IN THE DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

OK GROCERY COMPANY, a division of Giant Eagle, Inc., Plaintiff	)	
v.	)	Civil Action No. 02:20-cv-1609
TEAMSTER LOCAL UNION NO. 636, Defendant	)	ELECTRONICALLY FILED

BRIEF IN SUPPORT OF MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, STAY PROCEEDINGS

This matter comes before this Honorable Court on a Complaint filed by OK Grocery Company ("Employer") against Teamster Local Union No. 636 ("Union") alleging a violation by the Union of the collective bargaining agreement ("CBA") between the parties. The specific allegation is that the Union has failed to disavow an unsubstantiated claim by the Employer that the Union is encouraging a slowdown and/or sickout of its members working at the warehouse of the Employer. The crux of the unsubstantiated claims of the Employer are supposed actions taken by Tim Basile on September 14, 2020. Currently the grievance and arbitration process being pursued under the provisions in Article IX of the CBA. Therefore, it is appropriate for this Honorable Court to dismiss this civil action as premature or otherwise stay this civil action pending the outcome of the grievance and arbitration proceedings.

A fundamental principle of labor relations is that the grievance and arbitration process under a collective bargaining agreement takes primacy over any other method of dispute resolution that may otherwise be available to the parties. This was firmly

established by the United States Supreme Court in the *Steelworkers Trilogy*.[1] The Supreme Court has repeatedly reiterated this mandatory preference for the grievance and arbitration procedure over other remedies. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287 (2010); *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643 (1986); *Carbon Fuel Co. v. United Mine Workers of America,* 444 U.S. 212 (1979); *Gateway Coal v. United Mine Workers of America*, 414 U.S. 368 (1974).[2] Likewise, the National Labor Relations Board defers to the grievance and arbitration procedure when presented with unfair labor practices involving the same conduct. Collyer *Insulated Wire*, 192 NLRB 837 (1971); *Dubo Manufaturing* Co., 142 NLRB 431 (1963). *See also* Exhibit No. 3 to Motion.

The Complaint expressly relies upon the alleged and unsubstantiated actions of Mr. Basile in putting the postings in the refrigerators of the vending machine room and the break room. Paragraph 15 alleges that on the morning of September 15, 2020, the Company discovered seven (7) postings in the warehouse which it later claims called for a slowdown or sickout. Paragraph 16 alleges that the postings were found specifically in the refrigerators in the vending machine room and the break room. Paragraph 17 alleges that the Company reviewed video footage from September 14, 2020 and reached the unsubstantiated conclusion that Mr. Basile put the postings inside the refrigerators "in an

[1] *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[2] The Supreme Court has even mandated arbitration outside the labor relations context when there is a mandatory arbitration clause based on the requirements of the Federal Arbitration Act. *See American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); and *Green Tree Financial Corp.-Ala v. Randolph*, 531 U.S. 79 (2000).

apparent attempt to covertly initiate a slowdown and sickout by his co-workers." Finally, in Paragraph 18 the Company makes the point that Mr. Basile is a "long term employee and is a union committee member, a position to which he was elected by his co-workers." These are the underlying actions on which the Company is relying for its case.

This is reinforced by the September 18, 2020 letter from the Company to Albert Waltz, the Principle Officer of the Union. The Company made its baseless allegations regarding "a Local 636 employee has violated the collective bargaining agreement" with this posting. Exhibit D to Complaint. This is a clear reference to the actions of Mr. Basile recited in Paragraphs 15-18. The letter goes on to demand the union "immediately repudiate, in writing, the postings initiating a slowdown and/or sickout to all Local 636 employees and the Company." Id. This is followed by the threat to file this exact litigation if the Union did not provide such a "repudiation" in writing.[3] Ultimately, the Paragraph 27 of the Complaint speculates on the motives of what it claimed Mr. Basile did by claiming he "engaged in conduct that violates the Agreement by posting the call for its members to engage in a slowdown and sickout on September 14, 2020."

As stated in the Motion, the Union is pursuing a grievance regarding all the actions the Company alleges to be the basis for its unsubstantiated damages. The parties must work through the grievance and arbitration process before the Company has any remote possibility that it can succeed in the meritless Complaint. If Mr. Basile is vindicated then

[3] For some reason the Company refuses to acknowledge that the Union has not authorized, participated in or ratified this alleged conduct when ignores the letter from Mr. Waltz to Karen Priore. Exhibit E to Complaint. It must prove one of these overt acts in order to even have a claim on which it can pursue this Complaint. *Carbon Fuel*, 444 U.S. at 216-217. It appears, by pursuing this Complaint, that the Company is making an attempt to force the Union to repudiate something it does not believe occurred, nor that it authorized, participated in or ratified, so as to justify its unjustified discharge of Mr. Basile.

the crux of the Complaint, that he was instigating a slowdown or sickout, will have no basis in fact. This is beyond the fact that the Company has not alleged any authorization, participation or ratification of the claimed acts which is required for liability on the part of the Union, which is a necessary predicate for liability.[4]

For the foregoing reasons, it is respectfully requested that the Motion to Dismiss, or in the alternative for a stay, be granted.

Respectfully submitted,

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[4] The court is permitted to consider the exhibits attached to the Motion to Dismiss as they are authentic documents related to the allegations of the Complaint and a letter decision from a governmental agency, the NLRB. *See Pension Ben. Guar. Corp. v. White Consol. Industries, Inc.*, 998 F.2d 1192 (3d Cir.1993).