



Nanninga filed a grievance pursuant to the collective bargaining agreement between Keystone and Nanninga's union, the Independent Steel Workers' Alliance, ("Union"), protesting his discharge and demanding reinstatement. On October 30, 1999, while his arbitration was still proceeding and while accompanied by legal counsel, Nanninga signed the Release. The grievance proceeded through arbitration, resulting in the arbitrator ordering Nanninga's reinstatement. At no time during the arbitration did Keystone mention the signed Release. Despite the arbitrator's decision, Keystone refused to reinstate Nanninga, claiming that the arbitration was not enforceable because Nanninga had released any claim he may have had when he signed the Release. After withdrawing a previous complaint seeking enforcement of the arbitration award, Nanninga instituted the instant lawsuit seeking declaratory relief that Keystone may not rely upon the Release or use the Release as a defense against the enforcement of the arbitration award based upon Keystone's failure to raise the Release before or during the arbitration, a breach of contract theory, and because the release is in contravention of Illinois public policy.

Nanninga originally filed his complaint in Illinois state court, to which Keystone responded with a motion to remove the case to federal court arguing that Nanninga's action was preempted by § 301 of the Labor Management Relations Act, ("LMRA"), 29 U.S.C. § 185(a). Arguing that Keystone "misrepresented the nature of Plaintiff's cause of action" as seeking the enforcement of an arbitration award when the "Plaintiff's complaint is strictly limited to requesting a declaratory judgment that the Defendant has waived the right to rely upon a release and resignation . . . and that said release is accordingly of no force or effect," Nanninga made a motion to remand to state court,

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Opposition to Plaintiff's Motion to Remand. See, Doc. # 11. As a result, for purposes of these motions, the Court will assume that the grievance was filed before the Release was signed.

arguing that the LMRA was not implicated by his cause of action. (Doc. # 9). Objecting to Nanninga's motion, Keystone argued that federal jurisdiction is proper whenever a federal question is involved and that Nanninga cannot avoid removal simply by the "artful pleading" of couching a federal cause of action in terms of state law. The magistrate judge hearing the matter recommended denying Nanninga's motion to remand, finding removal proper because Nanninga's complaint implicated the interpretation, application, and enforcement of a collective bargaining agreement and was therefore preempted by federal law. This Court adopted the magistrate's recommendation, finding that Nanninga's claims were completely preempted by § 301 of the LMRA because the viability of the Release and its potential bar to the enforcement of the arbitration action are inextricably intertwined with the collective bargaining agreement entered into between the Union and Keystone.

After the Court found federal jurisdiction, the parties filed their respective motions for summary judgment now before the Court. In their Motion for Summary Judgment on all three counts of Nanninga's complaint, Keystone contends that Nanninga lacks standing to assert the claims and that no case in controversy exists which would provide the Court with jurisdiction over the matter. Nanninga's Motion for Summary Judgment on Counts I and III of his complaint seeks a determination that Keystone waived any right to rely upon the Release by failing to raise the Release in the arbitration, and that the Release violates the public policy of the state of Illinois, arguments echoing those he made in his previous motion to remand and previously found wanting by the Court.

#### **LEGAL STANDARD**

When considering a Fed.R.Civ.P. 56 motion for summary judgment, "the court must review all of the evidence in the record, drawing all reasonable inferences in favor of the nonmoving party,

but making no credibility determinations or weighing any evidence. The latter functions, along with the drawing of legitimate inferences from the facts, are for the jury, not the court.” *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 135 (2000). Thus, summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is not a genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Further, Fed.R.Civ.P. 56 requires granting summary judgment when a non-moving party “fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Id.* “In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323. When both sides seek summary judgment, as in the case at bar, the court must rule on each motion separately in determining whether or not each judgment should be entered, and the court can deny both motions if both parties fail to meet their burden. *Wolf v. Maryland Cas. Co.*, 617 F.Supp. 456, 458 (S.D.Ill. 1985). In this case, the Court first considers Keystone’s motion, finding all facts in favor of Nanninga. Because the Court grants Keystone’s motion, directly addressing Nanninga’s cross motion becomes superfluous.

#### ANALYSIS

This Court’s May 10, 2002, decision, (Doc. # 16), adopting the recommendation of the magistrate judge that § 301 of the LMRA preempts Nanninga’s state law causes of action has become the law of the case, and will not be litigated anew in the instant motion. *Appleton Electric Co. v. Graves Truck Line, Inc.*, 635 F.2d 603, 607 (7<sup>th</sup> Cir.1980). Thus, while the federal question

jurisdiction over this controversy is not in question, the Court must explicate its earlier decision in order to resolve the instant matter.

In its previous order, the Court noted that “[e]ven if a plaintiff makes no mention of § 301 in a complaint, § 301 nevertheless may displace entirely a state cause of action, allowing removal by the defendant under the complete preemption exception to the well-pleaded complaint rule.” *Atchley v. Heritage Cable Vision Assoc.*, 101 F.3d 495, 498 (7<sup>th</sup> Cir. 1996). Determining whether a party’s state law claims are preempted under § 301 requires courts to decide whether the resolution of the state law claim depends on the meaning of, or requires the interpretation of, a collective bargaining agreement. *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-406 (1988). The Court went on to hold that the broad preemptive effect of § 301 will not apply to every case involving a collective bargaining agreement, as disputes only tangentially involving a provision of a collective bargaining agreement will escape § 301 preemption. *See, Loewen Group Intern., Inc. v. Haberichter*, 65 F.3d 1417, 1421 (7<sup>th</sup> Cir. 1995); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985). Thus, “when the meaning of contract terms is not the subject of debate, the bare fact that a collective-bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished.” *Lividas v. Bradshaw*, 512 U.S. 107, 124 (1994). Instead, preemption is only found when a provision of a collective bargaining agreement is the subject of the dispute or the dispute is substantially dependent on the analysis of the terms of the collective bargaining agreement. *Loewen*, 65 F.3d at 1423; *see also, Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987).

In denying Nanninga’s Motion to Remand by finding that § 301 of the LMRA preempted Nanninga’s state law claims, the Court specifically held that “Plaintiff maintains that he is solely

interested in enforcing his rights that arise out of the Release, which arose in the context of his state law action under the Worker's Compensation Law of Illinois. However, the Court disagrees with Plaintiff's interpretation of his claim." Doc. # 16 at 8. Finding as the magistrate judge did that the rights Nanninga seeks to enforce do not exist in a vacuum, the Court stated that "[t]he issue of whether the Defendant waived the release by failing to raise it as a defense during the arbitration implicates by necessity the arbitration procedures of the collective bargaining agreement. As Plaintiff's claim involves the arbitration, it therefore implicates the collective bargaining agreement." *Id.* at 8-9.

Because this decision did not require the Court to expound upon its holding further, the Court did not specifically point out that § 301 of the LMRA only preempted Count I of Nanninga's complaint, as Count I was the only Count directly implicating the arbitration procedures of the collective bargaining agreement. Thus, in denying Nanninga's Motion to Remand, the Court only exercised federal question jurisdiction over Count I, retaining jurisdiction over the remaining two counts as pendent state law claims.

In contrast to Count I of Nanninga's Complaint, Count II attempts to void the signed release by claiming that "the consideration underlying the [Resignation and Release] includes the sum of \$10" which Nanninga claims Keystone failed to tender, and the Release should therefore be invalidated "for lack of consideration, and that the [Release] may not be utilized by Defendant as an impediment to the enforcement of Plaintiff's arbitration award." Compl. at 3-4. While referencing the enforcement of the arbitration award, Count II does not directly implicate the arbitration procedures as did Count I. Instead, Count II is phrased entirely as a breach of contract action, the resolution of which does not directly implicate the interpretation of the collective bargaining

agreement and is therefore not preempted by § 301 of the LMRA.

Likewise, Count III states a state law cause of action independent of the interpretation of the collective bargaining agreement. In this count, Nanninga claims that the Release cannot be used by Keystone as an impediment to the enforcement of the arbitration award because “conditioning a workers’ compensation settlement upon the resignation of the employee is against the public policy of the state of Illinois.” Compl. at 4. Again, while Nanninga is clearly seeking to use a violation of Illinois public policy to thwart the validity of the Release and Keystone’s ability to rely upon it in their refusal to implement the arbitration award, the resolution of this claim does not depend upon the meaning of, or interpretation of, a collective bargaining agreement, and will also not be preempted by § 301 of the LMRA.

Turning to the merits of Count I under the LMRA, the Court agrees with Keystone’s position that as a matter of law, individual employees do not have standing to assert claims to enforce or challenge an arbitration award unless they also assert a claim of unfair representation against their union because employees are not parties to either the collective bargaining agreement between the company and the union or to any arbitration arising thereunder. *Cleveland v. Porca, Co.*, 38 F.3d 289, 296-97 (7<sup>th</sup> Cir. 1994) citing *Martin v. Youngstown Sheet & Tube Co.*, 911 F.2d 1239, 1244 (7<sup>th</sup> Cir. 1990). Nanninga has not brought an unfair representation claim against the Union. As a result, Nanninga does not have standing to bring a claim under § 301 of the LMRA.


While this disposes of Count I, the Court still has jurisdiction over Counts II and III as pendent state law claims. However, without a basis for jurisdiction over these claims other than pendent jurisdiction, such as diversity of citizenship or the running of the statute of limitations for filing the pendent claim as an independent lawsuit in state court, district courts should relinquish

jurisdiction over pendent state claims when the federal claim is dismissed before trial. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). This is a course of action repeatedly insisted upon by the Seventh Circuit, and because the circumstances of this case do not provide an exception to the general rule favoring the relinquishment of jurisdiction over these claims, the Court relinquishes its pendent jurisdiction. *See, e.g., Graf v. Elgin, Joliet and Eastern Railway Co.*, 790 F.2d 1341, 1344 (7<sup>th</sup> Cir. 1986); *Blau Plumbing, Inc. v. S.O.S. Fix-It, Inc.*, 781 F.2d 604, 611-12 (7<sup>th</sup> Cir. 1986). However, despite the Court's dismissal of Counts II and III based upon the relinquishment of its pendent jurisdiction, such dismissal does not constitute a final judgment on the merits of these claims. *See, Graf*, 790 F.2d at 1347.

#### CONCLUSION

As a result of the foregoing, the Defendant's Motion for Summary Judgment is GRANTED <sup>(22)</sup> and Plaintiff's cross Motion for Summary Judgment is DENIED <sup>(24)</sup>. In granting Defendant's motion, Counts I, II, and III of Plaintiff's complaint are DISMISSED WITHOUT PREJUDICE.

ENTERED this 28<sup>th</sup> day of May, 2003.

  
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JOE BILLY McDADE  
Chief United States District Judge