

LEXSEE 1996 US DIST LEXIS 5817

**EVANGELINE SPEDOWSKI, Plaintiff, v. LEAR SEIGLER PLASTIC CORPORATION
AND INTERNATIONAL UNION UNITED AUTOMOBILE AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 503,
JACKIE SMITH, jointly and severally or in the alternative, Defendants.**

Case No. 1:95-CV-330

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION**

1996 U.S. Dist. LEXIS 5817

April 15, 1996, Decided

April 15, 1996, FILED

NOTICE: [*1] NOT FOR PUBLICATION

DISPOSITION: Defendants' Motions for Summary Judgment GRANTED in part and DENIED in part.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant employer filed a motion for summary disposition and defendants, a union and a union official, filed a motion for summary judgment in plaintiff employee's action against defendants alleging racial discrimination.

OVERVIEW: The employee obtained permission to take a leave of absence from work. She visited family members in the Philippines. She called her employer and told her foreperson that she could not come to work because she was having asthma problems. The foreperson allegedly told the employee not to worry about it. The employee's job was terminated because she failed to return to work after her leave of absence expired. Defendants argued that the employee's claims were preempted by § 301 of the Labor Management Relations Act, 29 U.S.C.S. § 185. The court granted in part and denied in part the motions for summary judgment. The court determined that not every state-law suit asserting a right that related in some way to a provision in a collective-bargaining agreement necessarily was preempted by § 301. The court explained that to the extent that the employee's complaint alleged a § 301 cause of action, it was barred by the applicable statute of limitations. The court noted that, given a very broad and liberal interpretation of the complaint, it was possible to construe the employee's claim as one for discrimination under state law.

OUTCOME: The court granted in part defendants' mo-

tions for summary judgment. The court denied in part defendants' motions for summary judgment.

LexisNexis(R) Headnotes

Labor & Employment Law > Collective Bargaining & Labor Relations > Federal Preemption

[HN1] Section 301 of the Labor Management Relations Act, 29 U.S.C.S. § 185, preempts any state-law claim arising from a breach of a collective bargaining agreement. However, not every state-law suit asserting a right that relates in some way to a provision in a collective-bargaining agreement necessarily is pre-empted by § 301. A union employee's state tort law action for retaliatory discharge is not preempted by § 301 because the state-law remedy is "independent" of the collective-bargaining agreement. Resolution of the state-law claim does not require construing the collective-bargaining agreement. The mere fact that a broad contractual protection against discriminatory-or retaliator-discharge may provide a remedy for conduct that coincidentally violates state-law does not make the existence or the contours of the state law violation dependent upon the terms of the private contract. Furthermore, an argument that the collective bargaining agreement may provide a defense to a defendant does not support removal to federal court and the finding of preemption.

Labor & Employment Law > Collective Bargaining & Labor Relations > Federal Preemption

[HN2] Federal law monopolizes certain aspects of labor relations, but where a suit does not center on the terms of a labor contract, collective bargaining agreement, union constitution, or other, it is not preempted because it is not within the arena of labor relations, which Congress nationalizes.

COUNSEL: For EVANGELINE SPEDOWSKI, plaintiff: Romeo C. Lagonoy, Southfield, MI.

For LEAR SIEGLER PLASTICS CORP., jointly and severally or in the alternative, defendant: Michael L. Fayette, Pinsky, Smith, Fayette & Hulswit, Grand Rapids, MI. John C. Cashen, Bodman, Longley & Dahling, Troy, MI. For LOCAL 503 INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, jointly and severally or in the alternative, JACKIE SMITH, jointly and severally or in the alternative, defendants: Michael L. Fayette, Pinsky, Smith, Fayette & Hulswit, Grand Rapids, MI.

JUDGES: GORDON J. QUIST, UNITED STATES DISTRICT JUDGE

OPINIONBY: GORDON J. QUIST

OPINION:

OPINION

Plaintiff brought this action against defendants alleging racial discrimination. This matter is presently before the Court on Defendant Lear Seigler Plastic Corporation's Motion for Summary Disposition and Defendants UAW Local 503 and Jackie Smith's Motion for Summary Judgment.

Factual Background

Plaintiff, Evangeline Spedowski, is a naturalized United States citizen of Filipino origin. She was hired by [*2] defendant Lear Seigler Plastic Corporation n1 ("Lear") in October 1984. Plaintiff was a member of defendant UAW Local 503, an organized labor union and the exclusive bargaining agent for Lear employees. Defendant Jackie Smith is an official of Local 503.

n1 Lear Seigler Plastic Corporation is now known as Lear Plastics Corporation.

