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

MARY C. RIMS, Plaintiff, v. UNITED AUTO WORKERS LOCAL 1695e and FORD ELECTRONICS AND REFRIGERATION CORPORATION, Defendants.	Civil Action No. 96-5640

Gawthrop, J. April , 1998

M E M O R A N D U M

Before the court is a Motion to Dismiss by Defendant Ford Electronics and Refrigeration Corporation ("Ford"). For the reasons set forth below, I find that the statute of limitations has run and that the case against Ford is thus time-barred.

Background

Plaintiff filed her complaint pro se in state court on July 15, 1996, alleging that the union, United Auto Workers Local 1695 ("Union"), had breached its duty of fair representation. The Union then removed this action to federal court on August 14, 1996. On January 31, 1997, plaintiff filed an Amended Complaint in which she added claims against her employer, Ford, for breach of the collective bargaining agreement. Plaintiff then filed a motion to amend her complaint and to add Ford as a defendant which this court granted on June 16, 1997. Plaintiff then filed another Amended Complaint, and, in response, Ford filed this

Motion to Dismiss. Defendant Ford moves for dismissal under Federal Rule of Civil Procedure Rule 12(b)(6) on the ground that plaintiff's claims are barred by the applicable statute of limitations. The plaintiff did not respond to the merits of this motion, but instead filed a Motion for Judgment by Default or in the Alternative, Motion to Strike Defense of Defendant, which this court denied.

Standard of Review

Defendants' Motion to Dismiss under Federal Rule of Civil Procedure 12(b) will be converted into a motion for summary judgment under Rule 56, as provided under Rule 12(b). The court, in its discretion, considered items outside the pleadings, such as plaintiff's deposition, attached as an exhibit to her response to the motion for summary judgment by the Union. When considering a summary judgment motion, the court must take as true the evidence of the non-movant and draw all justifiable inferences in the non- movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

Discussion

Defendant Ford argues that the statute of limitations applicable to this type of suit bars the plaintiff's claims against the employer. In her Amended Complaint, the plaintiff includes both claims against her employer, for breach of the bargaining agreement, and against her union, for breach of the

duty of fair representation, making this a "hybrid" suit. DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 164-65 (1983). The Supreme Court has termed such a suit a "hybrid" because, although the claims are interdependent, it actually consists of two separate causes of action. Id.[1] The two claims are interrelated, though, since "[t]he union must have allegedly breached its duty of fair representation before an employee may bring a hybrid section 301 action" against the employer. Taylor v. Ford Motor Co., 761 F.2d 931, 934 (3d Cir. 1985); see Breininger v. Sheet Metal Workers Int'l Ass'n Local Union No. 6, 493 U.S. 67, 82 (1989) ("[A] plaintiff must as a matter of logic prevail on his unfair representation allegation against the union in order to excuse his failure to exhaust contractual remedies before he can litigate the merits of his § 301 claim against his employer."). The critical date for both actions, then, is the date on which the union "unequivocally refuses to assist" the plaintiff. Taylor, 761 F.2d at 934.

The Supreme Court has determined that a six-month statute of limitations applies to such a hybrid suit. DelCostello, 462 U.S. at 155 (borrowing six-month statute of limitations provided for in §10(b) of the National Labor

[1]The cause of action against the employer arises under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, while the suit against the union derives from the National Labor Relations Act, 29 U.S.C. §§ 151 - 169.

Relations Act); see also Hackman v. Valley Fair, 932 F.2d 239, 240 (3d Cir. 1991) (applying six-month statute of limitations to hybrid suit). The six-month statute of limitations begins to run against both possible defendants on the date on which the employee knew or should have known that the union would not pursue the grievance, thus establishing the claim against the union, and also the claim against the employer. Vadino v. A. Valey Eng'rs, 903 F.2d 253, 261 (3d Cir. 1990) ("[T]he employee's claim on the employer's alleged breach of the collective bargaining agreement is tolled until it was or should have been clear to the employee that the union would not pursue the grievance."); DelCostello 462 U.S. at 165.

In the instant case, the record does not clearly reveal when the plaintiff's cause of action accrued. The plaintiff asserts that a union representative told her in November, 1995, that "there wasn't anything else" the union representative could do for her regarding her complaints. (Pl.'s Mem. Opp'n to Def. Mot. S.J. Ex. at 15.) This would imply that she knew as early as November, 1995, that further appeals to the union would be futile. See Vadino, 903 F.2d at 261 (holding action accrued when employee knew continued appeals to union would prove futile). However, in her memorandum of law opposing the Union's motion for summary judgment, the plaintiff states that "it was not until the April-May period of 1996 that the Union clearly manifested its intention not to represent the plaintiff and assist her in

getting her job back." (Pl.'s Mem. Opp'n to Def. Mot. S.J. at 14-15.) Viewing these conflicting assertions in the light most favorable to plaintiff, as I must, the action accrued, and thus the statute of limitations began to run, at the end of May, at the latest. Thus, to be timely, the plaintiff would have had to file her claims against Ford by November 30, 1996. Although the plaintiff filed her initial pro se complaint in state court on July 15, 1996, and retained counsel in September, 1996, she did not attempt to join Ford or to file an Amended Complaint until January 31, 1997. Thus, even assuming plaintiff's assertions as to when the claim accrued, she filed her amended complaint at least two months after the statute of limitations had run. Accordingly, the amended complaint against Ford can survive dismissal only if it relates back to the date of the original pleading such as to arguably fall within the statute of limitations period.

