323 U.S. 192, 203 (1944). While unions are allowed a "wide range of reasonableness," they are "subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338 (1953). "The undoubted broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is accompanied by a responsibility of equal scope, the responsibility and duty of fair representation." *Humphrey* v. *Moore*, 375 U.S. 335, 342 (1964).

The contours of a union's duty of fair representation towards individual workers were given further shape in *Vaca* v. *Sipes*, *supra*. "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca,* 386 U.S. at 190. This Court sought to strike a balance between a member's right to have a grievance taken to arbitration, and a union's discretion. *Id.* at 190. The Court "accept[ed]

the proposition that "a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion," but declined to require "that the individual employee has an absolute right to have his grievance taken to arbitration." *Id.* at 191.

Therefore, where a discharged worker files a "hybrid" suit under the Labor Management Relations Act, 1947, § 301, 29 U.S.C. § 185, it is not enough to prove an unlawful termination, but also that there was "arbitrary or bad-faith conduct on the part of the Union in processing [the] grievance." *Id*. at 193.

In *Vaca,* the Court found no evidence of arbitrary or bad faith conduct, where the union "processed the grievance into the fourth step, attempted to gather sufficient evidence to prove Owens' case, attempted to secure for Owens less vigorous work at the plant, and joined in the employer's efforts to have Owens rehabilitated. Only when these efforts all proved unsuccessful did the Union conclude both that arbitration would be fruitless and that the grievance should be dismissed. There was no evidence that any Union officer was personally hostile to Owens or that the Union acted at any time other than in good faith." *Id. at* 194.

Vaca's protection of individual members was further strengthened in *Hines* v. *Anchor Motor Freight, Inc.,* 424 U.S. 554 (1976), where the union was found to have breached its duty of fair representation, even though it took the worker's claim to arbitration. In *Hines,* truck drivers were discharged over false charges that they were dishonest – specifically, that they sought reimbursement for hotel stays above what they spent. The company

shared its evidence with the union, including receipts, hotel ledgers, and statements from the motel clerk and owner. Over their pleas of innocence and to investigate the hotel, the union assured them there was "nothing to worry about," and refused to independently investigate. At the hearing, Anchor, bearing the burden of proof, presented its case and then the employees were given an opportunity to be heard. They denied their dishonesty, but neither the employees nor the union presented any other evidence contradicting the company's documentation. The drivers then lost their hearing in front of a joint committee. *Id.* at 556-58.

Subsequently, the drivers independently investigated and uncovered evidence of actual innocence. *Id.* at 558. This Court disregarded the claim that the joint committee decision operated as a finality bar, and allowed the drivers' suit to proceed, stating that "enforcement of the finality provision where the arbitrator has erred is conditioned upon the union's having satisfied its statutory duty fairly to represent the employee in connection with the arbitration proceedings. Wrongfully discharged employees would be left without jobs and without a fair opportunity to secure an adequate remedy." *Id.* at 571.[3]

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3. Certiorari was granted on the following question: "Whether petitioners' claim under LMRA § 301 for wrongful discharge is barred by the decision of a joint grievance committee upholding their discharge, notwithstanding that their union breached its duty of fair representation in processing their grievance so as to deprive them and the grievance committee of overwhelming evidence of their innocence of the alleged dishonesty for which they were discharged." *Hines v. Anchor Motor Freight Inc.*, 421 U.S. 928, 929 (1975). The Court accepted the circuit court's holding that the duty of fair representation had been breached under these facts.

Hines has been widely understood to hold that the union breached its duty of fair representation by failing to undertake a good faith investigation of the drivers' claims of innocence.[4] The Sixth Circuit has generally followed suit, holding that the union's duty of fair representation includes a duty to reasonably investigate the merits of a grievance. *See, e.g., Driver* v. *U.S. Postal Service*, 328 F.3d 863, 869 (2003); *Black* v. *Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 585 (6th Cir. 1994) *Walk* v. *P*I*E Nationwide, Inc.*, 958 F.2d 1323, 1326 (6th Cir. 1992) ("union must undertake reasonable investigation to defend [an employee] from employer discipline"), *citing Hines, supra.*

Professor Robert A. Gorman has written that the relevant inquiry is not "whether the union in fact pursues an employee's grievance," but rather "whether the union has made a full investigation, has given the grievant notice and an opportunity to participate, has mustered colorable arguments and has refuted insubstantial arguments by the employer." *Miller* v. *Gateway Transp. Co., Inc.,* 616 F.2d 272, fns. 10, 11, quoting Gorman, *Basic Text on Labor Law, Unionization, and Collective Bargaining,* Ch. 30, § 6, n.11, at 718 (West Pub. Co., St. Paul 1976).[5]

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4. *See, e.g., Emmanuel v. Int'l Bhd. of Teamsters, Loc. Union No. 25*, 426 F.3d 416, 420–21 (1st Cir. 2005); *Garcia v. Zenith Elec. Corp.,* 58 F.3d 1171, 1176 (7th Cir.1995); *Abilene Sheet Metal, Inc. v. N.L.R.B.*, 619 F.2d 332, 347 (5th Cir. 1980); *Miller v. Gateway Transp. Co.,* 616 F.2d 272, 277 (7th Cir. 1980); *Newport News Shipbuilding & Dry Dock Co. v. N.L.R.B.*, 631 F.2d 263, 269 (4th Cir. 1980).

5. Although this Court has not cited this particular language quoted in *Miller*, it has cited Gorman's treatise in many cases: *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180 (1978); *Eastex, Inc. v. N.L.R.B.*, 437 U.S. 556 (1978);

Contrast here, where Schramm's union did nothing of substance; there was no review of company evidence, no attempt to gather evidence in his favor, no meaningful attempt to seek his side of the story, no grievance filed, and no attempt to advocate for him in any way.

Despite this Court's guidance in *Vaca* and *Hines*, the Sixth Circuit nevertheless deferred to the union's decision not to grieve Schramm's discharge, finding that Haddock's determination that the grievance could not be won was not "wholly irrational," and "within the range of reasonableness" even if ultimately wrong. App.12a-13a, 15a-16a. In reaching this conclusion, the Sixth Circuit misapplied this Court's decision in *O'Neill* and *Marquez* to render final the termination of an innocent employee, without any ability for review by a neutral, objective decision-maker.

Significantly, *O'Neill* did not involve an individual worker's discharge or grievance. It arose from an acrimonious labor dispute, where Continental Airlines filed for bankruptcy protection and repudiated its collective bargaining agreement with the Air Line Pilots Association (ALPA). A strike ensued and replacements were hired. Two years later, when vacancies arose, Continental and ALPA cut a deal to provide the striking pilots certain choices, including an option to return to

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Detroit Edison Co. v. N.L.R.B., 440 U.S. 301 (1979); *Pennco, Inc. v. N.L.R.B.*, 459 U.S. 994 (1982) (mem.); *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151 (1983); *N.L.R.B. v. Action Automotive, Inc.*, 469 U.S. 490 (1985); *Pattern Makers' League of N. Am., AFL-CIO v. N.L.R.B.*, 473 U.S. 95 (1985); *Fall River Dyeing & Finishing Corp. v. N.L.R.B.*, 482 U.S. 27 (1987); *N.L.R.B. v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775 (1990).

work. Unsatisfied with the deal, some striking pilots sued ALPA, charging that the union breached its duty of fair representation. *O'Neill*, 499 U.S. at 65.

This Court held, unanimously, that *Vaca* v. *Sipes* applied to a union in "all activity," including its negotiating capacity. *Id.* at 67. The Court utilized the following quotation that has been widely repeated – and often misapplied: "…the final product of the bargaining process may constitute evidence of a breach of duty only if it can be fairly characterized as so far outside a 'wide range of reasonableness,' *Ford Motor Co.* v. *Huffman,* 345 U.S., at 338, that it is wholly 'irrational' or 'arbitrary.'" *Id.* at 78.

The precise quote in *Huffman* is "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co.* v. *Huffman*, 345 U.S. at 338. *O'Neill* added the phrase "so far outside" to modify "a wide range of reasonableness," and omitted the qualifiers "bargaining representative" and "subject always to complete good faith and honesty." *O'Neill* is also the progeny of the phrase "wholly irrational."

Critically, *O'Neill's* focus was on the contract *negotiation* process, rather than the contract administration or enforcement that is involved in grievance arbitration. This is apparent from multiple passages in that opinion, to wit:

- "We granted certiorari to clarify the standard that governs a claim that a union has breached its duty of fair representation

> *in its negotiation of a back-to-work agreement* terminating a strike."
>
> - "The Government has generally regulated only 'the *process* of collective bargaining,' but relied on private *negotiation* between the parties to establish 'their own charter for the ordering of industrial relations.'"
>
> - Congress "intended that the parties should have *wide latitude in their negotiations*, unrestricted by any governmental power to regulate the substantive solution of their differences."

499 U.S. at 67, 74, emphasis added, internal cites omitted.

The Court analogized a union's duty to that owed by "other fiduciaries to their beneficiaries." *Id.* at 74. The Court then traced the development of the doctrine of the duty of fair representation and pointed out that the union asked for a more lenient standard[6] for contract negotiation: "The union correctly points out, however, that virtually all of those cases can be distinguished because they involved contract administration or enforcement rather than contract negotiation." *Id.* at 77.

While the Court declined to make such a bright-line distinction, it agreed that the Court of Appeal's refinement

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6. ALPA argued that the duty of fair representation "requires only that a union act in good faith and treat its members equally and in a nondiscriminatory fashion, but does not impose any obligation to provide adequate representation." *O'Neill*, 499 U.S. at 65.

of the arbitrariness component of the standard had gone too far, "authori[zing] more judicial review of the *substance of negotiated agreements* than is consistent with national labor policy." *Id.,* emphasis added.

The Court thus elaborated on the appropriate level of review in the context of collective bargaining: "Any substantive examination of a union's performance, therefore, must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *Id.* at 78. That phrase "highly deferential," restricted in *O'Neill* to bargaining cases, has since been misapplied outside the negotiation process, to individual grievances, as demonstrated in greater detail below.

The Court went on to admonish the Court of Appeals' attempt to circumvent the end result of the bargaining process, because it did not "take into account either the strong policy favoring the peaceful settlement of labor disputes, or the importance of evaluating the rationality of a union's decision in light of both the facts and the legal climate that confronted the negotiators at the time the decision was made." *Id.,* internal cites omitted.

