

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT RYDER	:	CIVIL ACTION
	:	
v.	:	
	:	
BAKERITE ROLLS, et al.	:	
	:	
and	:	
	:	
BAKERITE ROLLS, et al.	:	
	:	
v.	:	
	:	
TEAMSTERS LOCAL Union NO. 463, et al.	:	NO. 98-1880

MEMORANDUM

Giles, J.

March 2, 1999

The Health & Welfare Fund and Pension Fund of the Philadelphia Bakery Employers and Food Driver Salesmen’s Union Local No. 463 and Teamsters Local No. 676 (the “Fund”) and its representatives, Norman Trapp and Robert Ryder, brought action against the Northeast Foods company (“Northeast Foods”) and its subsidiaries, BakeRite Rolls (“BakeRite”) and Automatic Rolls of New Jersey (“Automatic”), to recover alleged delinquent contributions to the Fund. BakeRite and Automatic subsequently filed a third party complaint against Teamsters Local Union 463 (the “Union”) and Ryder seeking indemnification for all damages and costs resulting from that action. In their complaint, BakeRite and Automatic set forth two counts in which they asserted that the Union and

Ryder breached various collective bargaining agreements with them.

Before the court is Union and Ryder's motion to dismiss the third party complaint and/or for summary judgment. For reasons that follow, their motion is denied.

FACTUAL BACKGROUND

At all times material to this action, the Union has been the exclusive bargaining agent for certain employees of BakeRite and Automatic covered under separate collective bargaining agreements. (Goodman Aff. ¶ 2.) The Union and BakeRite had a collective bargaining agreement that expired on September 30, 1997 (the "BakeRite agreement"). (Third Party Compl. at ¶ 8.) The Union and Automatic were parties to successive collective bargaining agreements, the most recent of which expired January 2, 1998 (the "Automatic agreement"). (Third Party Compl. at ¶ 11.)

Pursuant to the BakeRite and Automatic agreements, BakeRite and Automatic were required to make contributions to the Fund. (Third Party Complaint at ¶ 12.) These contributions were to be made in weekly amounts, not to exceed those specified in the BakeRite and Automatic agreements at Articles 10 and 13. (Third Party Compl. at ¶ 12; BakeRite Agreement of 10/1/94 at Articles 10 and 13; Automatic Agreement of 1/1/95 at Articles 10 and 13.) In or about July 1997, the Fund modified the pension benefits and increased BakeRite and Automatic's corresponding contribution rates to levels that exceeded agreed upon limits. (Third Party Complaint at ¶ 15.)

BakeRite and Automatic assert that the Union and Ryder engaged in conduct which caused this modification and increase without notifying them or giving them an opportunity to bargain. (Third Party Compl. at ¶¶ 13, 14, 17.)

On or about April 1, 1998, representatives of BakeRite and the Union reached an agreement for a new collective bargaining agreement (the “new BakeRite agreement”). (Third Party Compl. at ¶ 31.) As part of that agreement, the Union agreed to BakeRite’s proposal to establish a 401(k) plan to replace the then current pension plan. (Third Party Compl. at ¶ 31.) The Union and Ryder agreed to present the new BakeRite agreement to the Union membership for ratification on April 3, 1998. (Third Party Compl. at ¶ 31.) They subsequently refused to do so. (Third Party Compl. at ¶ 36.) BakeRite was later informed that the new agreement was rejected by the Union’s executive committee. (Third Party Compl. at ¶ 34.) Regardless of a no-strike clause in the new BakeRite agreement, the Union then went on strike without authorization from its membership, and Ryder established a picket line at BakeRite and Automatic’s joint facility. (Third Party Compl. at ¶¶ 34, 35, 37, 41.)

On April 8, 1998, the Fund, Norma Trapp and Robert Ryder, brought action against the Northeast Foods, BakeRite, and Automatic to recover alleged delinquent contributions to the Fund. The complaint asserted that Northeast Foods, BakeRite, and Automatic had failed to make their full contributions to the Fund as they were required and had refused to comply with audit procedures to which they were bound. (See Compl.

at ¶¶ 8-44.)

BakeRite and Automatic then filed a third party complaint against the Union and Ryder asserting jurisdiction pursuant to Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), as amended, 29 U.S.C. § 185. (Third Party Compl. at ¶ 5.) They alleged that the Union and Ryder violated the BakeRite and Automatic agreements by causing the Fund to modify its benefits and increase its corresponding contribution rates beyond the specified amount, and violated the new BakeRite agreement by refusing to take the agreement to the Union membership for ratification and by calling an unauthorized strike in violation of the agreements no- strike clause. (Third Party Complaint at ¶¶ 42-52 .) BakeRite and Automatic assert that this conduct rendered the Union liable to indemnify them for damages and costs that they might incur as a result of the Fund’s delinquent contribution action. (Third Party Complaint at ¶¶ 45, 52.)

The Union and Ryder now move for dismissal of the third party complaint, and/or summary judgment in their favor, on the grounds that this court lacks subject matter jurisdiction over the third party complaint and that the third party complaint fails to state a colorable claim against Ryder, individually. For reasons that follow, the Union and Ryder’s motion to dismiss and/or for summary judgment, is denied.

ANALYSIS

I. Subject Matter Jurisdiction over the Third Party Complaint.

The Union and Ryder argue that this court lacks subject matter jurisdiction over BakeRite and Automatic's claims because the alleged conduct which forms at the basis of the third party complaint involves unfair labor practices and representational issues within the jurisdiction of National Labor Relations Board ("NLRB"). Further, they point out that the third party complaint is premised on the same asserted facts as those currently pending before the NLRB in a claim previously brought by BakeRite and Automatic.

Under the preemption doctrine in labor law, federal courts must defer to the primary jurisdiction of the NLRB if a matter is arguably subject to Sections 7 or 8 of the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151-169 (1982).¹ See Mack Trucks, Inc. v. Instructional Union, United Automobile, Aerospace and Agricultural Implement Workers of America, 856 F.2d 579, 585 (3d Cir. 1988). Nevertheless, in Section 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a) (1982), Congress "carved out" an exception to the NLRB's exclusive jurisdiction and

¹ Section 7 of the NLRA regulates the right of employees to organize and to engage in collective bargaining. 29 U.S.C. § 157. Section 8 prohibits employers and Unions from committing unfair labor practices, which are defined in that provision. 29 U.S.C. § 158.

granted district courts jurisdiction over suits for violations of contracts.² See id. (citing Vaca v. Snipes, 386 U.S. 171, 180-181 (1967)). Even if a matter is arguably subject to Sections 7 or 8 of the NLRB, the NLRB’s primary jurisdiction does not preempt a court’s jurisdiction over Section 301 causes of action:

A labor case . . . can be within the concurrent jurisdiction of the NLRB and the federal courts, but it is within the NLRB’s exclusive jurisdiction only if it involves an unfair labor practice that is not also covered by § 301(a). Thus, the NLRB’s jurisdiction is “exclusive” only if there is no jurisdiction under § 301(a).

Id.

On its face, the third party complaint sets forth sufficient claims to establish subject matter jurisdiction for this court. Count I states allegations against the Union and Ryder for violations of Articles 10 and 13 of the BakeRite and Automatic agreements governing Fund contribution rates. Count II states allegations for abrogation and breach of the new BakeRite agreement by the Union and Ryder when they refused to take that agreement to the Union membership for ratification and called a strike in violation of that

² Section 301 provides, in relevant part:

Suits for violations 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.

29 U.S.C. § 185(a).

agreement's no strike clause. Although these claims may raise some unfair labor practice and representational issues that are within the NLRB's jurisdiction, they also appear to raise actionable claims against the Union and Ryder for breaches of its collective bargaining agreements pursuant to Section 301(a).

As this court finds that the third party complaint states claims for breach of contract that are sufficient to establish subject matter jurisdiction for this court pursuant to Section 301(a), the Union and Ryder's motion for dismissal on the basis of lack of subject matter jurisdiction is denied. The motion for summary judgment is denied without prejudice. Such motion is inappropriate at this time as the factual record has not been fully developed.

II. BakeRite and Automatic's Claims Against Ryder Individually

Citing Atkinson v. Sinclair Refining Company, 370 U.S. 195 (1962), the Union and Ryder argue that BakeRite and Automatic's allegations against Ryder, individually, fail to state a claim as they are barred by the Labor Management Relations Act ("LMRA"), § 301(b), 29 U.S.C. § 185(b).³ See Atkinson, 195 U.S. at 249 (holding that the LMRA precluded the award of monetary damages against individual Union

³ Section 301(b) provides that "(a)ny 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 assets." 29 U.S.C. § 185(b).

officers and members). They assert that pursuant to Section 301(b), Ryder cannot be held individually liable for damages resulting from conduct which he undertook while acting on the Union's behalf.

BakeRite and Automatic represent that they are not seeking monetary damages against Ryder as an individual, and this court finds that such claims have not been asserted in the third party complaint. Notwithstanding, BakeRite and Automatic assert claims for equitable relief against Ryder, and assert that such non-monetary relief is not barred by the LMRA.

The third circuit has found that Section 301(b) does not preclude either declaratory or injunctive relief. Wilkes-Barre Publishing Co v. Newspaper Guild of Wilkes-Barre Local 120, 647 F.2d 372, 378 (3d Cir. 1981). Accordingly, this court finds that the LMRA does not bar BakeRite and Automatic's equitable claims against Ryder. The Union and Ryder's motion for dismissal of BakeRite and Automatic's claims for injunctive and declaratory relief against Ryder and/or for summary judgment are denied with prejudice.

CONCLUSION

This court has subject matter jurisdiction under Section 301(a) of the Labor Management Relations Act over the third party complaint as it set forth sufficient allegations to establish a colorable claim for breach of contract . Further, Section 301(b) does not bar this court from ordering non-monetary relief against Ryder, individually. The Union and Ryder's motion to dismiss and/or for summary judgment is therefore denied.

An appropriate order follows.

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ORDER

AND NOW, this 2nd day of March 1999, upon consideration of the motion to dismiss and/or for summary judgment of the third party defendants, Teamsters Local Union No. 463 and Robert Ryder, and the response thereto of third party plaintiffs, BakeRite Rolls and Automatic Rolls of New Jersey, it is hereby ORDERED that:

1. The third party defendants' motion to dismiss for lack of subject matter jurisdiction, is DENIED with prejudice. Further, their motion for summary judgment on this ground is DENIED without prejudice. Summary judgment is inappropriate at this time as the factual record has not been fully developed.

2. The third party defendants' motion to dismiss for failure to state a claim against Ryder, individually, is DENIED with prejudice. Further, their motion for summary judgment on this ground is DENIED with prejudice.

BY THE COURT:

JAMES T. GILES, C.J.