

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ANDREW PORA, :
 :
 Plaintiff, :
 :
 v. : C.A. No. 03-73 ML
 :
 LOCAL UNION 4543, UNITED :
 STEELWORKERS OF AMERICA, :
 Defendant. :

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

Before the court are Plaintiff's Request for Remand ("Motion to Remand") and Defendant's Motion for Judgment on the Pleadings ("Motion for Judgment"). These motions have been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and D.R.I. Local R. 32(a). A hearing was held on March 24, 2003. After listening to oral argument, reviewing the memoranda submitted, and performing independent research, I recommend that Plaintiff's Motion to Remand be denied and that Defendant's Motion for Judgment also be denied.

Facts and Travel

Plaintiff Andrew Pora ("Plaintiff" or "Pora") filed this pro se action on or about September 4, 2002, in the Massachusetts District Court, Attleboro Division, Small Claims Session. Plaintiff alleges in his Statement of Small Claim and Notice of Trial ("Complaint") that the actions of Defendant Local Union 4543 of the United Steelworkers of America ("Defendant" or the "Union") in processing a grievance were negligent, arbitrary, in bad faith, and constituted a deceptive act or practice under Chapter 93A of the

Massachusetts General Laws. Because of these acts, Plaintiff claims that the Union owes him \$5,000.00.

The Union removed the action to the United States District Court in Boston, Massachusetts, on or about October 15, 2002, pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1441(c). See Notice of Removal ¶ 2. The basis for removal was that the action arose under the labor laws of the United States. See id.

According to the Union:

Though framed under Massachusetts General Laws Chapter 93A Plaintiff alleges in effect a breach by the Union of its duty of fair representation, arising out of the Union's processing of a grievance filed by the Plaintiff. As such the dispute between the parties requires the interpretation of a collective bargaining agreement. *See Vaca v. Sipes*, 386 U.S. 171 (1976). The artful pleading rule applies and a federal district court has removal jurisdiction "when a complaint, though garbed in state-law raiment, sufficiently asserts a claim implicating the duty of fair representation." *See BIW Deceived v. Local S6*, 132 F.3d 824, 831, 1997 U.S. App. LEXIS 36795 *18 (1st Cir. 1997).

Id. In its answer, the Union denied the allegations of the Complaint and raised as affirmative defenses that the court lacked personal jurisdiction over Defendant and that Plaintiff failed to state a claim upon which relief can be granted.

Plaintiff objected to the removal in a November 5, 2002, letter to United States District Court Judge George A. O'Toole, Jr., and requested that the matter be remanded to the State of Massachusetts District Court in Attleboro. In support of this request, Plaintiff stated that his original claim made no reference to the duty of fair representation and that, therefore, the basis for the Union's removal of the

action was invalid.¹ Letter from Plaintiff to Judge O'Toole of 11/5/02 at 1. Plaintiff also claimed that removal of the case from Small Claims Action to Federal Court would place an "unnecessary, prohibitive financial burden [upon him] ... making the judicial process, which is meant to protect, out of reach ... allowing the defendant's actions to continue." Id. Judge O'Toole treated Plaintiff's letter as a Motion to Remand, and it is that Motion to Remand which is presently before the court.

On November 8, 2002, the Union filed the present Motion for Judgment. In an accompanying memorandum, the Union argued: 1) that Plaintiff's claim was preempted by federal law, see Memorandum of Law in Support of Defendant's Motion for Judgment on the Pleadings ("Defendant's Mem. Supporting Judgment") at 3-4; 2) that the court lacked personal jurisdiction over the Union pursuant to 29 U.S.C. § 185 because its principal office was in Lincoln, Rhode Island, that its officers and agents were not engaged in representing or acting for employees in Massachusetts and that such activities occurred only in Rhode Island, see id. at 4; 3) that even without the limitations imposed by 29 U.S.C. § 185 "well-established principles governing a U.S. District Court's exercise of personal jurisdiction do not permit this Court to hear a case in which the Union is a defendant absent the Union's consent," id. at 5; and 4) that venue was not proper, see id. at 8.

Plaintiff responded to this motion by sending a second

¹ Plaintiff actually states that the basis for removal is "irrelevant." Letter from Plaintiff to Judge O'Toole of 11/5/02 at 1. However, the context suggests that Plaintiff meant to say that it was "invalid." Id.

letter to Judge O'Toole, noting that the Union had removed the case to federal court in Massachusetts but was now contending that the court lacked jurisdiction. See Letter from Plaintiff to Judge O'Toole of 11/12/02. Plaintiff reaffirmed his position that "[t]his is not an issue for Federal Court and should be remanded to Attleboro District Court as originally filed." Id.

On December 9, 2002, the Union filed a motion for leave to respond to Plaintiff's Motion to Remand. Defendant Union's Memorandum in Opposition to Plaintiff's Motion to Remand to State Court ("Defendant's Mem. Opposing Remand") was filed thereafter.

After reviewing the filings in the matter, Judge O'Toole concluded that it should be transferred to the District of Rhode Island. On December 19, 2002, he signed an order transferring the action to this District pursuant to 28 U.S.C. § 1404(a). Upon arrival in this District, the case was assigned to District Judge Mary M. Lisi. The instant motions were referred to this Magistrate Judge on March 5, 2003, and a hearing was conducted on March 24, 2003.

Law

Title 28, United States Code § 1441 provides, in relevant part:

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have

original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

28 U.S.C. § 1441 (2000).

Under 28 U.S.C. § 1447(c):

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

28 U.S.C. § 1447(c) (2000).

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, states, in pertinent part:

(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.

29 U.S.C. § 185 (2000).

Discussion

I. The Motion to Remand

Plaintiff maintains that because his original claim made no reference to the duty of fair representation, "the proper forum is as a Small Claims Action, where I filed originally." Motion to Remand at 1. The Union contends that removal was proper based on the existence of federal question jurisdiction. See Defendant's Mem. Opposing Remand at 1; Notice of Removal ¶ 2. According to the Union, Plaintiff in effect has alleged a breach by the Union of its duty of fair representation and, thus, the action arises under the labor laws of the United States. See Notice of Removal ¶ 2.

The duty of fair representation is derived from a union's

status as exclusive bargaining agent and is owed by a union acting in its representative capacity to those on whose behalf it acts. See BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 830 (1st Cir. 1997). The Supreme Court has stated that the duty of fair representation arises from the National Labor Relations Act² itself, see United Steelworkers of Am. v. Rawson, 495 U.S. 362, 373, 110 S.Ct. 1904, 1911, 109 L.Ed.2d 362 (1990), and requires the union "fairly to represent all of those [member] employees, both in its collective bargaining ... and in its enforcement of the resulting collective bargaining agreement," id. at 372, 110 S.Ct. at 1911 (quoting Vaca v. Sipes, 386 U.S. 171, 177, 87 S.Ct. 903, 909-10, 17 L.Ed.2d 842 (1967))(ellipsis in original). The duty of fair representation "includes a statutory obligation to 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." BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d at 830 (quoting Vaca v. Sipes, 386 U.S. at 177, 87 S.Ct. at 910); see also United Steelworkers of

² Section 9(a) of the National Labor Relations Act ("NLRA") provides, in relevant part:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment

29 U.S.C. § 159(a) (2000); see also BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 830 n.3 (1st Cir. 1997)(quoting NLRA).

Am. v. Rawson, 495 U.S. at 372, 110 S.Ct. at 1911 (same). A breach of the statutory 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." Vaca v. Sipes, 386 U.S. at 190, 87 S.Ct. at 916; see also United Steelworkers of Am. v. Rawson, 495 U.S. at 372, 110 S.Ct. at 1911 (same).

"In the labor-law arena, preemption--the displacement of state law by the force of federal law--is a familiar phenomenon." BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 829 (1st Cir. 1997). Preemption can occur by operation of the duty of fair representation. See id. at 830. "A complaint that states a [duty of fair representation] claim allege[s] a breach by the Union of a duty grounded in federal statutes and ... federal law therefore governs [the] cause of action. Consequently, state law is preempted whenever a plaintiff's claim invokes rights derived from a union's duty of fair representation." Id. (second, third, and fourth alterations in original)(citation and internal quotation marks omitted); cf. Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S.399, 405-06, 108 S.Ct. 1877, 1881, 100 L.Ed.2d 410 (1988)("[I]f the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law ... is pre-empted and federal labor-law principles ... must be employed to resolve the dispute.").