In short, even a cursory reading of *O'Neill* points to its application being restricted to the contract negotiation process. That limitation was reinforced by a later case, *Marquez* v. *Screen Actors Guild, Inc.*, 525 U.S. 33 (1998), also cited by the Sixth Circuit in denying Schramm's appeal. App.13a.

Marquez involved a lawsuit filed by an actress against the Screen Actors Guild, alleging a breach of duty of fair

representation in its negotiation of a flawed union security clause. Again, the decision was unanimous.

The Court's framing of that case was narrow: "Does a union breach its duty of fair representation merely by negotiating a union security clause that tracks the language of § 8(a)(3) [of the National Labor Relations Act]?" *Marquez*, 525 U.S. at 42. The Court held that negotiating such a clause that merely included the language of the statute did not breach the duty of fair representation. *Id.* at 44. Applying *O'Neill*, this Court explained that the "wide range of reasonableness" afforded to negotiators "gives the union room to make discretionary decisions and choices, even if those judgments are ultimately wrong." *Id.* at 45–46. Though the opinion did not expressly state that it was restricted to negotiations, the Court took pains to restrict its consideration of the case *only* to the contract negotiation process, declining to hear any of the petitioner's claims alleging a breach of the duty of fair representation arising from enforcement of that clause, or failing to notify her of certain rights. *Id.* at 42.

No Supreme Court case has ever applied the much broader language from *O'Neill* and *Marquez* to a case involving contract *enforcement*, such as investigation and grievance administration in the case of a discharged worker. Nor has any case held that the union has discretion to ignore a meritorious grievance or to handle it perfunctorily and without investigation. Yet that is exactly what the Sixth Circuit did here. Had the Sixth Circuit applied the correct standard, it should have determined that there was a triable issue on both arbitrariness and bad faith.

B. Many circuits wrongly apply *O'Neill* to discharge grievances, resulting in a 4-5 split

The Sixth Circuit is not alone. Without Supreme Court guidance in many decades, at least five circuits have erased the distinction between a union's duty of fair representation towards an individual in discharge cases and towards the collective good in negotiations. Specifically, the circuits have taken this Court's standard for negotiations as set forth above, and improperly grafted that language onto discharge cases, which involve contract enforcement.

The survey of circuits, below, demonstrates a split of four that correctly limit application of *O'Neill* to the bargaining process (Fourth, Seventh, Ninth, and D.C. Circuits), five that do not (First, Second, Third, Sixth, Eighth), and three that are inconclusive (Fifth, Tenth, and Eleventh). Certiorari should be granted to resolve this circuit split and uncertain landscape.

1. Four circuits apply the correct standard

The Fourth Circuit has recognized that the "wide range of reasonableness" language from *O'Neill* does not apply beyond the bargaining table. "When it addresses the merits of an individual grievance, the union is not entitled to a 'wide range of reasonableness' in its conduct." *Dement* v. *Richmond F. & P.R.R.,* 845 F.2d 451, 460 (4th Cir.1988), *quoting Schultz* v. *Owens–Illinois, Inc.,* 696 F.2d 505, 515 (7th Cir.1982) and *Ford Motor Co.* v. *Huffman,* 345 U.S. 330, 338 (1953). *See also Kallas* v. *AAF-McQuay,* No. CIV. A. 97-00010-H, 1998 WL 264750, at *5 (W.D. Va. May 5, 1998) (granting summary judgment in favor of discharged

employee on breach of duty of fair representation claim, and citing *Dement* in stating: "Moreover, when a union processes an individual grievance, the Fourth Circuit does not accord the union the same wide latitude as when the union negotiates a collective bargaining agreement.")

The Seventh Circuit also recognizes the distinction. As explained in *Schultz*, 696 F.2d at 514, "Duty of fair representation cases may take two forms. First, there are those cases predicated upon claims that the union breached its duty in *negotiating* a collective bargaining agreement. Second, there are cases alleging that the union breached its duty in *administering* the collective bargaining agreement (*e.g.,* in processing a grievance)." The Court cited Leffler, *Piercing the Duty of Fair Representation: The Dichotomy Between Negotiations and Grievance Handling,* 1979 U.Ill.L.F. 35, and added, "The Supreme Court has implicitly recognized this dichotomy by defining a different standard in each of these two different situations." *Id. Schultz* justified the distinction with reference to *Huffman*, 345 U.S. at 337-38, noting that "… the union is obligated 'to represent all members of an appropriate unit [and] to make an honest effort to serve the interests of all those members, without hostility to any.' … [but] in contract negotiations '[t]he complete satisfaction of all who are represented is hardly to be expected.'" *Schultz*, 696 F.2d at 515.

Schultz emphasized, "[o]n the other hand, when assessing a union's conduct in processing a grievance, the Supreme Court, while also using a 'good faith' standard, has not purported to grant the union 'a wide range of reasonableness.'" *Id.*, *citing Vaca* v. *Sipes,* 386 U.S. at 190.

Schultz reasoned that the grievance context did not require "the inherent difficulties of satisfying the demands of diverse employees as it had in *Huffman*. Instead, the Court emphasized the union's statutory obligation to represent each individual employee fairly, with a nonperfunctory concern for his complaints and with a nonarbitrary exercise of judgment in evaluating grievances." *Id. Schultz* concluded, "The application of the *Vaca* standard in the context of grievance procedures does not provide for union discretion within 'a wide range of reasonableness'—in contrast to the collective bargaining standard of *Huffman*." *Id.*

Seven years later, in *Thomas v. United Parcel Serv., Inc.*, 890 F.2d 909, 918 (7th Cir. 1989), the court quoted the *Schultz* reasoning at length to reaffirm the "two forms" of duty of fair representation cases, and to vacate dismissal of the worker's claim against his union. *Thomas* involved a duty of fair representation claim in the context of an unjust termination. Also relying on this reasoning was *Olsen* v. *United Parcel Serv.*, 892 F.2d 1290 (7th Cir. 1990). Both *Thomas* and *Olsen* vacated district court findings in favor of the unions and reinstated the workers' claims.

The Ninth Circuit follows the D.C. Circuit in correctly recognizing that *O'Neill* must be read in context. *Lucas* v. *N.L.R.B.*, 333 F.3d 927, 933 (9th Cir. 2003) (declining to apply *O'Neill* to union operation of a hiring hall "in light of the added responsibility that unions have over workers' livelihood[s]."). In rejecting application of *O'Neill's* highly deferential standard, the Court held that "in administering a hiring hall, a union has a heightened duty of fair dealing that requires it to operate by 'reference to objective criteria.'" *Id.* at 935, *quoting Jacoby* v. *NLRB,*

233 F.3d 611, 616 (D.C. Cir. 2000) and *Plumbers & Pipe Fitters Loc. Union No. 32* v. *N.L.R.B.*, 50 F.3d 29 (D.C. Cir. 1995), discussed below.

Finally, the D.C. Circuit restricts *O'Neill's* "highly deferential" standard to "context." In *Jacoby,* 233 F.3d at 616, the Court explained: "In *O'Neill* the Court's focus was on "protecting the content of negotiated agreements from judicial second-guessing. … Absent clear instructions from the Supreme Court, we decline to weaken this principle [by extending it to other contexts]." The *Jacoby* Court reinforced its previous holding in *Plumbers & Pipe Fitters*, which reasoned that in *O'Neill*, "[t]he Court's focus on protecting the content of negotiated agreements from judicial second-guessing is apparent from its repeated references to 'the substance of negotiated agreements,' and 'the final product of the bargaining process.'" *Jacoby,* 50 F.3d at 33, quoting *O'Neill*, 499 U.S. at 77–78. Thus, *O'Neill's* references to "highly deferential," "so far outside a wide range of reasonableness," and "wholly irrational" were intended to be applicable only to the bargaining process. *Id.*

2. Five circuits apply the incorrect standard

In the First Circuit, in *Miller* v. *U.S. Postal Ser*v., 985 F.2d 9 (1st Cir. 1993), a postal worker unsuccessfully sued his union for failing to enforce a grievance arbitration award. The court relied on the *O'Neill* standard in affirming the district court's grant of summary judgment. *Miller* was then relied on in *Emmanuel* v. *Int'l Bhd. of Teamsters, Loc. Union No. 25*, 426 F.3d 416 (1st Cir. 2005), where a terminated bus driver sued his union for allegedly failing to adequately investigate prior to his arbitration

hearing. He lost in the district court on summary judgment, which the First Circuit affirmed. *Miller* was most recently relied upon in *Bryan* v. *Am. Airlines*, Inc., 988 F.3d 68 (1st Cir. 2021), where a pilot sued his union for improperly investigating his claim and failing to take it to arbitration. Like *Miller* and *Emmanuel,* the worker in *Bryan* failed to get a trial, having his claim dismissed in the trial court on summary judgment, which was affirmed in the Court of Appeals, applying the "highly deferential" standard to the discharged plaintiff. *Bryan,* 988 F.3d at 74-75, quoting *O'Neill*, 499 U.S. at 78.

In the Second Circuit, *Sanozky* v. *Int'l Ass'n of Machinists & Aerospace Workers*, 415 F.3d 279 (2d Cir. 2005) affirmed the grant of summary judgment to a union, against a worker who alleged that the union failed to adequately pursue his wrongful termination grievance. The court mechanically cited the language that "[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." *Id.* at 282–83.

The Third Circuit routinely applies *O'Neill* in cases involving discipline and discharge, *e.g. Cromwell* v. *United Steel Workers of Am.*, 423 F. App'x 213, 218 (3d Cir. 2011), *Burns* v. *Salem Tube, Inc.,* 381 F. App'x 178, 181 (3d Cir. 2010), *Klimek* v. *United Steel Workers Loc. 397*, 618 F. App'x 77, 81 (3d Cir. 2015), *Gehringer* v. *Atl. Detroit Diesel Allison LLC*, 595 F. App'x 157, 161 (3d Cir. 2014), and *Johnson* v. *Thomas Jefferson Univ. Hosp.*, 112 F. App'x 838 (3d Cir. 2004).

Previous to this case, the Sixth Circuit applied *O'Neill* in other disciplinary cases, including *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.* v. *Nat'l Lab. Rels. Bd.*, 844 F.3d 590, 603 (6th Cir. 2016) (union processed grievance through second step and then settled it with a last chance agreement), and *Crampton* v. *Kroger Co.*, 709 F. App'x 807 (6th Cir. 2017) (union processed grievance through last step in the grievance process but declined to arbitrate where employees admitted to policy violation and employer uniformly terminated for known violations of the policy), finding no breach of duty.

