IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MARLOW PALMORE,

Plaintiff,

v.

JON E. LITSCHER, STEVE KRONZER, and ROBIN M. WINISTORFER,

Defendants.

OPINION AND ORDER

01-C-0513-C

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This is a proposed civil action for monetary and injunctive relief, brought pursuant to 42 U.S.C. § 1983. Plaintiff Marlow Palmore is an inmate at the Green Bay Correctional Institution in Green Bay, Wisconsin. He alleges that defendants Jon E. Litscher, Steve Kronzer and Robin M. Winistorfer withheld, without his consent, portions of the wages he earned as a participant in a prison work project in violation of 18 U.S.C. § 1761(c). Although plaintiff has paid the full $150 filing fee, because he is a prisoner the court must screen the complaint, identify the claims and dismiss any claim that is frivolous, malicious or is not a claim upon which relief may be granted. See 28 U.S.C. §§ 1915A(a), (b). Because I conclude that plaintiff may not enforce 28 U.S.C. § 1761 via a 42 U.S.C. § 1983

suit, he has failed to state a claim upon which relief may be granted and will be denied leave to proceed against any of the defendants.

In his complaint, plaintiff makes the following allegations of fact.

ALLEGATIONS OF FACT

A. Parties

Plaintiff Marlow Palmore is a state prisoner confined at the Green Bay Correctional Institution in Green Bay, Wisconsin. Defendant Jon Litscher is the secretary of the Wisconsin Department of Corrections. Defendant Steve Kronzer is the director of the Bureau of Correctional Enterprises. Defendant Robin M. Winistorfer is the private sector coordinator for the Bureau of Correctional Enterprises.

B. Withheld Wages

On September 24, 1996, plaintiff was hired to work for a glove manufacturer at the Green Bay Correctional Institution where he is incarcerated. On November 11, 1996, plaintiff signed an agreement authorizing prison officials to make deductions from his wages to cover certain expenses, including room and board. On January 11, 1998, plaintiff was terminated by the glove manufacturer. On January 12, 1998, he was rehired. Plaintiff signed no new authorization relating to wage deductions following his rehire. Nevertheless,

prison officials continued to deduct significant amounts of money from the wages he earned working for the glove manufacturer. In October 2000, plaintiff wrote to defendant Litscher complaining about these unauthorized deductions. Defendant Litscher referred him to the warden of the Green Bay Correctional Institution, who in turn referred him to the Bureau of Correctional Enterprises. Plaintiff wrote defendant Winistorfer to complain about the absence of a valid agreement authorizing the wage deductions and to seek reimbursement for those deductions made between January 12, 1998 and October 2000. Defendant Winistorfer informed plaintiff that the agreement he had signed on November 11, 1996, was still effective. Plaintiff then filed a grievance with the Department of Corrections, which was dismissed as untimely. Plaintiff's appeal of that decision was dismissed on the same ground.

OPINION

Plaintiff argues that 28 U.S.C. § 1761 invests him with a right to be free from deductions from his wages in the absence of a valid voluntary agreement authorizing such deductions. The Ashurst-Sumners Act, 28 U.S.C. § 1761-62, provides no private right of action. Harker v. State Use Indus., 990 F.2d 131, 134 (4th Cir. 1993). Therefore, plaintiff seeks to enforce that statute by bringing this 42 U.S.C. § 1983 suit. Section 1983 is not available to redress violations of every federal statute. Rather, "[i]n order to seek redress through § 1983 . . . a plaintiff must assert the violation of a federal *right*, not merely a

violation of federal *law*." Blessing v. Freestone, 520 U.S. 329, 340 (1997) (quoting Golden State Transit Corp. v. Los Angeles, 493 U.S. 103, 106 (1989)). Accordingly, before reaching the issue whether a valid authorization for deductions exists, I must determine whether § 1761 gives plaintiff a federal right enforceable under 42 U.S.C. § 1983. Determining whether a federal statute gives rise to a federal right enforceable under § 1983 involves application of a three-part test:

> First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States.

Id. at 340-41 (citations omitted).