While preemption is a defense which under the well-pleaded complaint rule³ ordinarily does not give rise to

³ The well-pleaded complaint rule generally "prohibits the exercise of federal question jurisdiction if no federal claim appears within the four corners of the complaint." BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824,

federal question jurisdiction, see id. at 831, "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character," id. (quoting Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 63-64, 107 S.Ct. 1542, 1546, 95 L.Ed.2d 55 (1987)).

This powerful preemption principle propels a significant exception to the well-pleaded complaint rule--the artful pleading doctrine. The doctrine empowers courts to look beneath the face of the complaint to divine the underlying nature of a claim, to determine whether the plaintiff has sought to defeat removal by asserting a federal claim under state-law colors, and to act accordingly.

BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 831 (1st Cir. 1997). The Court of Appeals for the First Circuit has thus held that duty of fair representation preemption warrants invocation of the artful pleading doctrine. See id. at 832.

Applying that doctrine in the instant case, the Complaint reflects that it is based on "[t]he unions [sic] actions in processing case #E-47-2000 [which] were neglig[il]gent, arbitrary, in bad faith" Complaint. The Motion to Remand recites that Plaintiff's case was "filed on the grounds that the defendant has acted arbitrarily, and in bad faith." Motion to Remand at 1. Additionally, the Union has attached as an exhibit to its memorandum opposing the Motion to Remand a copy of a letter dated July 12, 2002, from Plaintiff to the Union treasurer in which Plaintiff clearly indicates that the Union's actions in "process[ing] grievance E-47-2000 . . . constitute a breach of the Duty of Fair Representation as a

831 (1st Cir. 1997).

federal statute." Defendant's Mem. Opposing Remand, Exhibit (" Ex.") 1, Letter from Plaintiff to Louis DaSilva of 7/12/02. Thus, this court finds that Plaintiff's claim is based upon an alleged breach of the Union's duty of fair representation, despite his attempt to frame the Complaint in state-law terms. See BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d at 832 ("[T]he artful pleading doctrine permits a district court to recharacterize a putative state-law claim as a federal claim when a review of the complaint, taken in context, reveals a colorable federal question within a field in which state law is completely preempted.").

"Pre-emption by federal law cannot be avoided by characterizing the Union's negligent performance of what it does on behalf of the members of the bargaining unit pursuant to the terms of the collective-bargaining contract as a state-law tort." United Steelworkers of Am. v. Rawson, 495 U.S. 362, 371-72, 110 S.Ct. 1904, 1911, 109 L.Ed.2d 362 (1990); see also BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 831-32 (1st Cir. 1997)("[W]e hold that a district court possesses federal question jurisdiction when a complaint, though garbed in state-law raiment, sufficiently asserts a claim implicating the duty of fair representation."). Accordingly, the court concludes that removal was proper because the court would have had original federal question jurisdiction of the case had it been filed in this court. See 28 U.S.C. 1441(b); BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d at 830.

As the Union observes, Plaintiff has pointed to no procedural defect associated with the removal of this action

which would warrant remand, see Defendant's Mem. Opposing Remand at 1, 4, and none is apparent to the court. Moreover, while principles of abstention afford federal courts the power to remand cases where the relief sought is equitable or otherwise discretionary, see Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 731, 116 S.Ct. 1712, 1728, 135 L.Ed.2d 1 (1996), that is not the situation here. Plaintiff seeks damages only. See Complaint (stating that the Union's actions caused him to suffer financial loss and seeking \$5000.00 damages and \$19.00 court costs). Accordingly, Plaintiff's Motion to Remand should be denied, and I so recommend.

II. The Motion for Judgment

At the March 24, 2003, hearing, Defendant's counsel acknowledged that several of the grounds upon which the Union originally based its Motion for Judgment—lack of personal jurisdiction over the Union under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, lack of personal jurisdiction over the Union under the Massachusetts long arm statute and the Due Process Clause, and improper venue—had been addressed by Judge O'Toole's transfer of the matter to the District of Rhode Island. Accordingly, the court considers only the issue of whether the case should be dismissed for failure to state a claim upon which relief can be granted because Plaintiff's claim under Chapter 93A of the Massachusetts General Laws is preempted by federal law. See Motion for Judgment at 1; Defendant's Mem. Supporting Judgment at 1, 3-4.

