

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.

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**OPINION AND ORDER**

Plaintiffs move for reconsideration of my opinion of July 2, 2004, or in the alternative, for leave to amend their complaint. For the reasons stated below, I GRANT the motion for reconsideration and reinstate Plaintiffs’ claim for breach of duty of fair representation under the National Labor Relations Act (NLRA), 29 U.S.C. §159(a). I therefore DENY the motion for leave to amend the complaint.

**ANALYSIS**

Previously, I ruled that a claim for the breach of duty of fair representation must be brought under the Labor Management Relations Act (LMRA) and could not be brought under the NLRA. For this proposition, I relied on Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry, 494 U.S. 558, 564 (1990), and the Sixth Circuit case of

Journeyman Pipe Fitters Local 392 v. National Labor Relations Board, 712 F.2d 225, 228 (6<sup>th</sup> Cir. 1983), which stated that “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.”

Plaintiffs argue that a duty of fair representation claim can be properly brought under the NLRA, and 28 U.S.C. §1337 is the basis for jurisdiction over those actions. In support, Plaintiffs cite Breininger v. Sheet Metal Workers Intern. Ass’n Local Union No. 6, 493 U.S. 67 (1989), and Storey v. Local 327, International Brotherhood of Teamsters, 759 F.2d 517 (6<sup>th</sup> Cir. 1985). In Breininger, the Court stated that “independent federal jurisdiction exists over fair representation claims because the duty is implied from the grant of exclusive representation status, *and the claims therefore “arise under” the NRLA.*” (emphasis mine). Id. at 83. In Storey, where the plaintiffs claimed the union had changed the results of a membership vote on the proposed collective bargaining agreement, the Sixth Circuit held that “Section 301 [of the LMRA] does not provide the only exception to the rule that the [National Labor Relations] Board has exclusive jurisdiction,” and stated that 28 U.S.C. 1337 offers another basis for jurisdiction in the federal courts. 759 F.2d 517 at 522.

Therefore, because Plaintiffs do state a claim for which relief can be granted in asserting the breach of duty for fair representation under the NLRA, their claim should be reinstated.

**CONCLUSION**

Plaintiffs' Motion for Reconsideration is GRANTED and the third count of the Complaint is reinstated. Plaintiffs' Motion to Amend Their Complaint is DENIED.

**IT IS SO ORDERED.**

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John Feikens  
United States District Judge

Date: \_\_\_\_\_