

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

LOCAL 1069, INTERNATIONAL
UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL
WORKERS OF AMERICA -- UAW,
Plaintiff,

v.

BOEING HELICOPTERS (A DIVISION
OF THE BOEING COMPANY),
Defendant.

CIVIL ACTION

NO. 98-4113

M E M O R A N D U M

Broderick, J.

November 12, 1998

Plaintiff, Local 1069, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (hereinafter "Union"), a labor union representing employees at the Boeing Helicopter Plant located in Ridley Park, Pennsylvania, has brought this action seeking injunctive relief. The Union seeks to enjoin Defendant, Boeing Helicopters (A Division of the Boeing Company) (hereinafter "Boeing"), from subcontracting work without giving the Union proper notice, allegedly in violation of the parties collective bargaining agreement. This Court held a conference on the matter and, with the consent of the parties, consolidated the hearing for a preliminary injunction with a hearing on the merits pursuant to Federal Rule of Civil Procedure 65(a)(2). Boeing has filed a motion for summary judgment under Rule 56(c) of the Federal Rules

of Civil Procedure. Boeing's motion and the Union's response thereto are now before the Court. For the reasons set forth below, Boeing's motion for summary judgment will be granted.

I. SUMMARY JUDGMENT STANDARD OF REVIEW

In order to prevail on a summary judgment motion, the moving party must show from the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court must accept the non-movant's version of the facts as true, and resolve conflicts in the non-movant's favor. Big Apple BMW, Inc. v. BMW of North American, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993).

The moving party bears the initial burden of demonstrating the absence of genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A disputed factual matter is a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A

fact is material if it might affect the outcome of the lawsuit under the governing substantive law. Id.

Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. The non-moving party may not rely on bare assertions, conclusory allegations or suspicions. Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982). Rather, the non-movant must then "make a showing sufficient to establish the existence of every element essential to his case, based on the affidavits or by the depositions and admissions on file." Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992).

II. DISCUSSION

The Union and Boeing are parties to a collective bargaining agreement effective on January 22, 1996. Incorporated in the collective bargaining agreement is a "Production Subcontracting Letter" which states in relevant part:

[T]he Company has the right to subcontract work and designate the work to be performed by the Company and the places where it is to be performed, which right shall not be subject to arbitration To enable the Union to suggest alternatives that would allow the retention of work within the bargaining unit, the Company will, at least ninety (90) days prior to signing the subcontract, provide notice to the Union of any plans to subcontract a significant function involving work then being performed by bargaining unit

employees which would directly result in the elimination of fifty (50) or more bargaining unit jobs.

The collective bargaining agreement also contains a detailed grievance and arbitration procedure. A grievance is defined as a "difference between the Company and any employee concerning working conditions, or the interpretation or application of any provision of this Agreement." The agreement sets forth a four-step procedure for processing grievances as well as the arbitration process to be used when the grievance is not resolved by those procedures.

During the Spring of 1998 Boeing made plans to discontinue its sheet metal fabricating operations and subcontract these jobs as part of a larger, nationwide restructuring and cost-cutting plan. The parties do not dispute that the Union was entitled to ninety days notice prior to the signing of the subcontracting agreements. The parties also agree that the dispute over whether or not the Union received notice in a timely fashion is subject to mandatory arbitration under the collective bargaining agreement.

The parties dispute when the Union was provided with notice of Boeing's subcontracting plans. The Union, in a Declaration under oath by Albert Gavetti, President of Local 1069, states that it was not made aware of Boeing's subcontracting plans until August, 1998, after the arrangement to subcontract had already been made. (Gavetti's Declaration ¶¶ 11, 12). Boeing, on the

other hand, in a Declaration under oath by A.D. Mansi, Director-Labor Relations (Helicopter Divisions) at Boeing's Ridley Park facility, states that the Union was given general notice of its restructuring and "outsourcing" plans in March 1998 and specifically notified of the subcontracting at issue on May 19, 1998. (Mansi Declaration ¶¶ 18-23).

The Court determines that, for the purposes of summary judgment, a genuine issue of fact exists as to when the Union was given notice of Boeing's subcontracting plans. However, the Court is of the opinion that it is not a material fact because, as a matter of law, the Union is not entitled to an injunction in this matter.

Congress has made clear that injunctions in labor disputes are highly disfavored. The Norris-LaGuardia Act, 29 U.S.C. § 101 et seq., states that "[n]o court of the United States ... shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute...." 29 U.S.C. § 101. The Supreme Court has recognized a narrow exception when the issuance of an injunction is necessary to force the parties to comply with a mandatory arbitration clause in the collective bargaining agreement. See Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970). The Courts have recognized such an exception in order to further the strong national policy favoring arbitration

of disputes when the parties have chosen it as their preferred conflict resolution method. See, e.g. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960). In determining whether such an injunction is appropriate the Court must apply a three-part test: first, "whether the underlying dispute is subject to mandatory arbitration[;]" second, "whether the employer, rather than seeking arbitration of his grievance, is 'interfer[ing] with and frustrat[ing] the arbitral processes ... which the parties had chosen[;]'" and third, whether an injunction would be appropriate applying traditional principles of equity. United Steelworkers of America, AFL-CIO v. Fort Pitt Steel Casting, 598 F.2d 1273, 1278-79 (3d Cir. 1979) (quoting Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397, 407); see also Nursing Home & Hospital Union No. 434 AFL-CIO-LDIU v. Sky Vue Terrace, Inc., 759 F.2d 1094, 1098 (3d Cir. 1985). Each of these requirements will be addressed in turn.