The Ashurst-Sumners Act "penalizes the knowing transportation of prison-made goods in commerce and was specifically intended to combat unfair competition." Vanskike v. Peters, 974 F.2d 806, 811 (7th Cir. 1992) (citing Kentucky Whip & Collar Co. v. Illinois Central R.R. Co., 299 U.S. 334, 351 (1937)). Section (a) of the act broadly prohibits the transportation of prison-made goods in interstate commerce. Section (b) exempts certain goods from this prohibition, including those prison-made goods manufactured for use by federal, state or local governments. Section (c) contains a further exemption for goods made by prisoners participating in certain prison work pilot projects. Plaintiff points out that in order to qualify for this exemption, the goods must be manufactured by prisoners who are

paid the prevailing wage for such work among non-inmate laborers in their locality and who have agreed in advance to certain deductions that section (c) allows prison officials to make for expenses such as room and board. 18 U.S.C § 1761(c)(2), (4).

The United States District Court for the District of Minnesota has thoroughly analyzed 28 U.S.C. § 1761 in the context of a prisoner lawsuit brought under § 1983, including the statute's legislative history. McMaster v. Minnesota, 819 F. Supp. 1429 (D. Minn. 1993), aff'd, 30 F.3d 976 (8th Cir. 1994). The district court concluded that Congress did not enact 28 U.S.C. § 1761(c) for the benefit of prisoners and therefore the prisoners in that case were not entitled to sue to enforce that provision under § 1983. Id. at 1441.

In McMaster, the court recognized first that when Congress enacted Ashurst-Sumners in 1935, its goal was to protect private business from unfair competition from cheap prison labor. It noted also that section (c) was added as an amendment in 1979 and that the work pilot projects first authorized by that section were expanded by amendment in 1984 and again in 1990. The Senate Report accompanying the 1984 amendment justified expansion of the projects because they had been "'successful in teaching inmates marketable job skills, reducing the need for their families to receive public assistance, decreasing the net cost of operating correctional facilities and breaking the recidivist cycle.'" Id. at 1440-41 (quoting S. Rep. No. 98-225 (1984) reprinted in 1984 U.S.C.C.A.N. 3182, 3463). According to the House Report accompanying the 1990 amendment that provided for further expansion of

the work projects, "the benefits of this program are numerous, with the reduction of the cost of incarceration being the most notable." The report also notes that the work pilot projects provide inmates with the means to make partial reparations to victims, allow inmates to meet financial obligations while in prison, reduce idleness and help develop marketable skills. Id. at 1441 (quoting H.R. Rep. No. 101-681(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6472, 6608-09).

The court acknowledged that the benefits cited in these reports went beyond the prevention of unfair competition. However, it concluded that reducing recidivism and incarceration costs and enhancing the ability of inmates to make reparations and meet financial obligations are benefits that "accrue not specifically to inmates, but to prison administrators and to society in general." Id. Specifically addressing section (c), the court held that in enacting Ashurst-Sumners and its amendments, Congress intended primarily to benefit society generally by reducing unfair competition and the costs of incarceration while enhancing rehabilitation efforts. While section (c) may also benefit prisoners, "the fact that a statute has the subsidiary purpose of benefitting a given class of persons does not establish that it creates enforceable rights in their favor." Id. (quoting Cort v, Ash, 422 U.S. 66, 80-81 (1975)).

I am persuaded that the reasoning in McMaster should be applied in this case. When Congress amended 28 U.S.C. § 1761 to add section (c), it was not concerned primarily with

insuring that prison laborers receive lucrative compensation. Rather, it sought to further the general societal interest in limiting incarceration costs and reducing recidivism through rehabilitation, while simultaneously shielding private sector producers from unfair competition. Congress intended 28 U.S.C. § 1761, as amended, to benefit society generally and private producers specifically, rather than prisoners. Therefore, plaintiff is not entitled to bring a § 1983 suit to enforce that statute. Accordingly, this lawsuit must be dismissed under 28 U.S.C. § 1915A for plaintiff's failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that

1. Plaintiff's 42 U.S.C. § 1983 claim is DISMISSED pursuant to 28 U.S.C. § 1915A for plaintiff's failure to state a claim upon which relief may be granted.

2. The clerk of court is directed to enter judgment for defendants and close this case.

3 A strike will be recorded against plaintiff in accordance with 28 U.S.C. § 1915(g).

Entered this 24th day of September, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge