

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

ANTONIO WILLIAMS	:	CIVIL ACTION
	:	
v.	:	
	:	
DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO	:	NO. 99-CV-1425

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 15th day of June, 1999, upon consideration of Defendant's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Document No. 2, filed March 29, 1999) and Plaintiff's Response to Defendant's Motion to Dismiss (Document No. 3, filed April 19, 1999), **IT IS ORDERED** that Defendant's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED** and the action is **DISMISSED WITH PREJUDICE**.

MEMORANDUM

1. Background.

Plaintiff's Complaint, filed March 3, 1999, alleges that defendant, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, (the "Union"), of which he is a member, breached its duty of fair representation by denying his request for arbitration after he had received three adverse decisions from earlier grievance procedures in his case against his employer, Thomas Jefferson University. Plaintiff received a formal denial of his request for arbitration from the Union on March 10, 1997.

The case was removed to federal court by notice of removal filed by defendant on March 22, 1999. The Court has jurisdiction under 28 U.S.C. § 1337(a). See Breininger v. Sheet Metal Workers Int'l, 493 U.S. 67, 83-84.

Defendant has filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) based on the statute of limitations. Defendant argues in its motion that plaintiff's claim is barred by the six month statute of limitations of the National Labor Relations Act ("NLRA"), § 10(b), as amended, 29 U.S.C. § 160(b). In his response, plaintiff contends that the Court should instead apply a two year state statute of limitations, rendering the filing of his Complaint within the appropriate limitations period. The issue presented for the Court is whether the six month statute of limitations under the NLRA or the two year statute of limitations under Pennsylvania State law is applicable to this case. For the reasons set forth below, the Court concludes that the six month statute of limitations is applicable to this case and that plaintiff's Complaint is time barred.

2. Discussion.

A. Two Year Statute of Limitations.

There is no federal statute of limitations expressly applicable to plaintiff's claim. When such is the case, "[courts] generally [conclude] that Congress intended that the courts apply the most closely analogous statute of limitations under state law." DelCostello v. Teamsters, 462 U.S. 151, 158 (1983). Under the Rules of Decision Act, 28 U.S.C. § 1652, the "laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Plaintiff analogizes his claim to a Section 1983 action in which courts have applied the two year statute of limitations from 42 Pa. C.S.A. § 5524. He contends that the Court should borrow this state limitations period in the instant case which would allow his claim to proceed.

B. Six Month Statute of Limitations.

Although federal courts should ordinarily borrow from state law when there is no federal statute of limitations expressly applicable to the cause of action, “[i]n some circumstances, state statutes of limitations can be unsatisfactory vehicles for the enforcement of federal law.”

DelCostello, 462 U.S. at 161. There are instances in which the application of a state statute of limitations could potentially “frustrate or interfere with the implementation of national policies.” Id. at 161 (quoting Occidental Life In. Co. v. EEOC, 432 U.S. 355, 367 (1977)). When such is the case, the Supreme Court has recognized a narrow exception to the general rule of borrowing from state law. “[The Court declines] to borrow a state statute of limitations only ‘when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking’.” Reed v. United Transp. Union, 488 U.S. 319, 324 (1989) (quoting DelCostello, 462 U.S. at 172).

In DelCostello, the Court concluded that the six month federal statute of limitations under § 10(b) of the NLRA was the appropriate law to apply in cases involving a “hybrid” § 301/duty of fair representation claim brought against both the plaintiff’s employer for breach of contract and the representative union for the breach of the duty of fair representation. As the Court explained, application of a state statute of limitations in these actions could allow “disputes involving critical terms in the collective-bargaining relationship between company and union” to

remain unresolved for long periods of time. Id. at 168-69. The six month provision of § 10(b), on the other hand, was more appropriate for these types of actions since it represented the proper balance between “national interests in stable bargaining relationships and finality of private settlements, and an employee’s interest in setting aside what he views as an unjust settlement under the collective bargaining system.” Id. at 171 (quoting United Parcel Service, Inc. v. Mitchell, 451 U.S. 56, 70-71 (1981)).¹

Defendant contends that the reasoning in DelCostello applies in the instant case and that the six month statute of limitations provision of § 10(b) of the NLRA therefore bars plaintiff’s suit. In response, plaintiff argues that DelCostello is not applicable to this case since DelCostello dealt with a “hybrid” action brought against both an employer and a labor union, whereas he filed suit against the Union alone.

C. Statute of Limitations Applicable to this Case.

Although the DelCostello decision deals with a “hybrid” cause of action, the Court concludes that the six month statute of limitations of § 10(b) of the NLRA applies in a duty of fair representation case brought against a labor union regardless of whether or not suit is brought against the employer. As the Court in DelCostello explained, a claim against an employer for breach of contract and a claim against a union for breach of duty of fair representation are “inextricably interdependent”. DelCostello, 462 U.S. at 164 (quoting Mitchell, 451 U.S. at 66-67). “The employee may, if he chooses, sue one defendant and not the other, but the case he must prove is the same whether he sues one, the other, or both.” Id. at 165. This statement in

¹ DelCostello overruled Mitchell on the ground that Mitchell applied a state statute of limitations to a similar suit while not addressing whether the federal statute of limitations provided in § 10(b) of the NLRA might be more appropriate.

DelCostello implies that the same statute of limitations would apply in a claim against either the employer for breach of contract or the labor union for breach of the duty of fair representation.

In Berg v. United Steel Workers of Am., No 98-308, 1998 WL 165005 (E.D. Pa. April 8, 1998) (DuBois, J.), this Court, while noting that DelCostello did not directly “answer the question”, applied the six month statute of limitations of § 10(b) to a duty of fair representation claim brought against the union alone. Id. at *5. This Court explained that “the Supreme Court stated in DelCostello that ‘the case is the same whether’ plaintiff sues the employer, the union, or both -- which suggests that the statute of limitations should be the same regardless of the parties actually named in the suit.” Id. at *5. (citation omitted) (quoting DelCostello, 462 U.S. at 165).

This Court in Berg noted that in Reed v. United Transp. Union, 488 U.S. 319 (1989), the Supreme Court limited the scope of DelCostello by applying state statute of limitations provisions to “internal union dispute[s] not directly related in any way to collective bargaining or dispute settlement under a collective bargaining agreement.” 488 U.S. at 331. The Court explained that § 10(b) was used in DelCostello actions in order to promote the national interest in “maintain[ing] . . . stable bargaining relationships” between the employer and the bargaining representative. Reed, 488 U.S. at 329 (quoting Local Union 1397, United Steel Workers of Am. v. United Steel Workers of Am., 748 F.2d 180, 184 (3d Cir. 1984)). Internal union disputes, however, “can have only an indirect impact on the economic relations between a union and an employer and on labor peace.” Stokes v. Local 116, International Union of Electronic Workers, No. 92-3131, 1993 WL 23895, at *4 (E.D. Pa. Feb. 2, 1993) (citing Reed, 488 U.S. at 330-31). Consequently, actions involving exclusively internal disputes between labor unions and their members continue to be subject to state statute of limitations provisions when no federal

limitations period is expressly provided.

In this case, plaintiff's claim does not involve a matter exclusively internal to his dealings with the Union. Rather, his action arises out of an alleged breach of the collective bargaining agreement arrived at between plaintiff's employer and the defendant Union. In Stokes, 1993 WL 23895, at *5, the court explained that, even in light of Reed, unfair representation claims against the union, standing alone, would continue to be held to § 10(b)'s six month provision since the duty of fair representation "involves the union's conduct of its duties vis-a-vis the employer, and, as a result, the concerns expressed in DelCostello are directly implicated.". Thus, the state statute of limitations applicable to internal disputes between unions and their members is inapplicable to plaintiff's claim and plaintiff is bound by the six month federal statute of limitations.

D. Application of the Statute of Limitations.

In a claim involving an alleged breach of the duty of fair representation, the statute of limitations "begins to run when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged violation." Stokes, 1993 WL 23895 at *6 (citing Hersh v. Allen Prod. Co., 789 F.2d 230, 232 (3d Cir. 1986)). Where, as in this case, the claim arises out of a failure to file a grievance on behalf of a union member, the statute of limitations is triggered when the member "knew or should have known that further appeals to the Union would be futile." Berg, 1998 WL 165005, at *6 (quoting Vandino v. A. Valey Eng'rs, 903 F.2d 253, 260 (3d Cir. 1990)). In Berg, for example, this Court measured the statute of limitations period from the date on which the plaintiff received a formal response from the union that it would not pursue his grievance even though the plaintiff had discovered the alleged breach

one month earlier. Berg, 1998 WL 165005, at *8.

In his Complaint, plaintiff alleges that he received a formal denial of his request for arbitration from the Union on March 10, 1997. There is no mention in the Complaint of any further action taken on the part of the plaintiff in response to his receipt of this denial until the filing of the Complaint on March 3, 1999.

The Court concludes that for statute of limitations purposes, March 10, 1997 is the date on which the plaintiff knew or should have known that “further appeals to the Union would be futile.” Vandino, 903 F.2d at 260. Thus, on the present state of the record, the Court will measure the six month statute of limitations from March 10, 1997. Since almost two years passed between March 10, 1997 and March 3, 1999, the Court must dismiss the claim as barred by the six month statute of limitations of the NLRA. The Court therefore grants defendant’s Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and dismisses the action with prejudice.

BY THE COURT:

JAN E. DUBOIS, J.