Lear and Local 503 entered into a collective bargaining agreement effective April 28, 1994. The Agreement contains the following provisions:

The Company and the Union agree that they will not discriminate in the training or upgrading, promotion, transfer, lay-off, discipline or discharge of employees because of race, color, creed, sex, age, national origin or religious or political affiliation, Vietnam veterans or handicapped.

Article I, Section 2.

The Company retains the sole right to discipline or discharge any employee for cause, provided that in the exercise of this right it will not act discriminatorily nor in violation of the terms of this agreement. Complaints [*3] concerning alleged discriminatory or unjust disciplinary actions or discharges may be processed under the grievance procedure as specified in this agreement.

Article VII, Section 2.

Plaintiff obtained permission from Lear to take a leave of absence from April 26, 1994, until May 10, 1994. Plaintiff used this leave to visit family members in the Philippines. She was supposed to return to work on May 10, 1994. However, on May 9, 1994, plaintiff called Lear from the Philippines and spoke with her foreperson, Beverly Zinsmaster. There is some dispute about the nature of that telephone conversation. In her deposition, plaintiff testified that she told Ms. Zinsmaster that she could not come to work because she was having asthma problems. Ms. Zinsmaster allegedly told plaintiff not to worry about it but to get better. Plaintiff placed another call to Lear on May 13, 1994, and again spoke with Ms. Zinsmaster. Plaintiff said she would fly back on May 17, 1994.

Plaintiff's employment was terminated on May 13, 1994, because she failed to return to work after her leave of absence had expired. Local 503 filed a grievance on plaintiff's behalf. The grievance was rejected by Lear at Step [*4] Three and Step Four meetings because plaintiff failed to furnish documentation substantiating a medical reason for her failure to return to work. Local 503 sent plaintiff a letter informing her that the grievance over her discharge would be put to a vote of the membership to determine whether it should be pursued to arbitration. On approximately July 20, 1994, plaintiff was informed that the membership voted not to pursue the grievance.

Plaintiff filed her complaint in the Circuit Court for St. Joseph County on April 17, 1995. Count I of the complaint is entitled "Racial Discrimination in Employment." Count I alleges that Supervisors and Foremen employed by Lear acted in concert with Local 503 and Jackie Smith to unlawfully discriminate against plaintiff. Count II is also entitled "Racial Discrimination in Employment." Count II alleges that Local 503 and Jackie Smith in concert with Lear management discriminated against plaintiff and intentionally refused to represent her in her grievance. Plaintiff's complaint makes no reference to the laws or statutes upon which her claims are based. Defendants removed the action to this Court on May 24, 1995.

Defendants argue that plaintiff's [*5] claims are preempted by Section 301 of the Labor Management Relations Act. 29 U.S.C. § 185. Plaintiff responds that her claim is a pure claim for discrimination. The Court notes that the complaint is very confusing; among other things, it does not state the legal basis for the claim.

Analysis

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, [HN1] preempts any state-law claim arising from a breach of a collective bargaining agreement. See *Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972 (1957). However, not "every state-law suit asserting a right that relates in some way to a provision in a collective-bargaining agreement . . . necessarily is pre-empted by § 301.11 *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220, 105 S. Ct. 1904, 1916, 85 L. Ed. 2d 206 (1985). In *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 108 S. Ct. 1877, 100 L. Ed. 2d 410 (1988), the Supreme Court held that a union employee's state tort law action for retaliatory discharge was not preempted by § 301 because the state-law remedy was "independent" of the collective-bargaining agreement. "Resolution of the state-law claim [*6] does not require construing the collective-bargaining agreement." *Lingle*, 486 U.S. 407, 108 S. Ct. at 1882. "The mere fact that a broad contractual protection against discriminatory - or retaliatory - discharge may provide a remedy for conduct that coincidentally violates state-law does not make the existence or the contours of the state law violation dependent upon the terms of the private contract." *Lingle*, 486 U.S. 412-413, 108 S. Ct. at 1885. Furthermore, an argument that the collective bargaining agreement may provide a defense to the defendant does not support removal to federal court and the finding of preemption. *Welch v. General Motors Corp.*, 922 F.2d 287, 293 (6th Cir. 1990).

In *Smolarek v. Chrysler Corp.*, 879 F.2d 1326 (6th Cir. 1989), cert. denied, 493 U.S. 992, 110 S. Ct. 539, 107 L. Ed. 2d 537 (1989), the Sixth Circuit reversed a district court decision denying a motion for remand to state court. In *Smolarek*, the plaintiff's complaint pleaded a cause of action based solely on Michigan's handicap discrimination claims. *Id.* at 1328. The court stated that the complaint did not arise under federal law or under the collective bargaining agreement. [*7] It was not inextricably intertwined with the collective bargaining agreement. Therefore, the complaint was not preempted by the Labor Management Relations Act. *Id.* at 1334-35.

In *Tisdale v. United Assoc. of Journeymen and Apprentices of the Plumbing and Pipefitting Indus.*, 25 F.3d 1308 (6th Cir. 1994), union members filed race discrimination claims in state court under Michigan's Elliott-

Larsen Civil Rights Act. Plaintiffs alleged that the union gave residency waivers to white applicants but not to plaintiffs because they were black. The trial court allowed the union to remove the action to federal court, but the Sixth Circuit reversed this decision. The Sixth Circuit found that plaintiffs' state-law claim could not be removed because it arose from an independent body of state substantive rights and did not invoke any legal ground that had been preempted by federal labor law. Furthermore, the claim was not "inextricably intertwined with consideration of the terms of the labor contract." *Id.* at 1310. The court stated:

[HN2] Federal law has monopolized certain aspects of labor relations, but where a suit does not center on the terms of a labor contract (collective bargaining [*8] agreement, union constitution, or other) it is not preempted because it is not within the arena of labor relations which Congress has nationalized.

Id. at 1310-11.

In *Willett v. General Motors Corp.*, 904 F. Supp. 612 (E.D. Mich. 1995), plaintiff brought a suit in state court alleging she had been wrongfully terminated because of her race in violation of Michigan's Elliott-Larsen Civil Rights Act. Defendants removed the suit. The court in *Willett*, remanded the case and stated:

Defendant argues that even though § 301 does not preempt claims under the Elliott-Larsen Act, plaintiff's complaint is still so intertwined with contract issues that removal is appropriate. Defendants' argument misses the mark. Plaintiff's complaint is not, as the defendants claim, founded on the denial of rights defined solely by contract. To the contrary, her complaint alleges only the denial of rights defined by Michigan's civil rights statutes, which are unaffected by plaintiff's collective bargaining agreement.

Id. at 615.

The plaintiff is the "master of the claim." *Smolarek*, 879 F.2d at 1329 (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 [*9] S. Ct. 2425, 96 L. Ed. 2d 318 (1987)). As stated earlier in this Opinion, the complaint is confusing. At oral argument plaintiff's attorney stated that he is a general practitioner, and it became apparent to this Court that plaintiff's counsel knew little, if anything,

about Section 301 claims. Plaintiff's counsel also stated that plaintiff intended to allege only a state law discrimination claim and that plaintiff did not intend to rely upon federal law. (The Court notes that the complaint does not specifically refer to the collective bargaining agreement or the union contract.)

This Court finds that to the extent plaintiff's complaint alleges a Section 301 cause of action, it is barred by the applicable statute of limitations. *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983). However, given a very broad and liberal interpretation of the complaint, it is possible to construe plaintiff's claim as one for discrimination under state law. n2 Accordingly, the pending motions for summary judgment (docket nos. 14 and 16) will be granted in part and denied in part. To the extent that plaintiff's complaint alleges a Section 301 claim, [*10] it is dismissed with prejudice. To the extent plaintiff's complaint alleges a state-law discrimination claim, this Court will exercise jurisdiction pursuant to 28 U.S.C. § 1367. Defendants shall have fourteen (14) days from the entry of the attached Order to file motions regarding the state-law discrimination claims.

n2 The Court recognizes that there may be other motions from defendants.

An Order consistent with this Opinion will be entered.

Dated: APR 15 1996

GORDON J. QUIST

UNITED STATES DISTRICT JUDGE

ORDER

In accordance with the Opinion entered this date,

IT IS HEREBY ORDERED that defendants' Motions For Summary Judgment (docket nos. 14 and 16) are **GRANTED** in part and **DENIED** in part. To the extent plaintiff's complaint alleges a Section 301 claim, it is dismissed with prejudice. To the extent plaintiff's complaint alleges a state-law discrimination claim, this Court will exercise jurisdiction pursuant to 28 U.S.C. § 1367. Defendants have fourteen (14) days from the [*11] entry of this Order to file motions regarding the state-law discrimination claims.

Dated: APR 15 1996

GORDON J. QUIST

UNITED STATES DISTRICT JUDGE

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