

**IN THE EASTERN DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GREGORY SANGMEISTER,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
AIRBORNE EXPRESS, et al.,	:	
Defendants	:	NO. 01-2600

Newcomer, S.J. August , 2001

**M E M O R A N D U M**

Presently before the Court is the Motion of Defendants Airborne Express, Michael Matey and Jack Dougherty to Dismiss Plaintiff's Complaint or, in the Alternative, for Summary Judgment, and plaintiff's Request for Remand filed in response thereto. For the reasons outlined below, the Court will grant defendants' Motion to Dismiss as to Count I of plaintiff's Complaint, deny defendants' Motion to Dismiss and Motion for Summary Judgment as to counts II, III, IV, and V of plaintiff's Complaint, and grant plaintiff's request to remand the action back to state court.

**I. BACKGROUND**

Plaintiff Gregory Sangmeister is a Pennsylvania citizen who was employed at all pertinent times by Defendant Airborne Express, a Washington corporation, with a principal place of business in Pennsylvania. Plaintiff originally filed his Complaint in the Philadelphia County Court of Common pleas, and served the now-moving Defendants Airborne Express, Michael Matey, and Jack Dougherty, also employees of Airborne Express

("Defendants").<sup>1</sup> Defendants filed a Notice of Removal under 28 U.S.C. § 1441(b), pursuant to which this action was removed from the Philadelphia County Court of Common Pleas to this Court.

Plaintiff's Complaint consists of the following five counts: Count I against Airborne Express for negligence; Count II against Airborne Express for defamation; Count III against Dougherty and Genniro for assault and battery; Count IV against Dougherty and Genniro for defamation; and Count V against Matey for conspiracy.<sup>2</sup> The five counts stem from an alleged incident that occurred on January 12, 2001. According to the plaintiff, the defendants, while acting in the course of their employment, accused him of illegal activity while he was performing job duties at the First Union Bank Building in Philadelphia, Pennsylvania. Additionally, plaintiff asserts that the defendants repeated these allegations to First Union Bank employees and physically escorted him through that building. Plaintiff claims that as a result of this incident, he has suffered physical and/or psychological injury, and his professional and personal reputation has been irreparably

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<sup>1</sup>Plaintiff also named Ralph Genniro as a defendant. The docket shows, however, that plaintiff has yet to serve Mr. Genniro.

<sup>2</sup>In his Response to the Defendant's Motion to Dismiss, plaintiff stipulates to withdrawing the Negligence claim. Therefore, plaintiff's negligence claim will not be discussed in this Memorandum.

damaged. Moreover, plaintiff asserts that the alleged attack originated from a conspiracy designed by Defendant Michael Matey to ruin plaintiff's reputation for personal reasons.

The Defendants contend that the alleged incident occurred as part of a work-related investigation implemented to determine whether plaintiff stole a company-owned pager and used it to send harassing messages to Airborne Express' female employees. The Defendants allege that plaintiff's claims implicate the Collective Bargaining Agreement agreed to by Local 107 of the Teamsters Union (of which they allege plaintiff and the individual defendants are members) and Airborne Express ("CBA"). They assert that plaintiff's Complaint is an "artful pleading" designed to avoid federal preemption. The Defendants further contend that resolution of plaintiff's claims require interpretation of the CBA, and thus are completely preempted by § 301 of the Labor Relations Management Act, 29 U.S.C. § 185 ("LMRA").<sup>3</sup> On that basis, the Defendants had the case removed to this Court.

Following their Notice of Removal, the Defendants filed

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<sup>3</sup>Section 301, entitled "Suits by and against labor organizations," states in pertinent part that "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." 29 U.S.C. §185(a).

the instant Motion to Dismiss. Plaintiff responded to Defendants' Motion, conceding his claim for negligence but requesting that the case, with the remaining counts, be remanded to state court. Although plaintiff withdrew his negligence claim, he asserts that his remaining claims do not implicate the CBA, and are thus not preempted by § 301 of the LMRA. The Defendants respond to plaintiff by restating their position that federal jurisdiction is proper, and asking the Court to grant their Motion to Dismiss as unopposed pursuant to Local Rule 7.1 due to plaintiff's untimely Response.<sup>4</sup>

The initial issue for this Court is to determine whether § 301 of the LMRA preempts plaintiff's state law claims and confers proper subject matter jurisdiction on the Court.

## **II. LEGAL STANDARD**

A case can only be removed to federal court pursuant to 28 U.S.C § 1441(b) if there is diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332, or if there is a federal question to be resolved under 28 U.S.C. § 1331. Under

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<sup>4</sup>Local Rule of Civil Procedure 7.1(c) states that "any party opposing [a] motion shall serve a brief in opposition, together with such answer or other response which may be appropriate within fourteen (14) days after service of the motion and supporting brief. In absence of a timely response, the motion may be granted as uncontested." Local Rule of Civil Procedure 7.1(c). The Court declines to grant Defendants' Motion to Dismiss as unopposed in light of plaintiff's eventual response. Rather, the Court will examine whether there is proper subject matter jurisdiction conferred upon it in this action.

the federal question statute, federal jurisdiction is proper only if a federal question is facially present on the plaintiff's properly plead complaint. See Railway Labor Executives Ass'n v. Pittsburgh & L.E.R.R., 858 F.2d 936, 939 (3d Cir. 1988). This rule serves to make the plaintiff the "master of the claim." Caterpillar, Inc. v. Williams, 482 U.S. 386, 393 (1987). However, a court will not allow a plaintiff to avoid federal court "when the plaintiff's claim contains a federal claim 'artfully pled' as a state law claim." United Jersey Banks v. Parell, 783 F.2d 360, 367 (3d Cir. 1986).

A corollary to the well-plead complaint rule exists under the complete preemption doctrine which holds that "Congress may so completely preempt a particular area, that any civil complaint raising this select group of claims is necessarily federal in character." Railway Labor Executives Ass'n, 858 F.2d at 939 (quoting Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63-64 (1987)). Thus, "once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception a federal claim, and therefore arises under federal law." Caterpillar, 482 U.S. at 393.

**A. PREEMPTION UNDER THE LMRA**

It has been established that Congress intended § 301 of the LMRA to authorize federal courts to implement a uniform body

of federal law controlling disputes regarding collective bargaining agreements. See Beidleman v. Stroh Brewing Co., 182 F.3d 225, 231-32 (3d Cir. 1999). To ensure that contract terms have consistent meanings under state and federal law, "only the federal law fashioned by the courts under § 301 of the LMRA governs the interpretation and application of collective bargaining agreements." United Steelworkers of America, AFL-CIO-CLC v. Rawson, 495 U.S. 362, 368 (1990).

However, not every dispute between an employer and employee, or that slightly relates to a collective bargaining agreement, is eligible for preemption under § 301 of the LMRA. See Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985); Franchise Tax Bd. of the State of California v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1, 25 n.26 (1983). In Allis-Chalmers, the Supreme Court held that § 301 applies to tort claims invoking a breach of an employer's duty to the employee that was created by a CBA. See id. at 213. However state law rights and obligations are not preempted when they exist independently of the CBA and cannot be waived or altered. See id. Thus, if a plaintiff's claims allege that the defendant breached the duty of reasonable care owed to every person in society, the claim is not preempted.

Courts evaluate whether preemption is proper by determining whether the tort claim is "inextricably intertwined"

with consideration of the CBA's terms. Id. "When the meaning of the contract terms is not the subject of dispute, the bare fact that a collective-bargaining agreement will be consulted clearly does not require the claim to be extinguished." Beidlemen, 182 F.3d at 232 (quoting Lividas v. Bradshaw, 512 U.S. 107, 124 (1994)).

If a district court finds that the state law claims are not preempted, and thus that no subject matter jurisdiction exists, Federal Rule of Civil Procedure 1447(c) requires district courts to remand the action to state court. Fed.R.Civ.P. 1447(c). It follows that district courts' responsibility to assure themselves that subject matter jurisdiction exists also gives them the authority to remand sua sponte cases lacking such jurisdiction. See Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995).

In the instant case, although the plaintiff did not formally file a motion to remand, this Court must satisfy itself that subject matter jurisdiction is proper. The preemption issues raised by the Defendants must be decided by determining whether plaintiff's state law claims of assault, defamation, and conspiracy imply rights and duties that exist independently of the CBA. If so, the claims are not inextricably intertwined with the CBA, this Court has no subject matter jurisdiction over them, and they must be remanded.

### **III. DISCUSSION**

#### **A. ASSAULT AND BATTERY**

First, the Court will analyze the plaintiff's assault and battery claim. For the reasons stated below, the Court determines that this claim does not require interpretation of the CBA, and is thus not preempted under § 301 of the LMRA.

To succeed on an assault claim, Pennsylvania law requires plaintiff to prove that the defendants "(1) attempt[ed] to cause or intentionally, knowingly or recklessly caused bodily injury to another." 18 PA. CONS. STAT. ANN. § 2701(1)(2000) (also stating that this statute eliminates the distinction between assault and battery). Evaluation of such a claim requires a strictly factual analysis of the defendant's intent and whether he caused bodily injury to the plaintiff. Because the duty of care to refrain from assaulting someone exists independently of a CBA, interpretation of a CBA's terms is unnecessary. See Lee v. Pfeifer, 916 F.Supp 501, 509 (D. Md. 1996).

The Defendants argue that the alleged assault occurred within the scope of a work-place investigation, and therefore Article 45 section 2 of the CBA must be interpreted. However, the portion of Article 45 section 2 that is apparently pertinent here merely states that "no warning notice need be given to an employee if the cause of discharge is: . . . (3) Proven theft or dishonesty. Not applicable to issues of time." The Court finds

that this provision is irrelevant to the analysis of an assault claim entailing factual determinations of intent, causation, and harm.

Similarly, Article 37 of the CBA, the non-discrimination provision and the second section that Defendants argue needs interpretation, does not establish or define a duty concerning the assault of an employee. Thus, interpretation of this provision is immaterial to whether the defendants assaulted the plaintiff. Whether the assault, an illegal activity, occurred during a workplace investigation, as Defendant claims, is extraneous because any provision of the CBA "proporting to give management the right to assault an employee would be illegal." Lee, 916 F.Supp. at 509 (citing to Allis-Chalmers, 471 U.S. at 212). This Court concludes that plaintiff's assault and battery claim is not preempted by the LMRA and will remand said claim.

#### **B. DEFAMATION**

This Court will also remand plaintiff's defamation claims against Airborne Express and individual Defendants Ralph Genniro and Jack Dougherty to state court because the resolution of those claims does not depend on an interpretation of the CBA.

Defamation is defined by Pennsylvania law in 42 PA. CONS. STAT. ANN. §8343 (2000). The plaintiff bears the

burden of proving: (1) the defamatory character of the communication; (2) its publication by defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. See Id.

Statements concerning management-level communications regarding an employee's job performance are generally found to be conditionally privileged. See Peek v. Philadelphia Coca-Cola Bottling Company, 1997 WL 399379 at \*3 (E.D.Pa. July 16, 1997). However, courts have consistently distinguished alleged defamatory statements made in the context of a disciplinary investigation and those made outside such proceedings. See Id. (citing Furillo v. Dana Corp. Parish Div., 866 F.Supp. 842, 848 (E.D.Pa. 1994) and Monsour v. Delco Remy Plant, 851 F.Supp. 245, 246 (S.D.Miss. 1994)). For example, in Meier v. Hamilton Standard Electronic Systems, Inc. Teledynamics Div., 748 F.Supp 296, 299-300 (E.D.Pa. 1990), the court found that because the plaintiff alleged that defamatory statements were made outside the scope of disciplinary proceedings to people who "had no connection with the grievance procedures" the defamation claim was not preempted by § 301 of the LMRA. Id.

In this case, the Defendants argue that the alleged

defamatory statements were made while plaintiff was acting in the scope of his employment and within the context of a disciplinary investigation, and therefore such statements implicate the CBA. The plaintiff does assert that the defendants defamed him while he was working, but denies that the statements were made in the context of a grievance or investigatory procedure. The alleged defamatory statements were told to employees of the First Union Bank, third parties not associated with Airborne Express.

The Defendants fail to point to any section of the CBA that they believe is implicated by the defamation claim. They merely assert that because the comments were made during the course of a disciplinary investigation, they "implicate[] the employer's authority under the CBA." However, analogous to Meier, there is nothing in the CBA that "suggests that the results of these investigations may be disseminated or discussed with those who would not have authority to discipline authorities." Id. Other than stating that proven theft is grounds for immediate discharge, the CBA ignores what constitutes a proper investigation of theft, "thus interpretation of the agreement will not help resolve these claims." Id. (Citing to Tellez v. Pacific Gas and Elec. Co., Inc., 817 F.2d 536, 538 (9th Cir. 1987)). Therefore, the Court finds that no duties created by the CBA are implicated, the CBA will not need to be interpreted, and preemption of plaintiff's defamation claims is

improper.

### C. CONSPIRACY

Plaintiff's conspiracy claim against Defendant Michael Matey also does not require interpretation of the CBA.

Accordingly, this claim will also be remanded to state court.

Because plaintiff does not cite to 18 PA. CONS. STAT. ANN. § 903 (2001), the statute governing criminal conspiracy, the Court assumes that he is alleging common law civil conspiracy. To prove civil conspiracy, a plaintiff "must show that two or more persons combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means." Scully v. US WATS, Inc., 238 F.3d 497, 516 (3d Cir. 2001) (citing Doe v. Kohn, Nast & Graf, P.C., 862 F.Supp. 1310, 1328 (E.D.Pa. 1994)). "This showing may be proved by acts and circumstances sufficient to warrant an inference that the unlawful combination had been in point of fact formed for the purpose charged." Id. (citing Fife v. Great Atlantic & Pacific Tea Co., 356 Pa. 265 (1947)).

Defendants assert that specific sections of the CBA must be interpreted to resolve this claim, because plaintiff is questioning the manager's authority to conduct an investigation. The Defendants rely on the following sections of the CBA: Article 45, Sections 2, 3, and 5 (Discharge or Suspension); Article 6 (Maintenance of Standards); Article 7 (Local and Area Grievance Machinery); and Article 37 (Non-discrimination); and those "which

relate to a workplace and working conditions." The sections of the CBA to which the Defendants point the Court do not mention any tort claims, including conspiracy.

The plaintiff in the instant case is unlike the plaintiff in Franks v. O'Connor Corp., 1992 WL 301266 at \*5 (E.D.Pa. Oct. 16, 1992), whose conspiracy claim against his manager stemmed from failure to pay wages required under the CBA. Here, the plaintiff is asserting that the Defendant Matey had a duty not to conspire to assault and defame him - a duty not governed by the CBA. Contrary to the Defendants' assertion, plaintiff does not appear to be question the manager's authority to conduct an investigation; rather, plaintiff asserts that Defendant Matey "orchestrated a conspiracy to physically and verbally abuse plaintiff . . . and to have his good name and reputation defamed."

The Court finds that interpretation of the CBA's contract terms is not necessary because the plaintiff is not asserting that his employer had no basis or right to investigate him, or that he was unfairly discharged or suspended. Moreover, the CBA's sections regarding workplace conditions and customs are not applicable to the plaintiff's conspiracy claim. Therefore, the Court concludes that plaintiff's conspiracy claim against Defendant Michael Matey is not preempted under § 301 of the LMRA.

**IV. CONCLUSION**

The Court finds that plaintiff's claims do not require interpretation of the CBA for their resolution. The Court further determines that the plaintiff did not construe his complaint to avoid deliberately federal preemption. Therefore, the Court concludes that plaintiff's claims are not preempted, and a state court's resolution of these claims will not hinder Congress' goal of creating a uniform body of law to govern disputes over collective bargaining agreements. Accordingly, the Court will remand to state court the remaining counts, Counts II, III, IV, and V, of plaintiff's Complaint.

AN APPROPRIATE ORDER FOLLOWS.

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Clarence C. Newcomer, S.J.

**IN THE EASTERN DISTRICT COURT  
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GREGORY SANGMEISTER	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
AIRBORNE EXPRESS, et al.,	:	
Defendant	:	NO. 01-2600

**O R D E R**

AND NOW, on this        day of August 2001, it is hereby  
ORDERED as follows:

(1) Defendants' Motion for Leave to File Reply (Paper #6) is GRANTED.

(2) Defendant's Motion to Dismiss is GRANTED as to Count I of Plaintiff's Complaint, plaintiff having withdrawn said Count. Count I is DISMISSED from this action.

(3) Defendant's Motion to Dismiss (Paper #3) is DENIED as to Counts II, III, IV and V of Plaintiff's Complaint.

(4) Plaintiff's request to remand Counts II, III, IV and V of this action to the Court of Common Pleas of Philadelphia County is GRANTED.

(5) The action is REMANDED to the Court of Common Pleas of Philadelphia County.

(6) The Clerk of Court shall mark this case closed.

AND IT IS SO ORDERED

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Clarence C. Newcomer, S.J.