The Eighth Circuit grafted *O'Neill's* holding onto discharge cases beginning with *Schmidt* v. *Int'l Bhd. of Elec. Workers, Loc. 949*, 980 F.2d 1167 (8th Cir. 1992), where the worker argued that the union acted arbitrarily in refusing to press his grievance to arbitration, the Court stated: "The Supreme Court recently defined the "arbitrary conduct" standard under *Vaca* v. *Sipes:* "[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." *Id.* at 1169, *citing O'Neill,* 499 U.S. at 68. The Court affirmed summary judgment to the union, noting that "as the *O'Neill* standard recognizes, unions must be afforded considerable latitude in the exercise of their reasoned judgment." *Id.* The following cases also applied *O'Neill* to discharge grievance cases, *Beavers* v. *United Paperworkers Int'l Union, Loc. 1741*, 72 F.3d 97 (8th Cir. 1995), *Smith* v. *United Parcel Ser*v., *Inc.*, 96 F.3d 1066 (8th Cir. 1996), *Cross* v. *United Auto Workers, Loc. 1762*, 450 F.3d 844 (8th Cir. 2006).

3. Three circuits do not have a consistent standard

In the Fifth Circuit, before *O'Neill,* in *Landry* v. *The Cooper/T. Smith Stevedoring Co.*, 880 F.2d 846, 852 (5th Cir. 1989), the Court correctly cited *Vaca's* standard that "a union may not 'arbitrarily ignore a meritorious grievance or process it in perfunctory fashion.'" A union also has "an obligation for a union to investigate a grievance in good faith … [and] to prosecute a grievance 'with reasonable diligence unless it decided in good faith that the grievance lacked merit or for some other reason should not be pursued.'" *Id. Landry* was relied upon in subsequent district court opinions, *Lowrey* v. *Exxon Corp.*, 812 F. Supp. 644 (M.D. La. 1993) (finding genuine issues of material fact as to whether union breached its duty in failing to investigate based on facts raised in opposition to motion, but dismissing case based on failure to establish a breach of contract by employer), *aff'd,* 19 F.3d 15 (5th Cir. 1994); *Bodin* v. *Morton Salt, Inc.*, No. 6:22-CV-01863, 2023 WL 5761332 at *5 (W.D. La. Sept. 6, 2023); and *Green* v. *United Parcel Ser*v. *Inc.*, No. CV 23-1082, 2025 WL 359282, at *3 (W.D. La. Jan. 30, 2025).

In contrast, in *Jaubert* v. *Ohmstede, Ltd.*, 574 F. App'x 498, 502 (5th Cir. 2014), the Fifth Circuit cited *O'Neill* and affirmed a grant of summary judgment to the union based on the "deferential standard of review that we apply to a union's actions." *Id.* at 503.

The Tenth Circuit's application of *O'Neill* to discharge cases is also inconsistent. *Young* v. *United Auto. Workers Lab. Emp. & Training Corp.*, 95 F.3d 992, 999 (10th Cir. 1996) cited *O'Neill* in affirming a grant of summary

judgment against a worker, concluding, "… we must agree with the district court that under *O'Neill* 's "irrational" standard, the appellant is "far from a legitimate lawsuit in federal court." *Also see Lampkin* v. *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW)*, 154 F.3d 1136 (10th Cir. 1998).

Conversely, in the same time frame, the Tenth Circuit explicitly rejected a union's reliance on *O'Neill* in a discharge case, reasoning, "… the dispute in *O'Neill* involved claims of union misconduct in the context of contract *formation,* as opposed to contract *administration* in a grievance proceeding." *Webb* v. *ABF Freight Sys., Inc.*, 155 F.3d 1230, 1240 (10th Cir. 1998). In that case, the court had no difficulty affirming a jury verdict for the unjustly discharged employee where the union "made no serious effort to investigate the facts of Webb's claims." *Id.* at 1241.

In the Eleventh Circuit, the seminal case seems to be *Harris* v. *Schwerman Trucking Co.*, 668 F.2d 1204 (11th Cir. 1982), which in a brief but concise opinion, surveyed the various circuits to conclude that a union may only be held liable if it handled a grievance in an arbitrary and perfunctory manner. *Id*. at 1206 (finding no breach where union assisted with grievance and a hearing was held before joint committee). Although there is a dearth of opinion post *O'Neill*, the Eleventh Circuit did apply *O'Neill* to a discharge case in *Barrington* v. *Lockheed Martin*, 257 F. App'x 153, 156 (11th Cir. 2007), upholding a grant of summary judgment against a *pro se* worker.

II. Review is Necessary to Protect Substantial Worker Rights

The standard set forth in *Vaca* v. *Sipes* strikes a fair balance between workers' rights and union discretion. However, application of *O'Neill's* extremely deferential "wholly irrational" standard creates a much higher bar for workers to overcome when alleging that their unions failed to adequately represent them in employment termination grievances.

For example, before adopting *Sanozky*, *supra*, the Second Circuit was correctly applying the narrower standards for discharge cases. In *Samuels* v. *Air Transp. Loc.* 504, 992 F.2d 12 (2d Cir. 1993), the court reinstated a vacated jury verdict for the worker, finding that "The jury reasonably could have found the union failed to investigate and present adequately the grievance because it neglected to discuss the case or possible witnesses with Samuels until the day of the hearing." *Id.* at 16. Despite *Samuels* having been cited in over 1,000 cases, it effectively died out without any negative history. *Sanozky* didn't cite it at all when altering the standard, and has since become the new precedent, cited 21 times to date by the Second Circuit, to the exclusion of *Samuels* altogether. Not one of those cases found for the worker.

Indeed – trying to prove that a union's decision not to grieve is "wholly irrational" may not overcome even the weakest, slightly plausible explanation as to why a union didn't investigate or grieve an employment termination. In Schramm's case, for example, the union was permitted to rely on a subjective interpretation of Schramm's statements in the vulnerable moments immediately

following his second discharge. App.9a. Far from an admission of guilt, Schramm denied any wrongdoing and tried to explain why he felt he was being set up, once again. R.1851-53, 1856-58. But that didn't matter, because the USW chose to believe the company over Schramm, and the court fully credited Haddock's subjective explanations, even excusing his dishonesty and expressions of support for Schramm's termination. App.13a-21a.

III. Deference to a Union's Subjective Motives and Intent Should Never Take Precedence Over *Vaca's* Objective Test or Traditional Standards of Summary Judgment

The Sixth's Circuit's error in applying *O'Neill's* "wholly irrational" test was further compounded by prioritizing its deference to the union's subjective motives and intent, at the expense of the objective test demanded by *Vaca* v. *Sipes* and traditional standards of summary judgment. When that occurs, this Court may intervene, as it did in *Tolan* v. *Cotton*, 572 U.S. 650, 659 (2014): ("we intervene here because the opinion below reflects a clear misapprehension of summary judgment standards in light of our precedents," which is to "view the evidence 'in the light most favorable to the opposing party.'" *Id.* at 657. Here, the Sixth Circuit's deference to the union was so skewed that it disregarded traditional summary judgment jurisprudence, with multiple facts and inferences resolved in the union's favor.

In support of the USW's motion for summary judgment, Haddock justified his decision not to grieve based on three factors (1) he believed the company had proof of misconduct, R.1182 (Decl. ¶ 59); (2) he understood

Schramm's statements following his termination to be admissions of guilt, R.1182 (Decl. ¶ 62); and (3) he determined that Schramm made a veiled threat on the call, R.1183 (Decl. ¶ 64). The Sixth Circuit accepted these assertions. App.9a, 14a-21a.

To understand the gravity of the court's wholesale adoption of Haddock's rationale for denying the grievance, context is essential. At his deposition, Haddock testified that he made this decision on his own, without reviewing any evidence because he felt he already had all of the information he needed. R.1388. Haddock had never seen a text, email, or phone message where Schramm threatened someone. R.1375. Nor did he speak with anyone who personally heard Schramm make any threat. Instead, he relied exclusively on reports "of concerns" he had received from local union leadership and the company. *Id.*

Prior to the termination call, Haddock had been briefed by Howe on the company's decision and was supportive. App.7a. Haddock testified, "During that call on the 21st, that's when it was being confirmed and it was – everything was coming together, that he in fact had a list, and it was being confirmed by the company as well … from corporate HR." R.1384.

Then, at the outset of the December 29, 2021 call, Schramm was terminated. When Haddock asked "what proof do you have?", Howe falsely responded, "We have a lot of proof that's been sent up both to myself and to our corporate legal department." R.1847. This is key because, as explained by Haddock, the "first factor" in his decision was "Howe's unequivocal representation that she had 'a lot of proof' of Schramm's threatening behavior." R.1182 (Decl. ¶ 59); *See also* R.1847 (transcript).

From that point forward, everything that Schramm said in his defense, including his proclamation of innocence, was viewed through a lens of guilt. It didn't matter what he said or how he said it.

In short, Haddock's decision not to grieve was not based on any objective evidence or review of the company's proof, but on his clouded perception that the company was credible and Schramm was not. As illustrated above, this is not the type of objective, reasoned decision making contemplated by the *Vaca* or *Hines* Courts. To discount and disregard all evidence that did not support the company's version of events was in error and cannot be justified under the union's duty of fair representation.

IV. This Case Presents an Ideal Vehicle for Resolving the Tension Between *Vaca* and *O'Neill*

Tom Schramm's case is particularly apt for this Court to resolve the circuit split and to clarify the standards for evaluating a union's conduct in a discharge case. Both lower courts, in applying the wrong test, held that this wholly innocent worker was not entitled to a trial, where his union relied on false assumptions and rumors, did not investigate, and failed to file even a step one grievance. If a worker cannot get a trial even under these circumstances, that is tantamount to a standard of immunity that is extremely challenging to overcome.

For fourteen million-plus unionized workers in the United States, who rely on their union to protect them when their jobs and livelihood are on the line, a grant of certiorari will permit this Court to thoroughly examine these critical questions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED OCTOBER 6, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1882

THOMAS SCHRAMM,

Plaintiff-Appellant,

v.

NEENAH PAPER MICHIGAN, INC.,

Defendant,

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, AKA UNITED STEEL WORKERS, AKA USW,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Before: SUTTON, Chief Judge; STRANCH and RITZ, Circuit Judges.

Appendix A

OPINION

JANE B. STRANCH, Circuit Judge. Thomas Schramm filed suit against his Union, United Steelworkers International, asserting breach of the duty of fair representation arising out of the Union's refusal to grieve his second termination. The district court granted summary judgment on the ground that Schramm failed to adduce sufficient evidence of a breach. For the reasons set forth below, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

A. Factual Background

Since 1986, Schramm worked for Neenah Paper Company, a producer of paper-based consumer products, at the company's plant in Munising, Michigan. As of 2021, Schramm was the plant's Fire Chief and a member of the United Steelworkers Union, District 2, Local 2-96, which represents the plant's maintenance workers. United Steelworkers International (USW) negotiated a collective bargaining agreement (CBA) with Neenah on behalf of Local 2-96 along with a separate USW union, Local 2-87, which represents the production employees at the Munising plant.

1. Schramm's First Termination

This case involves two claims of unjust termination, separated by time, which Schramm sought to grieve.

Neenah first terminated Schramm on March 1, 2021, for reporting a chemical spill to the Michigan Department of Environment, Great Lakes, and Energy, purportedly in violation of Neenah's confidentiality policies. Schramm contested the termination, thereby triggering the CBA's grievance process.

The CBA establishes a grievance procedure consisting of three stages. Under standard protocol, Local 2-96 is the entity that is generally responsible for filing grievances on behalf of its members and shepherding those grievances through the first two stages. At the first stage, the local union steward presents the grievance to the employee's supervisor. If the grievance is not resolved, the local union steward transmits the grievance up the chain of command to the department superintendent or a designated representative. If no resolution is reached, the grievance proceeds to the third stage. At that point, an international representative from USW takes over and attempts to negotiate a settlement with the plant manager. If no agreement is reached, the matter may proceed to arbitration. At the time of Schramm's termination, Chris Haddock was the USW staff representative in charge of overseeing and prosecuting member grievances beginning at the third stage.

Local 2-96 filed a grievance on Schramm's behalf and represented him through the first two stages, both of which resulted in denials and led to Haddock taking over the grievance procedure at the third stage. During the third stage, Schramm filed suit in federal court, alleging violation of the Whistleblower Protection Act,

and the parties agreed to stay the litigation pending arbitration. On October 6, 2021, before arbitration occurred, Neenah agreed to reinstate Schramm with backpay. Neenah continued to negotiate with the USW and Schramm, represented by Haddock, on the amount of backpay and other "additional rules that might exist" regarding Schramm's return to work. R. 77-2, Schramm Dep., PageID 1315. In December 2021, Neenah entered into a Settlement Agreement that set Schramm's return-to-work date as January 3, 2022, and Schramm's lawsuit was dismissed by stipulation.

2. Tensions Between Schramm and Other Neenah Employees

Schramm had a contentious relationship with a number of employees at Neenah. Relevant here, in May 2021, shortly after his first termination, Schramm told Josh Trader, the president of Local 2-96, that he wanted to see five Neenah employees fired. These employees included Kathy Hill, Neenah's local human resources director, and Brian Houghton, the manager of the Munising plant.

Schramm's apparent animus toward his coworkers became an issue of concern among officials at Neenah, as well as the local unions. According to Trader, during reinstatement negotiations for Schramm, multiple Neenah employees voiced concerns that Schramm had a "hit list" consisting of the five Neenah employees that he wanted fired and that Schramm was "volatile," "hostile," and potentially "violent." R. 77-10, Trader Dep., PageID 1577, 1582-83. Michael Peters, president of Local 2-87, and

Gregg Murk, who succeeded Schramm as Fire Chief after Schramm's first termination, testified that they heard similar expressions of concern from Neenah employees regarding Schramm's behavior and his list, though neither recalled it being expressly referred to as a "hit list." Trader, Peters, and Murk passed these concerns on to Haddock, as the individual who oversaw the third stage of Schramm's grievance and the negotiations over his return to work. They did not, however, provide Haddock with the names of the individuals who purportedly felt threatened, citing the individuals' fear over potential "repercussions from . . . Schramm." R. 77-4, Haddock Dep., PageID 1374.

During this period, officials at Local 2-96 and Local 2-87 internally voiced their concerns about Schramm's prospective return to work. For example, on October 10, 2021, Trader texted Murk that he was "embarrassed to be representing [Schramm]." R. 78-14, Trader/Murk Texts, PageID 1666. In response, Murk texted that "[Schramm's] going to be a f------g pain" and mused that "[m]aybe Haddock will piss [Schramm] off enough he will just go away." *Id.* at PageID 1667. On November 3, Trader emailed Hill that he "still believe[s] it would be beneficial to find a way to not have [Schramm] back." R. 79-1, Trader/Hill Email, PageID 1681. Five days later, on November 8, Trader informed Hill that Schramm had called him multiple times and left multiple voicemails, and he called Schramm "nuts." R. 79-2, Trader/Hill Texts, PageID 1683.

Hill testified that she became increasingly concerned about her safety as Fall 2021 wore on. On October 13, Hill emailed Monica Howe, Neenah's vice president of human

resources, reporting information from Peters and Trader that Schramm was "going around telling people he's going to [get]" her and multiple other colleagues "fired when he gets back" to work. R. 77-5, Hill Dep., PageID 1436. On November 17, while he was out of state, Schramm texted Trader and Murk asking if Hill was in the office. According to Schramm, he wanted to speak with Hill about backpay and insurance issues. Trader and Murk reported the texts to Hill, voicing concerns for her safety. Hill reported the safety concerns to Howe and Houghton. In a November 18 email to Howe, Hill wrote that she had shared her concerns about Schramm with Haddock and emphasized that she "would be doing everything in [her] power to stop this madness," and that Haddock was "very supportive and said [she] had to do what was right for [her] and the Munising employees." R. 79-5, Hill/Howe Email, PageID 1692. Howe passed these concerns on to Neenah's corporate management.

3. Schramm's Second Termination

On December 21, 2021, Howe and two members of Neenah's corporate team—Michael Rickheim and Noah Benz—decided to terminate Schramm's employment. That same day, Howe drafted a list of talking points that would be provided to Schramm regarding his termination. The document, titled "Communication Plan," explained that Schramm was being terminated because of "comments and behaviors" that "violat[ed]" Neenah's "workplace harassment and appropriate behavior policy." R. 79-6, Communication Plan, PageID 1696. The Plan cited Schramm's "[e]xcessive phone calls or text messages"

and repeated "reference[s]" to "a hit list with [five] names on it," and it stated that Schramm's fellow employees were afraid of him and were "looking for places to hide" should he return to work. *Id.* Howe spoke with Haddock regarding the decision and emailed him a copy of the document. Howe testified that Haddock "supported the company's decision when [she] called him and told him." R. 77-7, Howe Dep., PageID 1498.

On December 28, Howe held a conference call with Schramm and Haddock, in which she informed Schramm that he was being terminated from Neenah due to his inappropriate behavior. Haddock asked "what proof" Howe possessed that Schramm had behaved inappropriately. Howe pointed to "excessive phone calls and text messages" from Schramm, as well as "multiple comments and threats" that he had made regarding a "hit list" of his fellow employees. *Id.* Haddock stated that the termination was "out of the blue" for him and that he would need to "put together an information request seeking out th[e] individuals" who voiced safety concerns regarding Schramm. *Id.* at PageID 1847-49. Haddock also told Howe that he would have to grieve the termination.[1]

During the call, Schramm confirmed that he had been angry with Hill and four other Neenah employees, though he denied that he had a "hit list" and asserted that he had initially planned, upon his return to work, to make amends with these five individuals. He continued to criticize these

1. The transcript of the call erroneously transcribes the word "grieve" as "read."

individuals on the call, accusing them of fostering a hostile work environment and falsifying information relating to the first termination. Schramm also asserted that Hill was "the one that started" the conflict between him and Neenah, and he acknowledged that Hill was scared to work with him. R. 84-2, Call Tr., PageID 1852, 1857. At the end of the call with Howe, Schramm began to say, "the day that I come back to work that's the day that . . ." before trailing off and stating, "you know what, I'm going to let Chris deal with it because Chris knows what's in the wind when I come back to work for [K]athy Hill." *Id.* at PageID 1857-58. Haddock immediately ended the call with Howe.

Haddock then called Schramm back and told him that his statement that Hill "knows what's in the wind" constituted a "threat" that "did not help" their case "at all" and "probably cut [their] feet right off." *Id.* at PageID 1858-59. Schramm denied that he meant the comment as a threat and posited that "the thing that's in the wind with [K]athy Hill" is "the grievance." *Id.* at PageID 1861. Schramm also emphasized that the accusations against him were "complete bulls- - t," to which Haddock responded, "I hope you're right." *Id.* at PageID 1859. Haddock expressed doubt that Neenah would "give [him] the names of the people" who complained about Schramm "if the people are feeling threatened." *Id.* He stated, however, that he would "file a grievance and an information request" on Schramm's behalf. *Id.*

Haddock alerted Trader that he would handle the grievance for this second termination. On December 31, Schramm received his termination letter, which he

forwarded to Haddock that same day. Per the CBA, Haddock had two days to file the grievance, excluding weekends and holidays, thus placing the filing deadline on January 4, 2022. On January 3, Haddock emailed Howe a request for information and to extend the grievance deadline, both of which Howe denied on January 5, one day after the deadline's passage. Haddock then sent Schramm and Howe a letter informing them that USW would not be pursuing a grievance in response to the second termination.

Haddock testified that his decision not to file a grievance on Schramm's behalf was based on three factors: (1) he found credible Howe's assertions that Schramm had engaged in threatening behavior; (2) Schramm admitted that he had a list of five Neenah employees "who were the objects of his anger"; and (3) Haddock believed Schramm's "in the wind" comment was a veiled threat against Hill. R. 75-1, Haddock Decl., PageID 1182-83.

B. Procedural History

On March 2, 2022, Schramm filed suit against Neenah. Schramm added USW as a party to the action on June 28. On March 8, 2023, Schramm filed his second and final Amended Complaint against Neenah and USW, asserting claims against Neenah and one count of breach of the duty of fair representation (DFR), brought pursuant to Section 301 of the Labor Management Relations Act (LMRA), against USW. Schramm and Neenah then reached a settlement agreement, leaving USW as the sole remaining defendant.

Schramm and Neenah cross-moved for summary judgment on March 29, 2024. On September 11, the district court granted USW's motion for summary judgment and denied Schramm's motion for summary judgment. Schramm timely appealed.

II. ANALYSIS

The district court had federal question jurisdiction under 28 U.S.C. § 1331 and we have jurisdiction to hear the timely appeal under 28 U.S.C. § 1291.

We review a district court's order granting summary judgment de novo. *King v. Steward Trumbull Mem'l Hosp., Inc.*, 30 F.4th 551, 559 (6th Cir. 2022). Summary judgment is proper only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(a)). We view the facts in the light most favorable to, and draw all reasonable inferences in favor of, the nonmoving party. *Kirilenko-Ison v. Bd. of Educ. of Danville Indep. Schs.*, 974 F.3d 652, 660 (6th Cir. 2020).

Schramm brings a "hybrid" action under § 301 of the LMRA, 29 U.S.C. § 185 consisting of two claims: (1) breach of a collective bargaining agreement by the employer and (2) breach of the duty of fair representation by the union. *Garrison v. Cassens Transp. Co.*, 334 F.3d 528, 538 (6th Cir. 2003). The two claims are inextricably linked; the plaintiff cannot succeed in the action unless he establishes both claims. *Id.* Here, however, the district court ruled only on the DFR prong, and because that prong is dispositive, it is the focus of this appeal.

To demonstrate a violation of the DFR, a plaintiff must show (1) that the duty applies, (2) that the union breached the duty, and (3) that the breach caused the plaintiff's injury. *See Vencl v. Int'l Union of Operating Eng'rs, Local 18*, 137 F.3d 420, 426 (6th Cir. 1998); *accord James v. Norfolk S. Ry. Co.*, No. 24-3275, 2025 U.S. App. LEXIS 18426, 2025 WL 2049553, at *8 (6th Cir. July 22, 2025) (same). The parties agree that the duty applies, and do not contest or discuss the issue of causation. Accordingly, we focus exclusively on breach, which is the dispositive issue on appeal.

A union is not obligated to file or prosecute grievances that it deems meritless. *Williams v. Molpus*, 171 F.3d 360, 366-67 (6th Cir. 1999), *overruled on other grounds, Chapman v. United Auto Workers Loc. 1005*, 670 F.3d 677 (6th Cir. 2012). A union must, however, "serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967). Accordingly, a "breach of the duty of fair representation occurs" when "a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Merritt v. Int'l Ass'n of Machinists & Aerospace Workers*, 613 F.3d 609, 619 (6th Cir. 2010). To prove a breach of the DFR, a plaintiff must show arbitrariness, discrimination, or bad faith—he need not demonstrate all three to succeed. *Id.* Here, Schramm asserts that USW acted arbitrarily and in bad faith when it failed to grieve his second termination.

Appendix A

A. Vicarious Liability

Before evaluating Schramm's claims, we address a threshold issue—whether USW can be held vicariously liable for the conduct of officials of its local unions. Notably, Schramm has sued only USW, and not the two local unions. The parties agree that, although the decision over whether to file a grievance generally falls to the local union, Haddock assumed responsibility over that decision on behalf of USW.

In his reply brief, Schramm argues—for the first time on appeal—that USW and its nondefendant local affiliates should not be treated as distinct legal entities, and that USW can be held liable for the conduct of officials of its local affiliates. But Schramm's principal brief lacks any argument regarding vicarious liability. Its theories of arbitrariness and bad faith are tied solely to Haddock's conduct. Schramm's failure to raise the issue waives this theory of liability. *See Sanborn v. Parker*, 629 F.3d 554, 579 (6th Cir. 2010) ("[A]rguments made to [this court] for the first time in a reply brief are waived.").

We therefore turn to Schramm's claims, evaluating whether USW breached its DFR based on Haddock's decision making and conduct.

B. Arbitrariness

A union "breach[es] the duty of fair representation under the 'arbitrary prong'" only "if the union's conduct can fairly be characterized as 'so far outside a wide range

of reasonableness' that it is 'wholly irrational.'" *Merritt*, 613 F.3d at 619 (quoting *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 78, 111 S. Ct. 1127, 113 L. Ed. 2d 51 (1991)). A union's conduct is irrational if it is "without a rational basis or explanation." *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 46, 119 S. Ct. 292, 142 L. Ed. 2d 242 (1998). This deferential standard "gives the union room to make discretionary decisions and choices, even if those judgments are ultimately wrong." *Id.* at 45-46.

Schramm argues that USW acted arbitrarily because it failed to conduct an adequate investigation into the allegations against him and, as a result, made an ill-informed and unreasonable decision. A union "must undertake reasonable investigation to defend a member from employer discipline." *Walk v. P*I*E Nationwide, Inc.*, 958 F.2d 1323, 1326 (6th Cir. 1992). This investigation must be "independent," and the union may not, for example, "give up on an employee's grievance solely because the employer's evidence indicates that the employee was at fault for an incident." *Driver v. U.S. Postal Serv., Inc.*, 328 F.3d 863, 869 (6th Cir. 2003). Nonetheless, the extent to which a union must investigate a particular complaint or issue depends on the surrounding circumstances, and the union's investigatory decisions are entitled to judicial deference. *See Walk*, 958 F.2d at 1326-29. The key question is whether the union acted "with sufficient information" and made a rational decision based on that information. *Driver*, 328 F.3d at 870; *see Vaca*, 386 U.S. at 194.

The district court concluded that USW did not act arbitrarily, pointing to (1) evidence that officials of both

Neenah and the local union raised concerns to Haddock that Schramm was behaving in a threatening manner and causing his coworkers to fear for their safety, and (2) statements made by Schramm on his December 28 termination call with Haddock and Howe.

We turn to the record. As the court correctly recognized, at the time of the December 28 termination call, Haddock had already spoken not only with multiple Neenah officials, including Hill and Howe, but also with members and officials of the local union, including Trader and Peters. All these individuals told Haddock that Schramm was angry with several of his coworkers, and that Schramm's fellow employees at the Munising plant were afraid of him and anxious about his return to work. They also complained of excessive calls and messages from Schramm, including messages asking about Hill's whereabouts, and reported that employees at the plant were looking for places to "hide" should Schramm return to work.

Critically, Schramm validated these concerns during his termination call. Although he denied having a "hit list," Schramm confirmed that he had been angry with Hill and four other Neenah coworkers, continued to criticize those same coworkers, and conceded that Hill was "afraid to work with [him]." R. 84-2, PageID 1852-53, 1856-57. With Howe still on the line, Schramm said "the day that I come back to work that's the day that . . ." before simply concluding that Haddock "knows what's in the wind when I come back to work for [K]athy Hill." *Id.* at PageID 1857-58. Given the context, this statement can reasonably be

interpreted as a threat against Hill. Schramm had just expressed anger toward Hill and acknowledged that she is "afraid" of him. *Id.* at PageID 1856-57. The statement also accorded with Neenah's proffered rationale for the termination—that Schramm was threatening Neenah employees and making them feel unsafe. Indeed, when the statement was made, Haddock quickly ended the call with Howe, called Schramm back, and told him that he "probably cut our feet right off." *Id.* at PageID 1858.

Based on Schramm's statements on the call with Haddock and Howe, as well as the information Haddock collected from Neenah officials and local union officials, it was not "wholly irrational" for Haddock to conclude that Schramm would not prevail in his grievance. *Merritt*, 613 F.3d at 619 (quotation omitted). Haddock had a sufficient basis to conclude that Schramm's statements would reasonably be perceived as threatening and would validate Neenah's concerns that Schramm posed a risk to the physical safety of its employees. Because Haddock's decision was adequately informed and rational, it is entitled to judicial deference. *See Marquez*, 525 U.S. at 45-46.

Schramm contends that the district court erred in deeming these bases sufficient to justify USW's decision because the court made impermissible credibility determinations and ignored its responsibility to resolve the facts in the light most favorable to the nonmovant. Specifically, Schramm argues that the district court ignored his explanation that he did not intend to threaten Hill and credited Haddock's testimony that he found the

statement threatening. That critique misapprehends the standard. The question for the court is not whether Schramm intended the statement as a threat or even whether Haddock was convinced that Schramm intended to threaten Hill. Rather, it is whether Haddock's decision not to file a grievance was sufficiently informed and rational. *See Driver*, 328 F.3d at 870; *Vaca*, 386 U.S. at 194. Here, viewing the evidence in the light most favorable to Schramm, the record makes clear that Haddock had a reasonable basis, by the grievance filing deadline, to conclude that any grievance filed on Schramm's behalf would lack sufficient merit to proceed to arbitration. Haddock, in sum, acted within the wide range of discretion afforded to him as a union representative. *See Marquez*, 525 U.S. at 45-46. On this record, we cannot say that the district court erred in finding that Haddock's conduct was not arbitrary.

C. Bad Faith

Schramm also asserts that USW breached the DFR because it acted in bad faith by failing to grieve his second termination. As evidence of USW's bad faith, Schramm points to Haddock's "inaction" in representing him, as well as purported evidence of dishonest or deceptive conduct, including (1) two instances in which Haddock privately expressed support for Schramm's termination to Neenah officials, and (2) false or misleading statements made by Haddock during the termination call. The district court determined that Haddock did not act in bad faith, reasoning that the record "does not show that Haddock's decision was made for an improper purpose." R. 117, Op. & Order, PageID 2369.

"A union acts in bad faith when it acts with an improper intent, purpose, or motive . . . encompassing fraud, dishonesty, and other intentionally misleading conduct." *Merritt*, 613 F.3d at 619 (citation modified). Unlike with the arbitrariness prong, we do not grant deference to unions when assessing bad faith. *Id.* at 620. Nonetheless, to show bad faith, a plaintiff must adduce "substantial evidence of fraud, deceitful action or dishonest conduct." *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 299, 91 S. Ct. 1909, 29 L. Ed. 2d 473 (1971) (quoting *Humphrey v. Moore*, 375 U.S. 335, 348, 84 S. Ct. 363, 11 L. Ed. 2d 370 (1964)). Misconduct can include "such gross mistake or inaction as to imply bad faith." *Balowski v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 372 F.2d 829, 833 (6th Cir. 1967). And the misconduct must be tied to some improper intent, purpose, or motive. *Merritt*, 613 F.3d at 619.

Schramm first addresses Haddock's "inaction." Appellant Br. 36. Whether a union's alleged misconduct, including its inaction, constitutes bad faith "depends upon the facts of each case." *See Balowski*, 372 F.2d at 834. Here, as discussed, Schramm has not provided sufficient evidence that Haddock's decision not to proceed further with a grievance was unreasonable or improper under the circumstances of this case. Before the second termination, Haddock spoke with multiple local union and Neenah officials who reported that they were afraid of Schramm because of his threatening behavior. And he heard Schramm, on the termination call, confirm his animus toward a group of employees, including Hill, and make what can reasonably be interpreted as a threat

against Hill. Haddock obtained sufficient information to deem Schramm's grievance not meritorious, and his decision not to file a grievance does not suffice to raise an inference of bad faith.

Schramm next points to evidence that Haddock supported his termination, including (1) an email from Hill to Howe saying that upon stating her intention to stop Schramm from reporting to work based on his threats, Haddock "was very supportive and said [she] had to do what was right for [her] and the Munising employees," R. 79-5, Hill/Howe Email, PageID 1692, and (2) testimony from Howe that Haddock "supported the company['s] decision" to terminate Schramm "when [she] called him and told him," R. 77-7, Howe Dep., PageID 1498. This evidence, Schramm argues, indicates that Haddock was "complicit[]" in the plan to terminate him and, therefore, failed to represent him in good faith. Reply Br. 21.

We review this evidence in context and under the bad faith standard. By the time Haddock spoke with Hill, he had already received reports from local union and Neenah officials, including Trader, Peters, and Murk, that Schramm's fellow employees felt unsafe around him. Haddock's conversation with Howe occurred even later, after he heard from Hill that she was anxious about her physical wellbeing because of Schramm's anger toward her and his requests to find out her physical location. Schramm does not explain how Haddock's alleged support evinces improper intent, purpose, or motive. *See Merritt*, 613 F.3d at 619. Schramm has provided no evidence that Haddock's alleged expression of support was motivated by

anything other than the concerns raised by Hill and other individuals regarding their personal safety, which was the basis of his second termination and the issue Haddock was responsible for processing. As the First Circuit has recognized, a union's decision to take an employee's "comments more seriously than he might have wished" is not evidence of bad faith when that union is acting with the purpose of "protect[ing] its [other] members from perceived threats to their safety"—which often requires unions to "balance . . . competing interests." *Alston v. Int'l Ass'n of Firefighters, Loc. 950*, 998 F.3d 11, 27 (1st Cir. 2021). And contrary to Schramm's suggestion, the record evidence does not support the contention that Haddock actively "encouraged a separation" or participated in the decision to terminate Schramm. Appellant Br. 12. Haddock's expression of support, in short, does not meet the criteria for bad faith.

Finally, Schramm points to Haddock's conduct on his December 28 termination call. In response to Howe informing Schramm of his termination, Haddock stated that the termination was "out of the blue" for him and asked "what proof" Howe had to justify the decision to terminate. R. 84-2, Call Tr., PageID 1847-48. As Schramm notes, the record shows that Haddock knew about the termination one week prior and had expressed support. Haddock also told Schramm, immediately after the call with Howe, that he would file a grievance on his behalf, which he did not do. Schramm argues that Haddock's deceptive conduct on the call—when viewed in concert with Haddock's prior knowledge of the termination, expression of support to Hill and Howe, and failure to file

a grievance for Schramm—provides sufficient evidence to create a triable issue as to bad faith. Haddock responds that he was surprised by Howe's decision "not . . . [to] relate the company's specific concerns and allow Schramm to respond," but rather to immediately "beg[in] the [call] by telling Schramm that" he was being terminated. R. 75-1, Haddock Decl., PageID 1176.

Reasonably construing the evidence in the light most favorable to Schramm, we assume for purposes of this appeal, that Haddock was pretending not to have prior knowledge of the termination when he described it as "out of the blue," asked Howe questions to which he already knew the answer, and told Schramm that he would grieve the termination. In *Williams*, we held that the plaintiff had presented sufficient evidence for a jury to conclude that the union acted in bad faith or with discriminatory intent in its handling of the negotiation of a rider to a collective bargaining agreement. 171 F.3d at 367. Among other evidence, the plaintiff there alleged that the union likely secured approval of the agreement through misrepresentations about who ratified the rider and who demanded the rider's endtail provision. *Id.* By contrast, even if Haddock misled Schramm about his prior knowledge of and apparent support for the termination, that conduct—while inappropriate—would not constitute the sort of serious, material misrepresentation that can suffice to raise an inference of bad faith. *See also Alicea v. Suffield Poultry, Inc.*, 902 F.2d 125, 130 (1st Cir. 1990) (explaining that a misrepresentation must be "serious" and "lack rational justification or [be] improperly motivated" to show bad faith); *Carr v. Air Line Pilots Ass'n, Int'l*,

866 F.3d 597, 602 (5th Cir. 2017) (explaining that bad faith requires "sufficiently egregious" union action) (quotation omitted). And, most importantly, Schramm does not point to or identify any improper intent, purpose, or motive underlying Haddock's apparent deception. *See Merritt*, 613 F.3d at 619-20. To the contrary, Schramm argues that Haddock acted out of "irrational fear." Appellant Br. 36. Fear for the safety of other employees, including other union members at the Munising plant, is not an improper or illegitimate motive. *See Alston*, 998 F.3d at 27.

On this record, we cannot say that Schramm has provided "substantial evidence of fraud, deceitful action or dishonest conduct" evincing improper intent, purpose, or motive. *Lockridge*, 403 U.S. at 299. The district court did not err, therefore, in granting summary judgment to USW on the issue of bad faith. Nor did it err in determining that USW's actions were not arbitrary. Schramm has failed to adduce evidence that USW breached its duty of fair representation.

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION, FILED SEPTEMBER 11, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

No. 2:22-cv-47
Honorable Paul L. Maloney

THOMAS SCHRAMM,

Plaintiff,

-v-

NEENAH PAPER MICHIGAN INC. AND UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO,CLC,

Defendants.

OPINION AND ORDER GRANTING DEFENDANT UNION'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Thomas Schramm sued his employer Neenah Paper and the United Steel Workers, the union representing employees at the Neenah Paper facility

in Munising, Michigan. Plaintiff contends the union breached its duty by failing to file a grievance on his behalf after Neenah Paper terminated him in December 2021. Plaintiff filed a motion for summary judgment covering all of his causes of action against both defendants (ECF No. 77). The union filed a motion for summary judgment addressing the duty of fair representation claim (ECF No. 75). Because the Court concludes the union's decision not to file a grievance was neither arbitrary nor made in bad faith, the Court will grant Defendant's motion and will deny Plaintiff's motion in part.[1]

I.

A trial court should grant a motion for summary judgment only in the absence of a genuine dispute of any material fact and when the moving party establishes it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of showing that no genuine issues of material fact exist. *Celotex Crop. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). To meet this burden, the moving party must identify those portions of the pleadings, depositions, answers to interrogatories, admissions, any affidavits, and other evidence in the record, which demonstrate the lack of genuine issue of material fact. Fed. R. Civ. P. 56(c)

1. Plaintiff and Neenah Paper have reached a settlement. Contemporaneous with this Opinion and Order, the Court grants a Rule 21 motion for dismissal and will dismiss Defendant Neenah Paper. In this Opinion and Order, the Court resolves only the portion of Plaintiff's motion for summary judgment concerning his claim against Defendant United Steel Workers.

(1); *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 627-28 (6th Cir. 2018). The moving party may also meet its burden by showing the absence of evidence to support an essential element of the nonmoving party's claim. *Holis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 543 (6th Cir. 2014).

When faced with a motion for summary judgment, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Pittman*, 901 F.3d at 628 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). The court must view the facts and draw all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Maben v. Thelen*, 887 F.3d 252, 263 (6th Cir. 2018) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). In resolving a motion for summary judgment, the court does not weigh the evidence and determine the truth of the matter; the court determines only if there exists a genuine issue for trial. *Tolan v. Cotton*, 572 U.S. 650, 656, 134 S. Ct. 1861, 188 L. Ed. 2d 895 (2014) (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). The question is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-252.

Appendix B

II.

The parties generally agree about the following facts leading up to Plaintiff's termination in December 2021.

In 2021, Plaintiff worked for Neenah Paper at the plant in Munising, Michigan. Neenah Paper negotiated a collective bargaining agreement with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CIC (United Steel Workers or USW). USW negotiated the collective bargaining agreement on behalf of Local 2-87 (production workers) and Local 2-96 (maintenance workers). Neenah Paper employed Plaintiff as the fire chief at the plant. Plaintiff was a member of USW, District 2, Local 2-96.

In February 2021, a chemical spill occurred at the Munising facility. Someone at the plant reported the spill to the local 9-1-1 dispatch around 8:41 a.m. Emergency responders arrived around 8:45 a.m. And, around 10:00 a.m., Plaintiff reported the spill to the State of Michigan's Department of Environment, Great Lakes, and Energy.

Because of his phone call, Neenah Paper terminated Plaintiff effective March 1, 2021. Through a union grievance, Plaintiff contested his termination. Plaintiff also filed a lawsuit in May 2021. Plaintiff and Neenah Paper eventually resolved the grievance. On October 6, 2021, Neenah Paper issued a third-stage grievance response that gave Plaintiff back pay and reinstated

Plaintiff allowing him to return to work on October 18, 2021. Plaintiff and Neenah Paper subsequently agreed to settle the lawsuit also agreed that Plaintiff would return to work on January 3, 2022.

On December 28, 2021, Plaintiff participated in a phone call with Chris Haddock, a union representative, and Monica Howe, the vice president of human resources for Neenah Paper. Howe informed Plaintiff that he would not be permitted to return to work in January and that he was terminated. Howe justified the decision based on Plaintiff's concerning behavior since mid-October. Neenah Paper sent Plaintiff a termination letter. By email to Neenah Paper, USW requested an extension of time to file a grievance and also requested the documentation Neenah Paper used to support its decision, including statements by workers who felt threatened by Plaintiff. Neenah Paper did not agree to either request. USW sent Plaintiff a letter explaining that it would not be filing a grievance challenging the termination on Plaintiff's behalf.