First, the Court must determine that the dispute over whether or not the ninety-day notice was received in a timely fashion is subject to mandatory arbitration under the collective bargaining agreement. The grievance provision in the collective bargaining at issue here is a broad one and the parties do not dispute that the Union's grievance is one that is subject to mandatory arbitration.

Second, the Court must determine that the employer is taking steps that would thwart the arbitral process. That is, the injunction must be necessary to "ensure that an arbitral award in the union's favor [would be] more than a 'hollow formality.'" Sky Vue, 759 F.2d at 1098 (quoting Fort Pitt, 598 F.2d at 1282). Here, the Court determines that Boeing has done nothing to thwart the arbitral process.

The Union filed this suit on August 6, 1998. On August 3, 1998 the Union sent a letter to the Director of Labor Relations for Boeing protesting the subcontracting. The letter indicates that it should be considered a grievance and asks for "immediate and expedited arbitration" of the grievance. Boeing responded to this letter on August 17, 1998, noting that the letter sent by the Union was not a grievance on the approved form used by the parties for more than thirty years. Boeing also noted that the collective bargaining agreement makes no provision for any type of expedited arbitration procedure. Nonetheless, Boeing offered to expedite the grievance by taking it directly to the Step 4 hearing stage. The Union responded by filing a grievance on the approved form on August 19, 1998 but has taken no other action to process its grievance or pursue arbitration in this matter.

The Union admits that it has not pursued the grievance during the three months that this action has been pending. The Union does not allege that Boeing has done anything to prevent it

from pursuing the grievance. Rather, the Union alleges that it believed that the grievance and arbitration procedure would take too long. The Union also alleges that Boeing has been selling off equipment used in sheet metal fabricating during the period while this suit would be pending, thereby making it unlikely that the Union would be able to get those lost jobs back.

Finally, the Court must consider whether or not granting the injunction is appropriate under traditional principles of equity. In doing so, the Court must consider the following four factors: first, the probability of ultimate success on the merits by the party seeking the injunction; second, the irreparable harm that the party seeking the injunction will suffer if an injunction is not granted; third, the Court must balance the harm to the moving party if the injunction is not granted with the harm to the opposing party if the injunction is granted; and fourth, whether or not the moving party has an adequate remedy at law. See, e.g. Local 802, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers AFL-CIO v. Sun Ship, Inc., 511 F. Supp. 347, 349 (E.D. Pa. 1981).

Initially, the Court must determine whether or not the Union has demonstrated that it is likely to succeed on the merits. The Court recognizes that there is a disputed issue of fact as to when the Union received notice of Boeing's subcontracting plans. However, the Court determines that the Union has not demonstrated

that it is likely to succeed on the merits of its claim when this matter goes to arbitration.

Next, the Court determines that the Union will not suffer irreparable harm if the injunction requested is denied. Whether or not the Union actually received the notice in a timely fashion, it is undisputed that the Union has now had more than 90 days notice of Boeing's plans. The collective bargaining agreement clearly recognizes Boeing's right to subcontract. The Union is simply entitled to notice and an opportunity to suggest alternatives. Boeing does not have to implement, or even seriously consider, these alternatives. Boeing's right to subcontract is not subject to arbitration, as clearly provided in the "Production Subcontracting Letter."

The Union's grievance concerning the notice they received is however, subject to the grievance and arbitration procedure. It is therefore possible, that should this dispute go to arbitration, as the parties agree that it should, the arbitrator could find in favor of the Union. The Union would, at most, likely be only entitled to money damages in connection with jobs lost without the requisite notice. When only money damages are at issue and there is no reason why the company will not be able to pay those damages, the party seeking the injunction has an adequate remedy at law and no injunction should issue. See, e.g., Pittsburgh Newspaper Printing Pressmen's Union No. 9 v.

Pittsburgh Press Co., 479 F.2d 607, 610-611 (3d Cir. 1973) (no injunction granted where losses other than monetary losses were merely speculative); contra Sky Vue, 759 F.2d at 1097-1099 (injunction granted where company was sold and was in process of distributing assets so no assets would be available from which union could collect arbitration award, if successful). There is no suggestion here that Boeing is closing the plant or going out of business.

The Court is of the opinion that the Union's actions in not pursuing the grievance procedure weighs against the granting of an injunction. The Union's dilatory conduct suggests that the harm to the Union in waiting for an arbitrator's decision will not be irreparable. If there were any irreparable injury it would have already occurred during the three months that the Union has taken no action to pursue its grievance.

Finally, even if the Court could ignore such conduct under traditional principles of equity, federal law requires the Court to take it into account. See 29 U.S.C. § 108. The Norris-LaGuardia Act provides that "[n]o restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute...." 29 U.S.C. § 108. The Court determines that the Union, by not pursuing the

grievance procedure, has not made reasonable efforts to settle this dispute and is therefore not entitled to injunctive relief.

The Court also determines that the Union has failed to demonstrate that it is entitled to injunctive relief under the requirements of the Boys Market exception or under traditional equity principles. The Court therefore finds that there is no genuine issue of material fact and Defendant Boeing is entitled to judgment as a matter of law.

An appropriate Order follows.