

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA McCUISTON, RICK MIAZGA,
and AVA MILLER,

Plaintiffs,

Civil No. 04-70047
Hon. John Feikens

v.

JAMES P. HOFFA; C.B. CONDER a/k/a
“Doc” Conder; and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
AFL-CIO, a Labor Organization,

Defendants.

OPINION AND ORDER

Plaintiffs are members of local unions in Michigan, and their complaint against Defendants has three counts:(1) a violation of equal voting rights in violation of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §411(a)(1); (2) breach of the IBT constitution in violation of the Labor Management Relations Act (LMRA), 29 U.S.C. §185; and (3) breach of duty of fair representation in violation of the National Labor Relations Act, 29 U.S.C. §159(a). Defendants move to dismiss, arguing that Plaintiffs are required to plead fraud with specificity in order to state a claim for which relief can be granted.

FACTUAL BACKGROUND

I have already described the facts of this dispute in a previous opinion.

McCuiston v. Hoffa, Case No. 04-70047 (E.D. Mich. April 21, 2004). Essentially, Plaintiffs allege that Defendants represented that a contract had been ratified although the majority of voters cast their ballots against ratification.

ANALYSIS

I. Motion to Dismiss Standard

A party is entitled to a motion to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim on which relief can be granted. A motion to dismiss may be granted under Fed.R.Civ.P. 12(b)(6), "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984). In reviewing the motion, courts must construe the complaint in the light most favorable to the plaintiff, accept all of the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claim that would entitle him to relief." Ziegler v. IBP Hog Mkt., Inc., 249 F.3d 509, 512 (6th Cir.2001).

II. LMRDA Claim (Voting Rights)

The heart of Plaintiffs' first claim is paragraph 32 of the Complaint: "By declaring the Michigan Office Workers Supplement ratified on the basis of a majority "no" vote and implementing the [contract] on the basis of that declaration, defendants discriminated against members who voted "no" and deprived plaintiffs and all other carhaul members of their contract ratification rights, including the right to cast a meaningful vote[.]"

29 U.S.C. §411(a) provides in part that “every member of a labor organization shall have equal rights...to vote in elections.” Although courts have imposed fairly stringent requirements on the allegations that qualify as raising an issue under this provision, binding precedent holds that a “variance or irregularity [that] results in discriminatory deprivation of an individual’s right to cast a meaningful vote” is a violation of this provision. Blanchard v. Johnson, 532 F.2d 1074 (6th Cir.), cert. denied, 429 U.S. 869 (1976). The right to cast a meaningful vote certainly includes the right to have the votes be counted in an accurate manner, and the allegations here do include discriminatory deprivation, since the “yes” votes were allegedly counted accurately while “no” votes were not. Cf. Stettner v. Int’l Printing Pressmen & Assistants’ Union of North Am., 278 F.Supp. 675 (E.D. Tenn. 1967) (voting “dilution” creates a denial of the right to an equal vote for which 29 U.S.C. §411 provides a remedy).

Defendant argues that Plaintiff’s allegation in this count is actually an averment of fraud, which must be pleaded with particularity under the Fed. R. Civ. P. 9(b). However, Rule 9(b) only applies when the claims for relief are based on fraud. 2 James W. Moore, Moore’s Federal Practice 9.03[1][d], 9-20. Here, fraud is not an “essential element” of the federal claim. Compare Fox v. Parker Hannifin Corporation, 914 F.2d 795, 800 (6th Cir. 1990). A claim of common law fraud is comprised of the following elements: (a) a material representation by the defendant, (b) the representation was false, (c) when the defendant made the representation, he knew it was false or made it recklessly, without knowledge of its truth as a positive assertion, (d) the defendant

made the representation with the intention the plaintiff would act on it, (e) the plaintiff acted in reliance on it, and (f) the plaintiff suffered damages. See, e.g., Belle Isle Grill Corp v. Detroit, 256 Mich.App 463, 477; 666 NW2d 271 (2003). Here, in order to state a claim of a discriminatory deprivation of the right to vote, Plaintiffs only need to show that the “no” votes were counted differently from the “yes” votes. Unlike a fraud claim, Plaintiffs need not show that Defendants knew or should have known that any statement about the election was false; the discriminatory deprivation relies only on the factual outcome of the election.

Because Plaintiffs’ complaint contains these allegations, and this Court must accept all of Plaintiffs’ factual allegations as true when considering a motion to dismiss, Plaintiffs have stated a claim for which relief can be granted and Defendant’s motion to dismiss this count is DENIED.

II. LMRA Claim (Breach of Constitution)

The LMRA allows for suits to be brought by individuals against labor unions that violate a contract. 29 U.S.C. §185; see, e.g., Humphrey v. Moore, 375 U.S. 335 (1965). Labor union constitutions are considered contracts covered by this provision. Woodell v. Int’l Bhd of Elec. Workers, 502 U.S. 93 (1991).

The Complaint lists three provisions of the Teamster’s Constitution that Plaintiffs claim were violated by Defendants in this case: the article guaranteeing the right to ratify collective bargaining agreements; the provision stating that “affected” members have the right to ratify supplements to master agreements, and the provision requiring

the IBT to twice attempt renegotiation of a supplement that has been rejected and submit the resulting renegotiated supplement for another vote. (Compl. ¶¶33-36.) Plaintiffs allege that IBT did not attempt renegotiation of the supplement despite its defeat. (Compl. ¶22.)

Defendants again argue that this count should be dismissed because Plaintiffs failed to allege fraud with particularity. As with the first count, fraud is not an “essential element” of the federal claim. Again, assuming that the election in fact defeated the contract at issue, but as Plaintiffs allege, the votes were miscounted, Defendants’ knowledge of falsity would not be at issue, since the right granted by the contract would be violated by the objective situation alone.

Again, in considering a motion to dismiss, this Court must accept all factual allegations made in the complaint as true. Given that the plaintiff has alleged that the contract vote was not in favor of the supplement, and that defendants presented it as ratified instead of renegotiating, Plaintiffs have met their burden, and Defendants’ motion to dismiss this count is DENIED.

III. NLRA Claim (Breach of Duty of Fair Representation)

The duty of fair representation is inferred from the National Labor Relations Act, 29 U.S.C. §159(a). Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry, 494 U.S. 558, 564 (1990). “That duty requires a union ‘to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with compute good faith and honesty, and to avoid arbitrary conduct.’” Id. at 564, quoting Vaca v.

Sipes, 386 U.S. 171, 1777 (1967). However, as was the case in Terry, the breaching of the duty of fair representation is reached via a suit under the LMRA, and not under the NLRA. Id. See also Journeyman Pipe Fitters Local 392 v. National Labor Relations Board, 712 F.2d 225, 228 (6th Cir. 1983)(“an employee who has not been fairly represented may seek relief in more than one forum: he or she may bring an action in federal court under §301 of the Labor-Management Relations Act, 29 U.S.C. §185, or may obtain relief before the [National Labor Relations] Board.”) Therefore, because a breach of the duty of fair dealing is not properly stated under the National Labor Relations Act, the Complaint fails to state a claim under which relief can be granted and the motion to dismiss this count is GRANTED.

CONCLUSION

Plaintiffs state a claim under both the LMRDA and the LMRA. However, the claim for a breach of the duty of fair representation is not properly stated under the NLRA. Thus, Defendants’ motion to dismiss with respect to the LMRDA and LMRA claims is DENIED, but Defendants’ motion to dismiss with respect to the NLRA claim is GRANTED.

IT IS SO ORDERED.

John Feikens

United States District Judge

Date: _____