Plaintiff filed this lawsuit in March 2022. In April 2023, Plaintiff filed a second amended complaint (ECF No. 48). Against Neenah Paper, Plaintiff pleads a claim for violations of Michigan's Whistleblower Protection Act, a claim for breach of the settlement agreement, and a claim for breach of the collective bargaining agreement (CBA). Against USW, Plaintiff pleads a claim for violation of the duty of fair representation.

Appendix B

III.

A.

Our Supreme Court describes the combination of a claim against an employer for breach of a collective bargaining agreement, a violation of § 301 of the Labor Management Relations Act, and a claim against a union for breach of the duty of fair representation, a claim implied from the scheme of the National Labor Relations Act, as a hybrid suit. *See Reed v. United Transp. Union*, 488 U.S. 319, 328, 109 S. Ct. 621, 102 L. Ed. 2d 665 (1989). Ordinarily, to bring a claim against an employer for breach of a CBA, the employee must first exhaust any grievance or arbitration remedies provided for in the CBA. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 163, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983). That rule, however, does not work when the union representing the employee acts in a discriminatory or arbitrary manner or in bad faith and breaches its duty of fair representation. *Id.* at 164. "In such an instance, an employee may bring suit against both the employer and the union, notwithstanding the outcome or finality of the grievance or arbitration proceeding." *Id.* (citations omitted). The hybrid lawsuit contains two causes of action, one against the employer and one against the union, and "the two claims are inextricably linked." *Id.* To prevail against either the employer or the union, the employee must prove that the employer breached the CBA and the union breached its duty of fair representation. *White v. Anchor Motor Freight, Inc.*, 899 F.2d 555, 559-60 (6th Cir. 1990) (quoting *Bagsby v. Lewis Bros. Inc. of Tennessee*, 820 F.2d 799, 801 (1987)). At least for the claim

against the union, the plaintiff must also demonstrate that the breach of duty caused an injury. *Black v. Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 585 (6th Cir. 1994); *see Garrison v. Cassens Transp. Co.*, 334 F.3d 528, 539 (6th Cir. 2003) (citing *Dushaw v. Roadway Express, Inc.*, 66 F.3d 129, 32 (6th Cir. 1995)).

A union's duty of fair representation derives from the union's status as the exclusive representative of the employees of a bargaining unit. *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967); *Driver v. United States Postal Serv.*, 328 F.3d 863, 868 (6th Cir. 2003). As the exclusive representative, a union owes its members a duty to represent those members "adequately as well as honestly and in good faith." *Ryder*, 15 F.3d at 584 (quoting *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65, 75, 111 S. Ct. 1127, 113 L. Ed. 2d 51 (1991)). "'[A] union breaches its duty of fair representation if its actions are either arbitrary, discriminatory, or in bad faith.'" *Id.* (quoting *O'Neill*, 499 U.S. at 67) (emphasis added in *Ryder*).

In his motion, Plaintiff argues that USW's decision not to file a grievance was both arbitrary and made in bad faith. A plaintiff demonstrates bad faith by showing that the union acted, or failed to act, "with an improper intent, purpose or motive ... encompass[ing] fraud, dishonesty, and other intentionally misleading conduct." *Int'l Union, United Auto., Aerospace and Agric. Implement Workers of America v. Nat'l Labor Relations Bd.*, 844 F.3d 590, 604 (6th Cir. 2016) (alterations in *Int'l Union*; quoting *Meritt v. Int'l Ass'n of Machinists and Aerospace Workers*, 613 F.3d 609, 619 (6th Cir. 2010)). For allegations of bad faith,

courts engage in a "subjective inquiry" and look for "'proof that the union acted (or failed to act) due to an improper motive.'" *Bishop v. Air Line Pilots Ass'n Int'l*, 5 F.4th 684, 694 (7th Cir. 2021).

"[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." *O'Neill*, 499 U.S. at 67 (cleaned up). "This 'wide range of reasonableness' gives the union room to make discretionary decisions and choices, even if those judgment are ultimately wrong." *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 45, 119 S. Ct. 292, 142 L. Ed. 2d 242 (1989). Thus, a plaintiff must show that the union's acts were "wholly irrational," a standard described as "extreme arbitrariness." *Garrison*, 334 F.3d at 539 (citation omitted). "Mere negligence on the part of a union does not satisfy this requirement. That is, 'an unwise or even an unconsidered decision by the union is not necessarily an irrational decision.'" *Id.* at 538-39 (all citations omitted). When reviewing a union's actions for arbitrariness, courts must be deferential to the union. *Merritt*, 613 F.3d at 621. However, when reviewing a union's actions for bad faith, deferential review is not appropriate. *Id.*

B.

The Court considers whether USW acted arbitrarily or bad faith when it declined to file a grievance on Plaintiff's behalf. For Defendant USW's motion, the Court views the evidence in the light most favorable to Plaintiff. The following facts have support in the record.

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In October 2021, Neenah Paper resolved Plaintiff's grievance and agreed to allow Plaintiff to return to work on October 18, 2021. Plaintiff, however, had a previously scheduled vacation (ECF No. 77-2 Schramm Dep. at 128 PageID.1315) and he disputed the calculation of his backpay (*id.* at 132 PageID.1316). Plaintiff worked with Josh Trader and Chris Haddock to address the backpay calculations (*id.* at 132-33 PageID.1316-17).

In the fall of 2021, Josh Trader held the position of president for Plaintiff's union (ECF No. 77-10 Trader Dep. at 10-11 PageID.1568). Plaintiff acknowledged that when he was initially terminated in May 2021, he identified to Trader five people at Neenah Paper who needed to be fired (ECF No. 77-2 Plaintiff Dep. at 170 PageID.1326; ECF No. 77-10 Trader Dep. at 69 PageID.1582). About the time that Neenah Paper agreed to reinstate Plaintiff, Plaintiff began complaining to Trader about the backpay calculations (Trader Dep. at 36 PageID.1374). Trader recalled that the backpay issue seemed to "trigger" Plaintiff and the dispute seemed to "snowball" to other disputes with Neenah Paper (*id.* at 42-43 PageID.1576). Trader thought that the situation just "add[ed] to [Plaintiff] already being upset with people and angry that these people for what they did to him" (*id.* at 43 PageID.1576). Trader recalled Plaintiff "was still pissed off at Kathy, Brian, Curt, Brad and Pat" (*id.* at 45 PageID.1576).[2]

Soon after the time that Neenah Paper resolved the grievance with Plaintiff, Trader began to hear

2. Presumably the list refers to Kathy Hill, Brian Houghton, Curt Linstrom, Brad Jones and Pat McDonald.

concerns from union members about Plaintiff's return to work (Trader Dep. at 46 PageID.1577). Some of the individuals heard that Plaintiff had a hit list (*id.* at 47-48 PageID.1577). Trader testified that he heard concerns from "dozens and dozens of people" (*id.* at 46 PageID.1577). He heard concerns from people on all three shifts (*id.* at 47 PageID.1577). Trader recalled that people were concerned about their safety at work; they did not know if Plaintiff "is going to fly off the handle, be violent, verbal, whatever" (*id.* at 50 PagerID.1578). Trader passed these concerns along to Chris Haddock (*id.* at 49 PageID.1577). Trader told Haddock because Trader was concerned for the safety of the people at the facility (*id.* at 53 PageID.1578).

Other union officials heard similar rumors from individuals at the facility. Michael Peters was the president of the Local 87 (ECF No. 77-9 Peters Dep. at 7 PageID.1550). Peters testified that people at the facility approached him with concerns about Plaintiff returning to work (*id.* at 13-14 PageID.1552). Peters recalled hearing that Plaintiff had a list of five people in management with whom he was unhappy (*id.* at 26 PageID.1555). Peters heard from enough people that he reported their concerns to Chris Haddock (*id.* at 21 PageID.1553). Greg Murk became the fire chief after Plaintiff's initial termination (ECF No. 77-8 Murk Dep. at 5 PageID.1528). Murk recalled hearing that Plaintiff had a list of five people in management positions with whom Plaintiff had issues (*id.* at 14 PageID.1531). Murk heard from enough people he raised the concerns with the union representative (*id.* at 15 PageID.1531).

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Chris Haddock worked as a representative for USW in 2021 (ECF No. 77-4 Haddock Dep. at 5 PageID.1369). Haddock corroborated portions of Trader's, Peters' and Murk's testimony. Haddock recalled hearing from Trader that dozens of people had expressed concerns about what would happen when Plaintiff returned to work (*id.* at 21 PageID.1373). Haddock recalled hearing that Plaintiff had a list of five people (*id.*). When Haddock asked Trader for the names of people who had approached Trader, Trader declined to provide the names because the people were concerned about repercussions from Plaintiff (*id.* at 22 PageID.1374). In addition to hearing from Trader, Haddock also heard from Peters and Murk that individuals were expressing concerns about Plaintiff (*id.* at 26-27 PageID.1375; at 42-43 PageID.1379).

During the relevant events, Kathy Hill worked at the Munising facility as the human resources manager (ECF No. 77-5 Hill Dep. at 9 PageID.1423). Hill testified that, in mid-October, she began to receive reports about Plaintiff from the two union presidents, Trader and Peters (*id.* at 62 PageID.1436). Hill also received reports about Plaintiff from Murk (*id.* at 105-06 PageID.1447). Hill passed the reports, concerns about what would happen when Plaintiff returned to work, along to Brian Houghton (*id.* at 65-66 PageID.1437). Hill also passed the reports along to Monica Howe (*id.* at 77-78 PageID.1440; at 132 PageID.1453).

Brian Houghton worked as the manager of the Munising facility (ECF No. 77-6 at 8 PageID.1462). Houghton recalled learning about concerns regarding Plaintiff's return to work in late October or early November (*id.* at 23-24

PageID.1466). Houghton heard some of the concerns from Kathy Hill (*id.* at 30 PageID.1468) and from Josh Trader (*id.* 34-37 PageID.1469-70). Houghton also heard about the concerns from Mike Peters (*id.* at 38 PageID.1470) and Greg Murk (*id.* at 40-41 PageID.1470-71). Ultimately, Houghton passed the concerns along to corporate to determine whether Plaintiff should be terminated (*id.* at 52 PageID.1473).

In 2021, Monica Howe worked for Neenah Paper as vice president of human resources (ECF No. 77-7 Howe Dep. at 1479). Howe testified that she heard from Kathy Hill, Josh Trader and Mike Peters that many people had concerns about Plaintiff returning to work (*id.* at 86-87 PageID.1498). Ultimately, Howe at least contributed in part to the decision to terminate Plaintiff (*id.* at 83-84 PageID.1497). Howe recalled that she made the decision on December 21, 2021 (*id.* at 189 PageID.1524). Howe drafted a talking points document for a conference call that would include Plaintiff (ECF No. 79-6 PageID.1696). Howe sent the document to Chris Haddock (*id.* PageID.1695).

The conference call occurred on December 28, 2021, and included Howe, Plaintiff, and Haddock. Howe informed Plaintiff he was terminated (ECF No. 77-2 Schramm Dep. at 168 PageID.1325). Among the reasons for his termination, Howe identified the hit list (*id.* at 169 PageID.1326). At his deposition, Plaintiff disagreed with the characterization of it as a hit list (*id.*). Plaintiff then proceeded to name five people, the ones "I thought I needed to talk to and say, hey, I'm back, let's just put this behind us, move forward for the better of Neenah"

(*id.*). Plaintiff admitted that these were the same five people he told Trader in May 2021 needed to be fired (*id.*). Plaintiff also admitted that during the meeting he said that Chris "knows what's in the wind when I come back to work for Kathy Hill, right?" (*id.* at 170 PageID.1326). Plaintiff denied the statement was a threat (*id.*). Haddock interpreted Plaintiff's statement as a threat and, referring to the filing of a grievance, told Plaintiff that the statement "cut off our legs" (Haddock Dep. at 71 PageID.1386).

Haddock made the decision not to file a grievance. Defendant USW attaches Haddock's lengthy affidavit to its motion for summary judgment (ECF No. 75-1 Haddock Aff. PageID.1173-84). Haddock summarizes, from his perspective and in much detail, the events leading up to and following the December 28 phone call. Notably, Haddock states that this situation was novel in that (1) a "significant number of unit employees expressed fear of a coworker," (2) "the accounts of events coming from labor and management were substantially consistent in almost every detail," and (3) top corporate officials were involved rather than local facility management (*id.* ¶ 55-56 PageID.1181).

Haddock identifies three factors that lead to his conclusion not to file a grievance to challenge Plaintiff's termination (*id.* ¶ 58 PageID.1182). First, Howe made an "unequivocal representation" that she had proof of Plaintiff's threatening behavior, including statements from hourly employees and salaried employees (*id.*) Haddock's discussions with individuals at the facility made Howe's statement plausible (*id.*). Haddock found credible

Howe's reluctance to provide the names of individuals who expressed concerns about Plaintiff (*id.*). Haddock had no reason to doubt that Howe actually had documentation to support her claim (*id.* ¶ 60 PageID.1182). Second, during the phone call Plaintiff identified five individuals which Haddock viewed as confirmation that Plaintiff had a list (*id.* ¶ 62 PageID.1182; *see* Haddock Dep. at 86-87 PageID.1390). Haddock did not find Plaintiff's explanation of the list—he wanted to shake hands—to be credible (*id.* ¶ 63 PageID.1183). Haddock did not think that Plaintiff's explanation would be believed at a grievance hearing (*id.*). Third, during the phone call, Plaintiff made a comment about Kathy Hill that could be interpreted as threat (*id.* ¶ 64 PageID.1183).

1.

Defendant USW has established a lack of genuine issue of material fact that the decision to not file a grievance was not made arbitrarily. Plaintiff has not put forth sufficient evidence to create a genuine issue of material fact that USW made the decision arbitrarily.

The record contains sufficient evidence to support the reasons Haddock identified for not filing the grievance. Haddock had been told from multiple sources that employees at the plant were concerned about what would happen when Plaintiff returned to work. He had this information before the December 28 meeting. When Haddock asked Trader for names, Trader offered a logical reason for not giving those names. When Haddock made similar request for information after the December 28

meeting, Howe declined for the same reason, concern for the safety of the individuals. The record establishes that Defendant USW made "a reasonable investigation to defend a member from employer discipline." *Walk v. P*I*E Nationwide*, 958 F.2d 1323, 1326 (6th Cir. 1992). Plaintiff points out that the record contains no such documentation or statements. But, Haddock had to make a decision about filing a grievance shortly after the December 28 call with the information he had available at the time. Plaintiff has not put forth any evidence to show that Haddock should have doubted the existence of the documentation.

During the phone call, Haddock heard Plaintiff list five names and also heard Plaintiff make the statement about Kathy Hill. Haddock did not find Plaintiff's explanation for his list of five names to be credible. Haddock thought the statement about Hill constituted a threat. The record contains Plaintiff's explanations for his statements. For these motions, the Court does not decide what Plaintiff meant by his words as the parties have a factual dispute about Plaintiff's intent. The Court may, however, consider Haddock's interpretation of those statements, which factored into his decision not to file a grievance. Plaintiff has not put any evidence into the record to suggest that Haddock had some other interpretation of the statements or that Haddock's interpretation of the statements was not plausible.

Plaintiff argues that the union was "absolutely entitled to the names of witnesses," citing *Alcoa Corporation*, 25-CA-219925, 370 NLRB No. 107 (Apr. 16, 2021) (ECF

No. 77 at 26 PageID.1278).[3] The opinion does not support Plaintiff's assertion. In that opinion, the witnesses were formally interviewed as part of an investigation and the parties stipulated that none of the employees requested confidentiality during the interviews (ECF No. 79-10 PageID.1715). In footnote 3, the panel agreed with the Administrative Law Judge's conclusion that the information sought, the names of the witnesses, was relevant and necessary to the grievance *and* that the "respondent failed to demonstrate any legitimate confidentiality interests that outweighed the Union's need for the information" (*id.* PageID.1714). Here, Trader and Howe justified their denial of Haddock's requests for names because of confidentiality and safety concerns. Plaintiff's bare assertion of entitlement, relying only on the *Alcoa* opinion, does not overcome the justification for withholding the names.

On this record, Haddock's decision falls within the range of reasonableness. Plaintiff has not put forth sufficient evidence to create a genuine issue of material fact that the Haddock's decision was wholly irrational.

2.

Defendant USW has also established a lack of genuine issue that the decision not to file a grievance was not made in bad faith. Again, for Defendant's motion the Court views the evidence in the light most favorable to Plaintiff. Haddock identified the reasons he chose not to

3. Plaintiff attached a copy of the opinion as an exhibit (ECF No. 79-10 PageID.1714).

file a grievance. Those reasons undermine the conclusion that Haddock made the decision for an improper motive.

Plaintiff has not put forth evidence to support the conclusion that Haddock made the decision in bad faith or even to create a genuine issue of material fact to avoid summary judgment in Defendant's favor. Plaintiff contends that Haddock was "in on the plan" to terminate Plaintiff (ECF No. 77 at 26 PageID.1278). While Haddock did receive Howe's talking points document in advance of the telephone call, that fact does not establish or even permit the inference that Haddock participated in a plan to terminate Plaintiff. Haddock explained in his affidavit that he expected, during the telephone call, that Howe would provide details about Plaintiff's inappropriate behavior and that Plaintiff would have an opportunity to respond (Haddock Aff. ¶ 21 PageID.1176). When Howe did not provide that information during the telephone call, Haddock sought the information from her. Additionally, two of the factors that contributed to Haddock's decision not to file a grievance were statements Plaintiff made during the phone call. The fact that Trader and Peters, the two union presidents, passed along concerns of union members does not show that Haddock's decision was made for an improper purpose.

3.

Because the Court concludes that Defendant has demonstrated it did not breach the duty of fair representation, the Court need not consider or determine whether Neenah Paper violated the terms of the collective bargaining agreement.

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C.

Plaintiff argues that Defendant USW relies extensively on evidence that cannot be considered at summary judgment. More specifically, Plaintiff contends that USW relies on inadmissible hearsay.

At the summary judgment stage, parties do not have to present evidence in a form that would be admissible at trial. *Celotex Corp.*, 477 U.S. at 324; *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009). The party's burden is put forth sufficient evidence that would be admissible at trial. *Alexander*, 576 F.3d at 588. Hearsay refers to statements made by someone other than the declarant that is offered to prove the truth of matter asserted. Fed. R. Evid. 801(c). Because the statement by the declarant could not be admitted at trial, hearsay statements cannot be considered at summary judgment. *See Carter v. Univ. of Toledo*, 349 F.3d 269, 274 (6h Cir. 2003).

The Court declines to exclude from consideration all of testimony from witnesses that summarize what other employees said to the witnesses. Plaintiff makes this hearsay challenge as a blanket statement and does not point to any particular evidence presented by Defendant. And, Plaintiff does not identify what truths the statements can and cannot be used to prove. Likely, the Court could not consider Trader's testimony that employees were reporting that Plaintiff had a hit list to prove that Plaintiff had a hit list. But, the fact that Plaintiff had a list of five people with whom he was upset and wanted fired could

be considered for summary judgment purposes because, at his deposition, Plaintiff admitted to telling this fact to Trader in May 2021. Likely, the Court could not consider Trader's and Peters' recollections of what other employees were saying to prove that Plaintiff posed a threat to the workplace. But, the Court could consider their testimony for other reasons. The Court might be able to consider the testimony to explain why Trader and Peters made the reports to Neenah Paper and to Haddock.

IV.

Plaintiff contends Defendant USW breached its duty of fair representation by failing to file a grievance challenging Plaintiff's December 2021 termination. To show the breach of duty, Plaintiff needs to establish that the decision not to file a grievance challenging Plaintiff's termination was made arbitrarily or in bad faith. Chris Haddock, the union representative, explained why he did not think Plaintiff could prevail through a grievance or in arbitration and concluded that filing the grievance would be futile. Haddock's reasoning supports the conclusion the decision was not made arbitrarily. Even if Plaintiff could show that the reasons Neenah Paper gave for the termination were not ultimately supported by any evidence, that fact would not show that Haddock acted in bad faith or with some improper purpose. Haddock had to make a decision about filing a grievance with the information available to him at the time. Accordingly, the Court will grant Defendant's motion for summary judgment and will deny Plaintiff's motion for summary judgment.

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ORDER

For the reasons provided in the accompanying Opinion, the Court **GRANTS** Defendant United Steel Worker's motion for summary judgment (ECF Nos. 75) and **DENIES** Plaintiff Schramm's motion for summary judgment (ECF No. 77).

IT IS SO ORDERED.

Date: September 11, 2024

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge