

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

UNITED MINE WORKERS OF	:	No. 3:02cv520
AMERICAN, DISTRICT 2; LOCAL	:	
UNION 1571 UNITED MINE WORKERS	:	(Judge Munley)
OF AMERICA; LOCAL UNION 4004	:	
UNITED MINE WORKERS OF	:	
AMERICA,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
LEHIGH COAL AND NAVIGATION	:	
COMPANY,	:	
Defendant	:	

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MEMORANDUM

Presently before the court are Plaintiffs’ motion for leave to amend (Doc. 61) and Defendant’s motion *in limine* (Doc. 70) seeking to exclude evidence of various employment actions occurring in 2003. For the following reasons, we will deny both motions.

I. Background

Defendant LCN has operated a full-scale coal mining operation on its property since its inception in 1989. LCN has had a series of collective bargaining agreements (“CBAs”) with the UMWA plaintiffs, the last one of which expired in May 2002. Under the terms of the most recent CBA, (“1998 Wage Agreement” or “Agreement”) all coal mining, processing and jobs related to the operation were to be done by UMWA employees. See Plaintiffs’ App. B. These employees, *inter alia*, mined the coal, operated and maintained the processing plant, maintained and drove the equipment, drilled, welded, screened silt products and

performed electrical work. See Plaintiffs' App. B; App. C, p. 29.

Nardini and Sons is a lessee of LCN. In 1996, Nardini and LCN signed an agreement which provided that Nardini would conduct coal mining operations on LCN property whereupon LCN would have the right of first refusal to buy the coal extracted. The agreement also contemplated that the coal that Nardini extracted would be processed at the LCN preparation plant. In 1999, the UMWA filed a grievance because LCN was allowing Nardini to remove raw coal from the LCN property and have it processed off site by non-UMWA employees. Asserting that this was a violation of the 1998 Wage Agreement, the grievance was processed to arbitration and heard by Arbitrator Skonier who issued an award in November 1999. That award issued by Skonier ("Skonier Decision") found that LCN had, indeed, violated the provisions of Article 2 of the CBA, and he ordered that LCN cease and desist from violating it in the future. The Skonier Decision found that the CBA required LCN to have all coal mined from its property processed by UMWA employees and that by allowing Nardini to process the coal elsewhere, LCN violated the Agreement.

In January 2001, LCN laid off all of its UMWA hourly workers; at that time, there were approximately 220-250 UMWA members from both Local 1571 and 4004 employed at LCN. Since November 2002, only five or six of those laid off miners have been recalled to work at LCN. After January 2001, all mining on LCN property was done by Nardini and a subcontractor, KA Ash. KA Ash does coal removal, silt removal and some reclamation work. Prior to January 2001, the UMWA employees performed the screening of silt material, as well as some of the reclamation work which, since January 2001, has been done by either

Nardini or KA Ash. The coal that Nardini and KA Ash removed all went to preparation plants off LCN property, and was not processed by UMWA employees. On October 16, 2001, Plaintiffs filed a grievance, which was subsequently arbitrated by Arbitrator Martha Cooper. On March 29, 2002, Plaintiffs filed the instant suit seeking to enforce the Skonier Decision. On April 17, 2002, Arbitrator Cooper distinguished the Skonier opinion and found that coal sold for processing to non-union South Tamaqua Coal Pockets (“Pockets”) sometime after July 2001 and before October 2001 did not violate the 1998 Wage Agreement. Shortly thereafter, in May 2002, the 1998 Wage Agreement expired.

II. Jurisdiction

We have federal question jurisdiction¹ pursuant to Labor Management Relations Act (“LMRA”) § 301, 29 U.S.C. 185 (“Section 301”). Section 301 provides,

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

III. Discussion

A. Plaintiffs’ Motion to Amend its Complaint

Trial in this case is schedule for December 13, 2004. Plaintiffs filed the instant

¹ “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. 1331.

motion for leave to file a second amended complaint on December 1, 2004. Plaintiffs argue that they seek to amend their complaint to comport with our summary judgment memorandum decision of April 27, 2004, wherein we found material issues of genuine fact in the case, including “whether the LCN breaker was ever operational during the time complained of, whether coal was ‘diverted’ to avoid the constraints of the CBA and whether the UMWA has been deprived of work.” (Summary J. Memo. at 7, Doc. 39). Plaintiffs state that their second amended complaint comports with this opinion by limiting their claim to the time periods from “ November 1999 (the date of Arbitrator Skonier’s award) until January 2001 and then again from December 2002 to date, when the LCN breaker has been operational.” (Pl. Br. in Supp. of Mot. to Amend ¶ 5). Plaintiffs argue that the proposed amended complaint “does not add any new causes of action and the factual bases were all part of the nexus of facts underlying the motion for summary judgment.” (Pl. Br. in Supp. of Mot. to Amend ¶ 6). Defendant argues that the amended complaint contains new allegations and their inclusion at this late stage of the litigation would prejudice them. We agree that the amended complaint contains new factual and legal bases for relief. We will deny the motion to amend because the amendments would be futile as we have no jurisdiction over the proposed amended claims.

i. Standard for Amending a Complaint

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading after a responsive pleading is served only by leave of the court. FED. R. CIV. P. 15(a). District courts are obligated to grant leave freely “when justice so requires.” Id.

Although decisions on motions to amend are committed to the sound discretion of the district court, Gay v. Petsock, 917 F.2d 768, 772 (3d Cir.1990), courts liberally allow amendments when “justice so requires,” and when the non-moving party is not prejudiced by the allowance of the amendment. Thomas v. State Farm Ins. Co., CIV.A.No.99-2268, 1999 WL 1018279, at *3 (E.D. Pa. Nov. 5, 1999).

The Supreme Court discussed the liberal standard to amend a complaint under Rule 15(a), when it found in Forman v. Davis that “[i]n the absence of any apparent or declared reason--such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment ..., the leave sought should, as the rules require, be freely given.” Provenzano v. Integrated Genetics, et al., 22 F. Supp. 2d 406, 410-11 (3d Cir. 1998) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). Absent undue prejudice, “denial must be grounded in bad faith or dilatory motives, truly undue or unexplained delay, repeated failure to cure deficiency by amendments previously allowed or futility of amendment.” Heyl & Patterson International, Inc. v. F.D. Rich Housing of the Virgin Islands, 663 F.2d 419, 425 (3d Cir.1981) (citation omitted).

standard.

ii. The Proposed Amendments

Plaintiffs argue that the proposed amendments add no new causes of action and arise from the same factual nexus as the allegations in the original complaint.

However, we find that the proposed second amended complaint contains material

changes in the allegations. Paragraph 18 states,

Since May 2002, the parties have had numerous collective bargaining sessions in an effort to reach agreement for a successor agreement. They met at least eleven times for collective bargaining, and most recently they met three times in the fall of 2004. Indeed, the parties reached a tentative agreement in November 2004, but it was not ratified by Local membership, to which the tentative agreement was subject prior to execution by the parties. Thus, the 1998 Wage Agreement is still the collective bargaining agreement to which the parties are bound.

(Pl. Proposed Second Amend. Compl. ¶ 18, Doc. 61).

The proposed complaint further alleges,

20. Since December 2002, the Defendant has not abided by the terms and conditions of the collective bargaining agreement nor by the Skonier arbitration award in that it, at the preparation plant, has been employing non-Union workers in Union positions, it has recalled Union members out of the required seniority roster as that is provided for in their parties agreement, and it has supervisors performing bargaining unit work all of which is in violation of the parties agreement and the Skonier arbitration award.

21. Since December 2002, there continues to be numerous members of the Union's Locals who are on lay-off status with job rights to bargaining unit positions at the preparation plant.

(Pl. Proposed Amend. Compl. ¶ 20-21, Doc. 61).

The first amended complaint contains no allegations involving activity occurring since May 2002. Indeed, it was filed in April 2002, and therefore could not have contained these allegations. Furthermore, the second amended complaint alleges that the 1998 Wage Agreement continues to bind the parties, although up to this point in the litigation the parties have agreed that the Agreement expired in May 2002. As our jurisdiction in this case arises under section 301 of the LMRA, we have no jurisdiction over claims arising from an expired

collective bargaining agreement.² See Litton Financial Printing Division v. National Labor Relations Board, 501 U.S. 190, 206 (1991) (“Section 301 of the LMRA, 29 U.S.C. § 185, does not provide for federal court jurisdiction where a bargaining agreement has expired, although rights and duties under the expired agreement ‘retain legal significance because they define the status quo’ for purposes of the prohibition of unilateral changes.”) (citing Derrico v. Sheehan Emergency Hosp., 844 F.2d 22, 25-27 (2d Cir. 1988)).

iii. Jurisdiction under Section 301

Section 301 grants federal courts jurisdiction over “suits for violation of contracts between an employer and a labor organization representing employees.” 29 U.S.C. § 185 (emphasis added). An expired contract, however, is not a contract for the purposes of section 301. See United Paperworkers Int’l Union v. Champion Int’l Corp., 81 F.3d 798, 802 (8th Cir. 1998) (holding that an expired collective bargaining agreement cannot provide section 301 jurisdiction for post-expiration claims because there is no contract at that point); Derrico v. Sheehan Emergency Hosp., 844 F.2d 22, 23, 25 (2d Cir. 1988) (finding no jurisdiction over claims of post-expiration violations of a collective bargaining agreement even though

² At the pre-trial conference, we asked both parties to brief the issue of the relationship between the parties following the expiration of the collective bargaining agreement and our jurisdiction over this case. Plaintiffs have complied, whereas Defendant has not filed a brief nor raised the jurisdictional issue which we presently address. However, federal courts, being courts of limited jurisdiction, have a continuing duty to satisfy themselves of jurisdiction before addressing the merits of a case. Packard v. Provident Nat’l Bank, 994 F.2d 1039, 1049 (3d Cir. 1993). Moreover, federal courts have the obligation to address the question of subject matter jurisdiction *sua sponte*. Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999); see generally Nelson v. Keefer, 451 F.2d 289, 293-95 (3d Cir. 1971) (finding that the federal judiciary has been too cautious in addressing the large number of cases which do not belong in federal courts).

the court made no finding of an impasse and at the time of the alleged violation the parties were still negotiating); Office and Prof'l Employees Ins. Trust Fund v. Laborers Funds Admin. Office of Northern Cal., 783 F.2d 919, 922 (9th Cir. 1986) (finding that a suit to enforce contractual obligations under an expired contract is not a contract under section 301 “because the contract no longer exists”). The National Labor Relations Act (“NLRA”) § 8(a)(5) and 8(d), 29 U.S.C. §§ 158(a)(5), (d) imposes a duty to bargain in good faith. Litton Financial Printing Division v. National Labor Relations Board, 501 U.S. 190, 198 (1991).³

If, following the expiration of a collective bargaining agreement, an employer unilaterally changes the terms of employment before bargaining with the union to an impasse, it violates the duty to bargain in good faith imposed by NLRA § 8. Id. Therefore, for the purposes of the NLRA, an expired contract controls the relationship between an employer and a union while they are bargaining. Id. In Litton, the Supreme Court stated “[a]lthough after expiration most terms and conditions of employment are not subject to unilateral change, in order to protect the statutory right to bargain, those terms and conditions no longer have force by virtue of the contract.” Id. at 206 (citing Derrico, 844 F.2d at 25-27). “[A]n expired contract has by its own terms released all its parties from their respective contractual obligations.” Id. An expired bargaining agreement gives rise to a duty under the NLRA, but section 301 provides jurisdiction for violations of contracts, not for violations of duties

³ These sections require an employer to bargain “in good faith with respect to wages, hours, and other terms and conditions of employment.” Litton, 501 U.S. at 198.

imposed by the NLRA.⁴ Therefore, because the plain language of section 301 limits jurisdiction to claims arising from a contract, and not expired contracts, we have no jurisdiction over Plaintiffs' post-expiration claims.

To the extent that Plaintiffs may have a claim against Defendant for a violation of its duty to bargain in good faith, the NLRB has exclusive jurisdiction. United Automobile, Aerospace and Agricultural Implement Workers of America, Local 33 v. R.E. Dietz Co., 996 F.2d 592, 595 (2d Cir. 1993). Furthermore, to the extent that Plaintiffs seek to amend its complaint to argue that the parties' conduct following the expiration of the 1998 Wage Agreement created an implied-in-fact contract, or to the extent that Plaintiffs seek to base liability for Defendant's post-expiration conduct on any other contract implied or otherwise, we will deny leave to amend because such an amendment would prejudice Defendant.⁵ Up to this point, Plaintiffs have sought to base liability solely on the 1998 Wage Agreement and the Skonier Decision which upheld it. The motion to seek leave to amend was filed two weeks before trial and twenty-three months following the close of discovery. Adding additional bases for recovery, such as an implied contract or an altogether different contract, would require extensive discovery. Thus, Defendants would be prejudiced, and we will deny the

⁴ The National Labor Relations Board has exclusive jurisdiction over violations of the NLRA. United Automobile, Aerospace and Agricultural Implement Workers of America, Local 33 v. R.E. Dietz Co., 996 F.2d 592, 595 (2d Cir. 1993).

⁵ In its memorandum regarding the parties' legal relationship (Doc. 62), Plaintiff makes no argument that the parties' post-expiration conduct created an implied in fact contract, but instead argues solely that the NLRA duty to bargain to an impasse bound the parties to the terms of the 1998 Wage Agreement.

motion for leave to amend. Berger v. Edgewater Steel, 911 F.2d 911, 924 (3d Cir.1990).

B. Defendant's Motion in Limine

On December 2, 2004, Defendant filed a motion *in limine* seeking to preclude evidence of claims arising from the recall of workers in 2003 who were non-union members. As we have found that we have no subject matter jurisdiction over claims arising from activity occurring after the May 2002 expiration of the 1998 Wage Agreement, we will deny Defendant's motion *in limine* as moot.

