

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

SAMUEL SANDERS, et al. : CIVIL ACTION  
: :  
v. : :  
: :  
STORK BRONSWERK, INC., et al. : NO. 05-cv-03518-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

October 24, 2005

The named plaintiffs were employed by the defendant Stork Bronswerk, Inc. as metal workers in various capacities, at the Kvaerner Philadelphia Shipyard. Stork Bronswerk was a subcontractor of Kvaerner. In August 2002, Kvaerner entered into a collective bargaining agreement with the Philadelphia Metal Trades Council covering Kvaerner's employees. Under the terms of that collective bargaining agreement, Kvaerner was authorized to subcontract work to nonunion concerns such as Stork Bronswerk, so long as such subcontractors became signatories to the collective bargaining agreement, agreed to pay union-scale wages, and agreed to deduct from the wages of the subcontractors' employees an amount equivalent to union dues, and to remit that sum to the union.

According to plaintiffs' complaint, Stork Bronswerk did become a signatory to the Kvaerner-union CBA, and did collect and pay over the equivalent of union dues from plaintiffs and its other employees, but did not pay plaintiffs wages at the union

scale. Plaintiffs assert that they first learned that they were not being paid the union rate in June 2005, after which they promptly instituted this lawsuit.

Plaintiffs filed their complaint in the Court of Common Pleas of Philadelphia County, on behalf of themselves and a variously-described class. In the caption, and at various parts of the complaint, plaintiffs purport to be acting on behalf of any and all persons employed by Stork Bronswerk at the Kvaerner Shipyard. Elsewhere in the complaint, they propose to represent a class consisting of all employees of any and all subcontractors at the Philadelphia Shipyard, who may likewise not have been receiving the full amount of wages due.

Defendants removed the action to this court, on the theory that plaintiffs' claims arise under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and that plaintiffs' state-law claims are preempted. Plaintiffs have now filed a motion to remand the action to state court, asserting that their claims arise under state law and are not preempted. Defendants oppose remand, and have also filed motions to dismiss the complaint in its entirety.

#### I. The Motion to Remand

The defendants were entitled to remove the case to federal court if plaintiffs' complaint asserted claims arising under federal law. On the issue of removal, we are not concerned with whether plaintiffs assert valid claims under federal law,

but merely whether they assert claims under federal law. On that narrow issue, the answer is apparent. Plaintiffs attached the collective bargaining agreement (or pertinent sections of it) to their complaint as an exhibit. They charge both defendants with breach of contract, and the only contract to which Kvaerner is a party is the collective bargaining agreement. Plaintiffs claim to be at least third-party beneficiaries of the collective bargaining agreement, and they are seeking to enforce its terms against both defendants. The motion to remand will be denied.

## II. The Motions to Dismiss

Assuming as correct all of the allegations of plaintiffs' complaint, there is no basis for imposing liability upon the defendant Kvaerner. Kvaerner was not obligated to pay plaintiffs wages in any amount. The contractual duty to pay plaintiffs at union scale - if there was such a contractual obligation - was that of Stork Bronswerk, plaintiffs' employer. Under any view of the matter, therefore, plaintiffs have failed to state valid claims against Kvaerner, and their complaint is subject to dismissal under Fed. R. Civ. P. 12(b)(6).

Plaintiffs assert that the defendant Stork Bronswerk breached its contract and is liable to them for breach of contract. This is indeed problematic. The only contracts plaintiffs were parties to were their respective employment contracts, and there is no contention that the defendant Stork failed to pay them in accordance with their employment contracts;

that is, they presumably agreed to work for the wages they were actually paid. Does the fact that, unknown to plaintiffs, their employer had promised someone else that they would be paid a higher amount render that higher amount a term of the employment contract?

I need not dwell upon these issues, because under any view of the matter, plaintiffs can only succeed if they have the right to enforce the payment terms of the collective bargaining agreement signed by Stork Bronswerk. And, under familiar principles of labor law, plaintiffs cannot enforce the CBA against their employer without establishing that the union has breached its obligation of fair representation. And, of course, plaintiffs must first exhaust their contractual grievance remedies. Vaca v. Sipes, 386 U.S. 171, 87 S. Ct. 903 (1967); United Parcel Service v. Mitchell, 451 U.S. 56, 67 L. Ed. 2d 732 (1981).

Viewing, in combination, the collective bargaining agreement between Kvaerner and the union, and the provisions under which Stork Bronswerk became a signatory to that agreement, it is clear that the parties to those agreements contemplated that the specified grievance mechanism would apply not only to union members, but also to the nonunion employees of subcontractors. All parties agree that, in fact, plaintiffs have never attempted to file and pursue a grievance concerning their

rates of pay. Plaintiffs cannot prevail in this action without having done so.

### III. Class Action Allegations

In view of the conclusions expressed above, it is unnecessary to address the numerous problems associated with plaintiffs' class allegations. Since the claims of the named plaintiffs are being dismissed, the class action allegations have become moot.

An Order follows.