Defendant's counsel argued at the hearing that because Plaintiff maintained in his letters to Judge O'Toole that he was not asserting any federal claims, under the First Circuit's ruling in BIW Deceived v. Local S6, Indus. Union of

Marine & Shipbuilding Workers of Am., 132 F.3d 824 (1st Cir. 1997), the action should be dismissed. Plaintiff responded that his comments to Judge O'Toole were made in the context of his belief that the case belonged in state court and that his claims should be heard somewhere.

To a point, the travel in BIW Deceived is similar to that of the instant case. Some factual background is in order. In 1995, the Bath Iron Works ("BIW") hired a number of electricians and pipefitters, including the plaintiffs. See BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d at 827. The defendant union participated in the job interviews pursuant to the terms of an existing collective bargaining agreement. See id. According to the plaintiffs, during the interviews the union made them certain promises regarding the duration of their employment at BIW. See id. The promises, however, proved to be false, and the plaintiffs were laid off after a short period of employment. See id. They filed suit against the union in state court, alleging various state-law causes of action. The defendant union removed the matter to federal district court. See id. The plaintiffs filed a motion to remand the case to state court on the ground that their suit involved only state-law claims. See id. The district court denied the motion to remand, agreeing with the union that the plaintiffs' claims were preempted by federal law. See id. at 827-28. The plaintiffs subsequently filed a motion for judgment on the pleadings in the defendant's favor in order to appeal the district court judge's denial of their motion to remand. See id. at 828. The motion for judgment on the pleadings was eventually granted, and the plaintiffs appealed the denial of their motion to remand to the First Circuit.

See id. The First Circuit affirmed the district court's decision. See id. at 834.

In the instant case, Defendant's counsel argued at the March 24, 2003, hearing that the First Circuit's holding in BIW Deceived mandates dismissal of Plaintiff's claims here. Counsel stated that because the plaintiffs in BIW Deceived insisted that they were pursuing only state claims after removal their claims were dismissed. However, this is a misapprehension of what actually happened. See BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 828 (1st Cir. 1997) ("The parties treat this appeal as if Judge Carter dismissed the suit because the various causes of action were preempted, but this is an inaccurate characterization of what actually transpired."). As the First Circuit stated, "[t]here was no dismissal: while Judge Carter expressed his belief that the plaintiffs' claims were preempted, the only ruling that he made on a contested matter consisted of denying the plaintiffs' motion to remand." Id. (emphasis added). While ultimately the plaintiffs in BIW Deceived were bound by the judgment to which they had consented, see id. at 834, that case provides no precedent for dismissing Plaintiff's claims here.

While Plaintiff would prefer to have his case heard in state court, Defendant has argued persuasively that the Union should not be deprived of a federal forum by Plaintiff's framing of "a truly federal claim under the rubric of state law," Defendant's Mem. Opposing Remand at 3. The court has agreed that Plaintiff's claim should be recharacterized as a federal claim, namely a violation of the Union's duty of fair representation, and that removal was proper because this court would have had jurisdiction of the matter had it been filed

here originally. See Discussion supra at 8-9; see also BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers of Am., 132 F.3d 824, 832 (1st Cir. 1997); Sousa v. Stop & Shop Supermarket Co., No. CIV.A.98-12629-GAO, 1999 WL 244643, at * 1 (D. Mass. Apr. 16, 1999) ("Despite the plaintiff's formulation of the claim in terms of state law only, the Court should recharacterize the complaint to reflect that reality and affirm the removal despite the plaintiff's professed intent to pursue only state law claims.")(internal quotation marks omitted). Defendant cannot now assert that Plaintiff should be deprived of a forum altogether because he has not alleged a federal claim. Consequently, the court recommends that Defendant's Motion for Judgment be denied.

Conclusion

For the foregoing reasons, I recommend that both Plaintiff's Motion to Remand and Defendant's Motion for Judgment be denied. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

David L. Martin
United States Magistrate Judge
June 27, 2003