Federal Rule of Civil Procedure 15(c) governs whether an amendment to a complaint relates back to the filing date of the initial complaint. For an amendment involving a new party to relate back, Rule 15(c) requires that, within the prescribed limitations period, the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense and the party must or should have known that, but for a mistake concerning identity, the action would have been brought against it. The rule defines the time period for meeting these

requirements as 120 days after the filing of the complaint.[2] Ford argues that the amended complaint adding it as a defendant cannot relate back to the date of the original complaint because all of the requirements of the rule were not met within 120 days of the filing of the original complaint.

The plaintiff bears the burden of proof as to the requirements of Rule 15(c). See Wine v. EMSA Ltd. Partnership, 167 F.R.D. 34, 38 (E.D. Pa. 1996). Thus, the plaintiff must show that Ford received notice of her cause of action within 120 days after her filing of the initial complaint. See Trnka v. United Auto Workers Union, Local 688 and Region 4, No. 90 C. 1073, 1991 WL 28214, at *4 (N.D. Ill. Feb. 20, 1991) (holding, where plaintiff initially named only union as defendant, subsequent amendment seeking to allege hybrid action by adding employer as defendant did not relate back because requisite notice not demonstrated). Further, the plaintiff must demonstrate that the notice was such that Ford would not be prejudiced in maintaining a defense on the merits.

Ford contends that the plaintiff fails to meet this burden because she has not shown that Ford received notice of her

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[2] Rule 15(c) defines the prescribed limitations period as the "period provided by Rule 4(m) for service of the summons and complaint." Fed. R. Civ. P. 15(c). Rule 4(m) in turn requires service upon a defendant "within 120 days after the filing of the complaint." Fed. R. Civ. P. 4(m).

original cause of action or that it would not be prejudiced in defending the claims against it. The only averment of notice from plaintiff is the certificate of service attached to her motion to join Ford as an additional defendant filed on February 20, 1997, well outside the 120-day period. The plaintiff has neither alleged that she notified Ford prior to moving to amend her complaint, nor pointed to any evidence to dispute the lack of timely notice given to Ford.

In its motion to dismiss, Ford avers that it did not receive notice of the cause of action against the union until some six months after it was filed, and then only learned of the action through a subpoena served on one of its employees. Such untimely notice is not sufficient to protect against the prejudice contemplated by Rule 15(c). "The 'prejudice' to which the Rule refers is that suffered by one who, for lack of timely notice that a suit has been instituted, must set about assembling evidence and constructing a defense when the case is already stale." Nelson v. County of Allegheny, 60 F.3d 1010, 1014-15 (3d Cir. 1995), cert. denied sub nom. Beddingfield v. Allegheny County, 116 S.Ct. 1266 (1996). This is precisely the type of prejudice Ford would face by having to maintain a defense on the merits at this stage of the proceedings. Discovery in this matter closed on January 31, 1997. Both the plaintiff and the union, the original parties in this action, timely filed pre-trial memoranda in February, 1997. In addition, those parties

filed motions for summary judgment which this court decided on June 16, 1997. Cf. Wine, 167 F.R.D. at 39-40 (denying plaintiff leave to amend complaint, in part, because "discovery [had] been completed and Defendants' summary judgment motions [had] already been briefed and filed"). Since this case is ready for trial, I must conclude that Ford would indeed be prejudiced if forced, at this point, to litigate on the merits.

In sum, I find that the plaintiff cannot meet her burden on the notice requirement, and Ford would be prejudiced if required to defend this action at this time. Thus, I need not address the second prong of Rule 15(c), whether Ford knew or should have known that, but for a mistake, the action would have been brought against it.[3] Accordingly, I shall grant Ford's motion to dismiss.

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[3] It appears, however, that plaintiff also could not satisfy the mistake requirement of Rule 15(c) since Ford would have had no reason to think that plaintiff had erred in omitting Ford from the suit. The original complaint alleged a breach of the duty of fair representation claim against the union. An employee may bring such a claim solely against the union. See, e.g., Breininger v. Sheet Metal Workers Intern. Ass'n Local Union No. 6, 493 U.S. 67, (1989) (holding a union's administration of a hiring hall is subject to the duty of fair representation even though there was no possible breach of contract claim against the employer). Further, even if viewed as a hybrid suit, Ford would have had no indication that the plaintiff had intended to bring suit against Ford since an employee bringing a hybrid action may sue the union, the employer, or both. DelCostello, 462 U.S. at 165 ("The employee may, if he chooses, sue one defendant and not the other."). Thus, under either scenario, Ford would have had no basis for believing the plaintiff had mistakenly excluded Ford as a defendant.

An order follows.

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O R D E R

AND NOW, this day of April, 1998, the Defendant's Motion to Dismiss is GRANTED. The plaintiff's claims against Defendant Ford Electronics and Refrigeration Corporation are dismissed with prejudice.

BY THE COURT:

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Robert S. Gawthrop, III, J.