STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

CHRO ex rel. David Joiner, Complainant	CHRO No. 0410177 Fed No. 16aa400240
v.	
H.E.R.E. Local 217, Respondent	July 21, 2006

Memorandum of Decision on Respondent's
Motion to Dismiss

The complainant filed an affidavit of illegal discriminatory practice ("the complaint") dated November 5, 2003, against the respondent (his union) with the commission on human rights and opportunities ("commission"), alleging *inter alia* that, the respondent discriminated against him in denying him union representation on the basis of his race (African-American) and color (black) in violation of General Statutes § 46a-60 (a) (3) and Title VII. Furthermore, the complainant alleges that the respondent retaliated against him as a result of his filing a discrimination complaint against his employer (Chartwells) with this commission in violation of General Statutes § 46a-60 (a) (4), and that the respondent violated General Statutes § 46a-60 (a) (5) by aiding and abetting his employer in denying him privileges and rights associated with a seniority system pursuant to a collective bargaining agreement ("CBA") between Chartwells and the respondent. The respondent filed a motion to dismiss all allegations relating to the violations of state laws on the basis that said alleged violations are preempted by § 301 of the Labor and Management Relations Act of 1947 (LMRA), codified as 29 U.S.C. §

185. For the reasons set forth herein, the respondent's motion to dismiss is GRANTED.

I. Background

The following recitation of the facts is from the pending complaint (affidavit), and its attached exhibit (#1), and pleadings and documents relied on by the complainant and/or commission in support of the allegations pending.

The complainant, in his complaint, alleges that while working for Chartwells at Trinity College he filed a discrimination complaint against Chartwells on May 10, 2003 (par. 4), that he was terminated by Chartwells (date not given) and that he was reinstated on May 4, 2003 (par. 5). In May 2003, shortly after having been reinstated the complainant instituted his "bumping rights"[1] over employees with less job classification seniority than he had. Chartwells denied the complainant his bumping rights and further informed the complainant that he was less senior than the individuals he was attempting to bump (par. 6). The complainant alleges "according to respondent's union contract in Article 12, employees' seniority is based on job classification and not overall employment with the respondent" (par. 7).

As a result of Chartwells denying the complainant his bumping rights the complainant initiated a union grievance against Chartwells.[2] The respondent notified the complainant by letter that it was upholding Chartwells decision to deny him his bumping rights (par. 8, exhibit 1 of complaint). Specifically, the respondent stated that

[1] "Bumping rights" are not defined or explained by the complainant.

[2] Exhibit 1 of the complaint details the grievance referred in the complaint along with other grievances that the complainant initiated, along with the outcome or proposed disposition of the grievances. For purposes of this decision, the references to other pending or resolved grievances are not germane to the ultimate ruling on the respondent's motion to dismiss.

seniority is based on length of service at Trinity College and not as to the length of time in a particular job classification with reference being made to Article 12 (order of call) Section 33.1 and Article 33 (seniority) Section 12.2.

The complainant alleges that despite having been a banquet captain prior to four other employees (all non-black), two of these employees allowed to bump the complainant, thereby reducing the number of hours he worked to the point of his being placed on "on call"[3] status. (par. 9, 10, 11) The complainant alleges that the respondent, by accepting Chartwells' interpretation of the CBA regarding seniority and by refusing to provide union representation due to his race and color, is also aiding and abetting Chartwells in denying him bumping rights, reducing his hours and being placed on on-call status (par. 14).

The commission takes the position that Section 301 of the LMRA, as interpreted under the alleged facts, does not preempt his complaint. Furthermore, the commission argues the CBA, while it may have to be referred to, does not require interpretation so as to warrant the preemption of complainant's claims based on state law. The commission argues as well, that the states employment discrimination laws create rights independent of the CBA and thus would remove the issue of preemption from consideration.

The complainant though pro se has taken an active role in the prosecution of his claims and has both argued at the hearing on this motion (May 19, 2006) and filed memoranda in opposition to respondent's motion. The argument advanced by the complainant, in addition to agreeing with the commission regarding not having to

[3] The term "on call" is not defined or explained by the complainant.

interpret the CBA, is that if preemption were a possibility based on the alleged facts, the commission, after having completed its investigation would not have certified this case for a public hearing.[4]

II. Discussion

A. Standard

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals,* 237 Conn. 184 (1996); *Upson v. State,* 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp.,* 44 Conn. App. 446, 451-52, cert. denied. 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant and every reasonable inference is to be drawn in his favor; *New England Savings Bank v. Bedford Realty Corp.,* 246 Conn. 594, 608 (1998); and "[e]very presumption favoring jurisdiction shall be indulged." *Conn. Light & Power Co. v. Costle,* 179 Conn. 415, 421 (1980).

B. Preemption

Section 301 of the Labor Management Relations Act[5] completely preempts a state

[4] The post certification public hearing is de novo and as such is not an appeal or review of the commission's processing of the complaint prior to certification. See § 46a-84 (b).

[5] Section 301 of the LMRA states in pertinent part; 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.

law claim, "if the resolution of [the] state law claim depends upon the meaning of the collective bargaining agreement." *Magerer v. John Sexton & Co.,* 912 F.2d 525, 528 (1st Cir. 1990), quoting *Lingle v. Norge Division of Magic Chef, Inc*., 486 U.S. 399 405-06 (1988). The rationale behind this is "[t]he subject matter of 301 (a) is peculiarly one that calls for uniform law…. Once the collective bargain [is] made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolutions of disputes." (Internal quotation marks omitted.) *Barbieri, et al. v. United Technologies Corp.,* 255 Conn. 708, 723 (2001), quoting *Lingle v. Norge Division of Magic Chef, Inc.,* supra, 404 n 3. However, "[not] every state law suit asserting a right that relates in some way to a provision in a collective bargaining agreement or more generally to the parties to such an agreement necessarily is pre-empted by Section 301. The full scope of the pre-emptive effect of federal labor-contract law remains to be fleshed out on a case-by-case basis." *Barbieri v. United Technologies Corp.,* supra, 724, quoting *Allis Chalmers Corp. v. Lueck,* 471 U.S. 202, 220 (1985).

In this case the complainant alleges that he was denied bumping rights that he was entitled to based upon his seniority as detailed in Article 12 of the CBA. Furthermore, he alleges that he was retaliated against as a result of his filing a complaint with this commission, the retaliation referred to being the respondent's not upholding his seniority and bumping rights as defined in the CBA. Finally, the complainant argues that the respondent aided and abetted Chartwells in denying him his bumping rights based on

his seniority as detailed in the CBA, which the complainant specifically referred to in his complaint and attached as Exhibit 1. This exhibit in detail shows a marked discrepancy between the complainant's interpretation of the particular articles of the CBA and that of the respondent and Chartwells. By virtue of the complainant's own pleading, the rights he claims were denied him due to a claimed protected status require the interpretation of both the applicability and meaning of Articles 12 and 33 of the CBA. The need for interpreting the CBA must have occurred to both the commission and complainant. In addition to specifically referring to certain provisions of the CBA in the complaint, the commission proposed in its proposed exhibit list dated March 24, 2006 and at the pre-hearing conference[6] to introduce it as CHRO Exhibit 4 at the public hearing (trial). This particular document was described in respondent's "Objection to Exhibits and Witnesses Identified by the Complainant and Commission" as excerpts from either a human resources handbook or one or more collective bargaining agreements entered into by the University of Minnesota. The explained purpose by both the commission and complainant was to offer this tribunal a better explanation and understanding of the CBA between Chartwells and the respondent.[7] Additionally, if the CBA were to be merely referred to as opposed to requiring interpretation then there would be no need to offer exhibits for the undersigned to better understand the CBA. The commission, in addition to wanting to offer CHRO Exhibit 4, also intended to call witnesses identified in

[6] The purpose of a pre-hearing conference is to clarify the issues, resolve outstanding motions or matters regarding production of documents, stipulate to facts, identify witnesses and exhibits, and address other matters as the presiding officer deems necessary to aid in the timely disposition of the complaint. See § 46a-54-78a (b) (3) of the Regulations of the Connecticut State Agencies.
[7] See hearing on motion to dismiss, May 19, 2006 transcript pages 75-79.

a document titled “Commission’s Proposed Witness List” dated March 24, 2006. Of the eleven individuals on this list, four, not including the complainant, intended to testify regarding collective bargaining issues along with seniority and bumping rights.

Finally, Exhibit I of the complaint offers specifically the obvious need to interpret provisions in the CBA. In responding to the complainant the respondent stated:

> Because we do not reasonably believe that any of your arguments will convince an arbitrator of your **interpretation** of Articles 33 Section 33.1, the Union believes that further pursuit of your grievance regarding removal of your captain job title is unwarranted.

(Emphasis added.) Id. 3.

The commission and complainant argue that Connecticut’s laws dealing with employment discrimination establish rights independent of the CBA and thus are not preempted by Section 301. As a general rule this proposition is true. But the claimed independent nature of complainant’s state claims is removed by his own actions in pleading his case. The Supreme Court in *Allis-Chalmers v. Lueck,* supra, outlined a test to determine if the state claim is independent of the CBA, thus defeating a claim of preemption. The court stated if the “evaluation of the [state] claim is inextricably intertwined with consideration of the terms of the labor contract” (Id. 1208) then Section 301 is applicable. The complainant chose to plead his case in a manner that specifically implicates the meaning of the CBA. In the decision of *Duso v. Corbin & Russwin Architectural Hardware, Division of Emhart Industries, Inc.,* No. 3:93CV00862 (AHN) the Federal District Court of Connecticut found, based on facts remarkably similar to those in this case (denial of seniority based on a CBA), that by virtue of the

plaintiff's own manner of pleading his case that the resolution of the plaintiff's claim "will hinge more than tangentially on the interpretation of the CBA." Id 8. As a result of the necessity of interpreting provisions of the CBA, Section 301 of LMRA requires preemption of the state claims.

In addressing allegations (denial of promotion, retaliated against for engaging in protected activity based on plaintiff's race) again similar to those which are presented by the complainant, the Fifth Circuit Court of Appeals, found that Section 301 of the LMRA preempted the plaintiffs claims of promotion, **seniority** and assignment to training programs, all of which were provided for in the CBA and would require interpretation. *Reece v. Houston Lighting & Power Company,* 79 F.3d 485, 487 (cert. denied 519 U.S. 864) (1996).

The complainant by his own action in arguing that he was denied rights and benefits (albeit due to a protected status) detailed in the CBA has nonetheless brought into this case the requirement of interpreting certain articles of the CBA. It is difficult to imagine how any analysis of this case could be conducted under *McDonnell Douglas Corp. v.* Green*,* 411 U.S. 792 (1973) without first understanding and determining was the complainant entitled to the claimed seniority and the "bumping rights" that go with seniority. I therefore find, as did the District Court in *Duso* and the Fifth Circuit in *Reese,* that interpreting the CBA is necessary and as such preempts the complainant's state claims.

Title VII Claim

Having determined that Section 301 of the LMRA is applicable and having dismissed the state claims, there remains pending the complainant's Title VII allegation. This

tribunal "must act strictly within its statutory authority…It is a familiar principle that [an administrative agency] which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." (Citation omitted; internal quotation marks omitted.) *Groton Open Space v. Town of Groton,* 2005 WL 1084510, 17, quoting *Nissardo v. State Traffic Commission,* 259 Conn. 131, 156 (2002).

As a state commission (agency), this tribunal's jurisdiction to hear and adjudicate can be found in § 46a-56 (3), and by virtue of the definitions of "discriminatory employment practice" and "discriminatory practice" found in § 46a-51 (7) and (8), none of which mention or refer to Title VII as being under this commission's umbrella of jurisdiction. While it is true this commission investigates Title VII allegations, by virtue of a Work-Share Agreement with the Equal Employment Opportunity Commission, this agreement does not expand this tribunal's jurisdiction to adjudicate claims beyond the commission's statutory authorization.

While Title VII claims standing alone are beyond this tribunal's jurisdiction, evidence of unlawful practices under Title VII can be heard in the context of being a violation of § 46-58a,[8] which by virtue of this statute creates a state law violation upon the finding of a deprivation of rights under Title VII. *CHRO ex. rel. Crebase v. Procter Gamble Pharmaceuticals Inc.,* Case No. 330171, pg. 71, July 12, 2006. In the pending matter the complainant has not alleged a violation of § 46a-58(a). However, had he, that claim

[8] "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex blindness or physical disability."

too would have been dismissed as having been preempted for reasons previously discussed, state law is preempted by Section 301 of the LMRA. As a result, having no jurisdiction to hear the complainant's Title VII claim standing alone, I must and hereby do dismiss this claim as being outside the jurisdiction of this tribunal.

It is so ordered this 21st day of July 2006

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Thomas C. Austin, Jr.
Presiding HRR

cc.
David Joiner
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