IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 1473,
SHAWN DEYOT AND RANDALL SORENSON,

Plaintiffs,

v.

MEMORANDUM AND ORDER
06-C-595-S

NESTLE USA, INC.,

Defendant.

Plaintiffs United Food and Commercial Workers Union, Local 1437 on behalf of its member production and maintenance employees, including Shawn Deyot and Randall Sorenson, commenced this class action in the Circuit Court for Eau Claire County Wisconsin alleging that defendant Nestle USA, Inc. violated Wisconsin Statute § 103.02 at its Gateway facility by failing to compensate employees for time spent donning and doffing required clothing. Defendant removed the matter to this Court asserting complete federal preemption pursuant to § 301 of the Labor Management Relations Act. The matter is presently before the Court on plaintiffs' motion to remand.

The complaint makes the following allegations. Defendant operates the Gateway manufacturing and processing facility in Eau Claire, Wisconsin. Defendant requires its employees to wear uniforms and protective gear to perform their jobs. The employees

must walk to the uniform locker room, change into work clothing and gear and walk to their work stations prior to beginning their shifts. At the end of their shifts employees are required to return to the locker room, change out of work clothes and gear and place their work clothing in a designated area. Employees are not compensated for the time spent walking to and from the locker room and donning and doffing the required clothing and gear. Employees are also required to don and doff clothing during a mandatory unpaid lunch period. These activities are hours worked for which employees must be compensated pursuant to Wisconsin Statute § 103.02.

MEMORANDUM

On its face, the complaint is based exclusively on state law. Defendant contends, however, that resolution of the alleged state law claims requires interpretation of the parties' collective bargaining agreement ("CBA"), thereby rendering the claims exclusively federal and conferring federal jurisdiction. Plaintiffs contend that no interpretation of the CBA is required to resolve the state claims.

Generally, § 301 does not pre-empt nonnegotiable rights conferred on individual employees by state law. Lividas v. Bradshaw, 512 U.S. 107, 123 (1994). However, if resolution of the state law claim depends on the meaning of a CBA, state law is

preempted to assure national uniformity in CBA interpretation. Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 405-06 (1988). If resolution of a state claim is "substantially dependent" upon an analysis of a CBA it is pre-empted. International Broth. of Elec. Workers, AFL-CIO v. Hechler, 481 U.S. 851, 859 n.3 (1987). If resolution requires reference to, but not interpretation of the CBA, the claim is not pre-empted. Baker v. Kingsley, 387 F.3d 649, 657 (7th Cir. 2004).

Accordingly, resolution of the motion to remand depends entirely on an assessment of the extent to which interpretation of the CBA between the parties will be necessary to resolve the independent state statutory claim to payment for time spent donning and doffing work clothes and walking to work stations. Careful review of the claims at issue, the language of the collective bargaining agreement and defendant's arguments suggest that resolution of the statutory claims will not require interpretation of the CBA and therefore are not pre-empted.

Plaintiffs' claims require proof that (1) employees spent time donning and doffing work clothes and equipment and walking to work stations at the Gateway facility, (2) these activities constitute "hours of labor" within the meaning of Wis. Stat. § 103.02 and regulations adopted pursuant to that provision, (3) employees were not paid for the time performing these activities. Proof of these elements appears to be entirely unrelated to any provision of the

CBA. Whether employees spend time preparing for work and whether they were paid for that time is a question of fact unrelated to any provision of the CBA.

For example, DWD 272.12(2)(e) defines in detail standards for when preparatory activities such as dressing constitute hours worked for purposes of the statutory wage requirements. Whether the activities of the plaintiff employees in this case meet the standards is entirely a question of proof of the facts and circumstances involved in the preparatory activities, and application of those facts to the regulation. That determination might require interpretation of the state regulations, but does not require interpretation of the CBA. Whether those activities satisfy definitions or requirements in the CBA is irrelevant.

In its opposition to remand, defendant does not suggest that there is any express term in the CBA which would require application or interpretation in order to resolve these issues. Defendant does suggest that reference to or interpretation of the CBA would be necessary to determine whether employees are entitled to even greater benefits in some circumstances under the terms of the CBA. That issue is not presented by plaintiffs' claims and is irrelevant to them. Defendant also notes the provisions of the CBA which define hours worked for purposes of payment under the CBA. Interpretation of these provisions would have no impact on the meaning of similar terms used in the Wisconsin statutes.

Most of defendant's arguments go to whether union members are contractually required to perform the donning, doffing and other activities in question pursuant to implied terms in the contract based on past practices of the parties. Application of the statutes and regulations at issue, however, are not dependent on whether activities are contractually required. Rather, the question is whether as a matter of fact, the activities are an integral part of the job the employee is asked to perform. Reference to the CBA is simply not required to make that determination.

Plaintiffs' claims are independent state law causes of action which are not substantially dependent on the meaning of the CBA. Accordingly, the claims are not subject to federal preemption and there is no basis for federal jurisdiction. The matter must be remanded to state court.

Plaintiffs seek an award of fees incurred as a result of the removal pursuant to 28 U.S.C. § 1447(c). Absent unusual circumstances, courts may award attorney's fees under 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied. Martin v. Franklin Capital Corp., 546 U.S. 132, 126 S. Ct. 704, 711 (2005). In applying the standard the court should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the

opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied. Id. In light of the broad scope of preemption provided by § 301 and the fact that the work for which additional wages are sought bears some relationship to the CBA, it cannot be said that removal lacked any objectively reasonable basis. Furthermore, there is nothing to suggest that removal was an effort to prolong litigation or impose costs on the opponent. An award of fees pursuant 28 U.S.C. § 1447(c) is inappropriate.

ORDER

IT IS ORDERED that plaintiffs' motion to remand is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' motion for fees, costs and expenses is DENIED.

IT IS FURTHER ORDERED that this matter is remanded to the Circuit Court for Eau Claire County, Wisconsin.

Entered this 29th day of November, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge