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

BETTY JANE LORD SERITTI,	:	
Plaintiff	:	**No. 3:00cv1748**
	:	
v.	:	**(Judge Munley)**
	:	
MINERS MEMORIAL MEDICAL	:	
CENTER and THE AMERICAN	:	
FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL	:	
EMPLOYEES, DISTRICT	:	
COUNCIL 89,	:	
Defendants	:	

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MEMORANDUM

Before the court for disposition are the defendants' motions to dismiss the plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(6). The parties in this action are the plaintiff, Betty Jane Lord Seritti, and the defendants are Miners Memorial Medical Center (hereinafter "Miners") and The American Federation of State, County, and Municipal Employees District Council 89 (hereinafter "District Council"). For the following reasons, the defendants' motions to dismiss will be granted.

Background

The plaintiff in the instant case was employed by Miners from July 1994 until she was laid off in May 1998. Defendant Miners, a hospital, entered into a collective bargaining agreement (hereinafter "CBA") with Defendant District Council, a labor union. While employed by Miners, plaintiff was a member of District Council.

On October 31, 1996, Miners posted a vacancy for a registration clerk/switchboard operator position. Plaintiff Seritti bid on that position, but it was awarded to another employee. Plaintiff filed a

grievance on November 13, 1996 alleging that Miners breached the CBA by appointing another employee to the open position. On November 20, 1996, Miners denied the grievance at Step 1 of the grievance/arbitration procedure set forth in the CBA. On December 3, 1996, Miners denied the grievance at Step 2 of the grievance procedure. On March 12, 1997, Miners denied the grievance at Step 3 of the grievance procedure. District Council informed Miners, by a letter dated April 23, 1997, that the union would proceed to arbitration on plaintiff's grievance. District Council failed to process the grievance to an arbitrator.

Plaintiff Seritti continued to contact her union representatives, but was unable to receive any information regarding the status of her grievance. On September 10, 1998, plaintiff filed an unfair labor practice charge with the National Labor Relations Board (hereinafter "NLRB") against District Council for its failure to process plaintiff's grievance to arbitration. On October 13, 1998, District Council processed plaintiff's grievance to an arbitrator, and on October 27, 1998, plaintiff withdrew her unfair labor practice charge.

The arbitration hearing was held on July 15, 1999. In December 1999, plaintiff received a copy of the arbitrator's decision, dated August 23, 1999, which denied her grievance. On January 31, 2000, plaintiff filed an unfair labor practice charge with the NLRB against District Council alleging breach of duty of fair representation. The NLRB dismissed plaintiff's charge on May 15, 2000. Plaintiff appealed the dismissal which was upheld by the NLRB's general counsel on September 1, 2000. Plaintiff then filed the instant complaint on October 2, 2000.

Counts 1 and 2 allege breach of duty of fair representation and breach of contract by Defendant District Council. Counts 3 and 4 allege breach of contract and tortious infliction of economic injury by

Defendant Miners.

Defendants, independently filed motions to dismiss each of the allegations against them under Federal Rule of Civil Procedure 12 (b)(6). The matter has been fully briefed and is therefore ripe for disposition.

Standard of Review

Federal Rule of Civil Procedure 12(b)(6) provides that an action may be dismissed if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In deciding a 12(b)(6) motion, a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a motion to dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989) (citations omitted).

Discussion

In determining whether to grant defendants' motions to dismiss, there are two issues that need to be addressed. First, whether plaintiff's common law claims of breach of contract by both Miners and District Council and tortious infliction of economic injury by Miners are preempted by § 301 of the Labor-Management Relations Act (hereinafter "LMRA"), 29 U.S.C. § 185, et seq. Second, whether the plaintiff's claims are time-barred by the six month statute of limitations for claims brought pursuant to the LMRA. We shall address these issues *seriatim*.

1. Plaintiff's claims are preempted by the LMRA.

It is well settled that state law claims involving interpretation of the collective bargaining agreement or involving violations of a collective bargaining agreement are preempted by the LMRA. Section 301 of the LMRA grants federal courts subject matter jurisdiction over lawsuits alleging violations of collective bargaining agreements.

> 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.

Section 301 is not simply jurisdictional, as it also provides federal courts authority to establish a body of federal law to enforce collective bargaining agreements. Textile Workers Union of American v. Lincoln Mills of Alabama, 353 U.S. 448, 451 (1957). Congress intended § 301 to engender uniform federal labor law that would prevail over inconsistent local laws and rules. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209-10 (1985). The Supreme Court has held that § 301 preempts any state law cause of action for violation of a collective bargaining agreement. Avco Corp. v. International Association of Machinists & Aerospace Workers, 390 U.S. 557, 559 (1968).

However, not all state law claims fall under the ambit of § 301. The preemptive effect of § 301 is only triggered if the resolution of a state law claim depends upon an analysis of the terms of a CBA.

> The issue is not the nature of the remedy sought for the alleged violation, but whether the remedy sought may require that the court from which it is sought, state or federal, interpret a collective bargaining agreement.

Wilkes-Barre Publishing Co. v. Newspaper Guild of Wilkes-Barre, et al., 647 F.2d 372, 380 (3d Cir. 1981).

Only when a state law claim can be resolved without interpreting the CBA will it be considered independent and not preempted by § 301. Lingle v. Norge Div. Of Magic Chef, Inc., 486 U.S. 399, 410 (1988); Allis-Chalmers, 471 U.S. at 220 (state-law claims are preempted if "inextricably intertwined with consideration of the terms of the labor contract"). When preempted by § 301, state law claims must either be treated as § 301 claims or be dismissed. Allis-Chalmers, 471 U.S. at 220.

In the instant case, both Counts 1 and 2 are based upon the theory that District Council breached a duty of fair representation and breached the CBA. It is elementary that both of the rights asserted by Seritti not only derive from the contract, but are defined by the contractual obligation, that is the collective bargaining agreement, and any attempt to assess liability here inevitably will involve interpretation of the CBA. Moreover, Seritti, in her complaint, specifically sets forth that she brings her claims to recover damages pursuant to § 301 of the LMRA. (Compl. ¶ 1). Therefore, we find that both Counts 1 and 2 are preempted by § 301 of the LMRA.

In the Third and Fourth Counts, which are based upon the same legal theory and set of facts as set forth in the First and Second Counts, the plaintiff alleges that Miners tortiously inflicted an economic injury and breached its contract. Plaintiff's Third and Fourth Counts again involve the interpretation of the collective bargaining agreement, and are therefore preempted by the LMRA.

Plaintiff's Third Count is a claim for tortious interference with a contractual/economic relationship.[1] Under Pennsylvania law the four elements of tortious interference are as follows: (1) the existence of a

[1] Plaintiff actually describes this cause of action as "tortiously causing economic injury." No tort exists in Pennsylvania by that name, but we have determined that the allegations support a claim for tortious interference with contractual/economic relationship and shall rule accordingly.

contractual relationship; (2) an intent on the part of the defendant to harm the plaintiff by interfering with said relationship; (3) the absence of a privilege or justification for such interference; and (4) damages resulting from the defendant's conduct. Triffin v. Janssen, 626 A.2d 571, 574 (Pa. Super. Ct. 1993).

Plaintiff must demonstrate that she had certain contractual rights and/or grievance rights under the terms of the CBA to establish the first element. Accordingly, Plaintiff's tortious interference claim is "inextricably intertwined" with consideration of the terms of the collective bargaining agreement. It would be impossible to determine whether Miners tortiously interfered with plaintiff's contractual rights and/or grievance rights under the collective bargaining agreement without knowing what terms Miners was required to enforce. In other words, "[t]he duties imposed and rights established through the state tort ... derive from the rights and obligations established by the [collective bargaining] contract." Allis-Chalmers, 471 U.S. at 217. Thus, plaintiff's tortious interference claim is inextricably intertwined with consideration of the terms of the CBA as it will inevitably involve interpretation of the collective bargaining agreement. Accordingly, preemption is mandated. See Beidleman v. Stroh Brewery Co., 182 F.3d 225, 236 (3d Cir. 1999) (holding that the plaintiff's tortious interference claim was preempted by the LMRA because the claim was "inextricably intertwined" with the consideration of the terms of the collective bargaining agreement); see also Wilkes-Barre Publ'g. Co., 647 F.2d at 381-82 ("where parties to a labor dispute are charged with tortious interference with a collective bargaining agreement, at least in the absence of outrageous or violent conduct, state law causes of action are preempted [by § 301]").[2]

[2] The Court explained "outrageous" conduct as conduct that was violent, had a negative impact on one's reputation or mental health or interfered with the possession of real property. Id. As plaintiff does not allege any of these acts, we find these exceptions to preemption are not relevant.

Plaintiff's Fourth Count is based upon the theory that Miners breached the terms of the contract, the collective bargaining agreement, between Miners and District Council. Once again, one of the elements necessary to properly plead a cause of action for breach of contract is the existence of a contract, including its essential terms. CoreStates Bank, Nat'l. Ass'n v. Cutillo. 723 A.2d 1053, 1058 (Pa. Super. Ct. 1999). In the Fourth Count, the contract which Miners is alleged to have breached is the CBA. (Compl. ¶¶ 38-40). A state law claim for breaching the terms of a CBA is entirely preempted by § 301 of the LMRA. Avco Corp., 390 U.S. at 559; Teamsters v. Lucas Flour Co., 369 U.S. 95, 104 (1962); 29 U.S.C. § 185. Because plaintiff's Third and Fourth Counts are also preempted by the LMRA, they should be dismissed or treated as claims under § 301 of the LMRA. See Allis-Chalmers, 471 U.S. at 220.

In order to determine whether plaintiff was entitled to the rights and benefits, which she alleges were violated, it would be of utmost importance and necessity for this court to look at the CBA and interpret what rights and benefits the agreement bestowed upon her. The allegations of breach of contract by both District Council and Miners and tortious infliction of economic injury by Miners are "inextricably intertwined" with consideration of the terms of the CBA. Therefore, we find these claims to be preempted by § 301 of the LMRA.

2. The LMRA Six Month Statute of Limitations.

Plaintiff has averred what is termed a "hybrid" § 301 action because she sued her employer for breaching its dual obligations under the collective bargaining agreement and the union for breaching its duty of fair representation. Del Costello v. Int'l Bhd of Teamsters, 462 U.S. 151, 164-65 (1983); United Steelworkers of America v. Crown Cork & Seal Co., 32 F.3d 53, 58 (3d Cir. 1994). The Supreme Court has held that a six month statute of limitations applies to such actions. Id. at 170-71.

The limitation period begins to run when a plaintiff knows or reasonably should know that the union has breached its duty of fair representation. Flanigan v. Int'l. Bhd. of Teamsters, 942 F.2d 824, 827 (2d Cir. 1991); Dittman v. General Motors Corporation-Delco Chassis Div., 941 F. Supp. 284, 288 (D.Conn. 1996). The CBA required District Council to process members' grievances within a specific time frame. In the instant matter, when plaintiff received a copy of the Arbitration Award on December 31, 1999, denying her grievance as untimely, she knew that District Council had failed to process her grievance to arbitration in a timely manner. Accordingly, she was aware that she could successfully maintain a suit against Miners and/or District Council no later than that date. (Compl. ¶ 14 & Exhibit G). Likewise, plaintiff knew at that time that she could bring claims based on the same facts against Miners. See Campbell v. Van Osdale, 810 F. Supp. 205, 208 (W.D.Mich. 1992) (holding that the six-month limitation period began to run on plaintiff's claim that the union failed to provide adequate representation at the arbitration hearing when the plaintiff learned of the Arbitrator's Award). In the instant matter, plaintiff did not file the complaint until October 2, 2000 - approximately ten months after the cause of action accrued. Accordingly, on the face of the complaint, the plaintiff's claims are barred by the six month statute of limitations.

Plaintiff Seritti contends that the statute of limitations was tolled when she submitted her second unfair representation charge to the NLRB on January 31, 2000. We disagree.

The filing of a complaint with the NLRB does not toll the statute of limitations of a subsequent § 301 action. Nicely v. United States Steel Corporation, 574 F. Supp. 184, 187 (W.D. Pa. 1983); see also Arriaga-Zayas v. International Ladies' Garment Workers' Union–Puerto Rico Council, 835 F.2d 11, 13-14 (1st Cir. 1987); Lettis v. U. S. Postal Service, 39 F. Supp.2d 181, 194 (E.D.N.Y. 1998). In cases dealing with the tolling of the limitations period while a claim is pending before the NLRB, courts have stressed the

dual nature of the remedies available. Nicely, 574 F. Supp. at 187. An action under § 301 is wholly distinct from an action under § 10(b) of the National Labor Relations Act, Vaca v. Sipes, 386 U. S. 171, 182 n. 8 (1967), and plaintiff has the ability to pursue both routes for redress. Nicely, 574 F. Supp. at 187. As the District Court held in Nicely:

> [S]ection 301 itself indicates that Congress did not intend an NLRB action to be a prerequisite for a section 301 suit. Furthermore, there is no reason to believe Congress expected or intended a claimant from pursuing a section 301 action pending an action before the NLRB. The purpose behind the creation of the NLRB and the preemption doctrine do not apply to suits 'involving alleged breaches of the union's duty of fair representation' ... [a] decision not to toll is also supported by Congress' desire, as evidenced by section 10(b), to ensure finality of private settlements of employer-employee conflicts within a relatively short period of time.

Nicely, 574 F. Supp. at 188.

In making her argument that the statute of limitations should have been tolled, the plaintiff cites Simmons v. Howard Univ., 157 F.3d 914, 917 (D.C. Cir. 1998) for the proposition that the statute of limitations for a hybrid § 301 claim may be tolled when the plaintiff is fraudulently induced to delay filing his suit or in good faith attempts to exhaust grievance procedures. Plaintiff has cited no cases from the Third Circuit and our research has uncovered none that share this holding.

Nevertheless, even in applying the law set out in Simmons, we find that there are no allegations that fraud induced plaintiff's delay in filing during the period. Further, we find that a good faith argument is not applicable, in that courts within the Third Circuit have found that the filing of a claim under the NLRB does not toll the statute of limitations for the purposes of filing a later § 301 action. Accordingly, plaintiff's claims are time-barred by the six month statute of limitations, and therefore, an order will be entered granting

Miners' and District Council's Motions to Dismiss.

Conclusion

We find that plaintiff's state law claims are preempted by §301 of the LMRA. These claims constitute a hybrid § 301 action which is governed by a six month statute of limitations. The statute of limitations began to accrue on December 31, 1999, and the instant suit was not commenced until October 2, 2000. Consequently, we find that plaintiff's suit is time-barred by the six month statute of limitations which governs hybrid § 301 actions. Therefore, for all of the above-mentioned reasons, we will grant the defendants' motions to dismiss all of the allegations against them under Rule 12(b)(6). An appropriate order follows.

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BETTY JANE LORD SERITTI,	**:**	
Plaintiff	**:**	
	:	**No. 3:00cv1748**
v.	**:**	
	:	
MINERS MEMORIAL MEDICAL	**:**	
CENTER and THE AMERICAN	**:**	**(Judge Munley)**
FEDERATION OF STATE, COUNTY,	**:**	
AND MUNICIPAL EMPLOYEES	**:**	
DISTRICT COUNCIL 89,	**:**	
Defendants	**:**	
	:	

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ORDER

AND NOW, to wit, this 24th day of July 2001, it is hereby **ORDERED** that:

1) Defendant District Council's motion to dismiss [11-1] is **GRANTED**;

2) Defendant Miners' motion to dismiss [4-1] is **GRANTED**; and

3) The Clerk of Court is directed to close this case.

BY THE COURT:

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JUDGE JAMES M. MUNLEY
United States District Court

Filed: July 24, 2001