IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

P. KEVIN PHILLIPS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 01-22-GMS
	)	
UNITED PARCEL SERVICE INC.,	)	
	)	
Defendant.	)	
	)	

M E M O R A N D U M A N D O R D E R

I. INTRODUCTION

On December 13, 2000, the plaintiffs, P. Kevin Phillips, Bari M. Poorman, James A. Baker and Kevin Maxwell, filed a complaint the Delaware Superior Court alleging wrongful withholding of earnings pursuant to 19 Del. C. § 1102. The defendant, United Parcel Service, Inc. ("UPS"), removed the case to the court on January 10, 2001 (D.I. 1). Removal was based on both diversity and federal question jurisdiction. *See* 28 U.S.C. §§ 1331, 1332, and 1441.[1] The defendant filed a motion to dismiss or in the alternative for summary judgment on April 10, 2001, on the grounds that plaintiffs' claims are preempted by Section 301 of the Labor Management Relations Act, *codified at* 29 U.S.C. § 185 (the "LMRA") (D.I. 10).[2] The plaintiffs answered (D.I. 14) and UPS filed a reply

[1]For the purpose of the instant motion, the court accepts UPS's allegations regarding diversity jurisdiction at face value. Although the parties are diverse, it is unclear whether the amount in controversy exceeds $75,000.

[2]Section 301 of the LMRA provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction over the parties, without respect to the amount in controversy or without regard to the citizenship of the

(D.I. 16). Since the court finds that the plaintiffs (1) are pre-empted from bringing the original claim, (2) have not amended their complaint to state a federal cause of action, and (3) have not supplied sufficient evidence to support a cause of action, it will grant UPS's motion for summary judgment.

II. STANDARD OF REVIEW

As an initial matter, the record includes several pieces of evidence outside the pleadings. UPS attached a copy of the Teamsters Metropolitan Philadelphia United Parcel Service Supplemental Agreement to the National Master United Parcel Service Agreement (the "Agreement") to its motion and included an affidavit.[3] The plaintiffs' reply brief contained an affidavit by Phillips. Because the court must examine these materials to decide the instant motion, it will treat the pending motion as one for summary judgment.[4] *See* Fed. Civ. P. 12(b)(6) (noting motion can be converted into one for summary judgment when parties attach materials outside of pleadings); *see also Camp v. Brennan*, 219 F.3d 279, 280 (3d Cir. 2000) (stating that consideration of matters beyond complaint converts motion to dismiss into motion for summary judgment).

Summary judgment is appropriate if there exists no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). An issue is

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parties.

29 U.S.C. § 185(a).

[3]The Agreement appears to be the sole agreement between UPS and the workers' union. Although the copy provided to the court is not certified, it is accompanied by the affidavit of UPS Labor Relations Manager Mark Aaron, wherein Mr. Aaron attests to its authenticity.

[4]The plaintiffs may not complain that they were not afforded sufficient notice. First, the defendant's motion specifically requested its consideration as a "motion to dismiss or in the alternative for summary judgment." Second, not only did the plaintiffs have the opportunity to respond, but they also submitted additional materials with their reply brief.

"genuine" only if, given the evidence, a reasonable jury could return a verdict in favor of the non-moving party. *See, e.g.*, *Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986)). A fact is "essential" if it bears on an essential element of a plaintiff's claim. *See id.* In deciding a summary judgment motion, the court must evaluate the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences and resolving all reasonable doubts in favor of that party. *See, e.g., Pacitti v. Macy's*, 193 F.3d 766, 772 (3d Cir. 1999). The non-moving party, however, must demonstrate the existence of a material fact by supplying sufficient evidence, not mere allegations, that would enable a reasonable jury to find in its favor. *See Olson v. General Elec. Astrospace,* 101 F.3d 947, 951 (3d Cir. 1996) (citation omitted). Keeping the above standards in mind, the court turns to the facts and assertions of each party.

III. BACKGROUND

At the time of the filing of the complaint in the Delaware Superior Court, the plaintiffs were employed by UPS as full-time drivers. As a result, they were members of the bargaining unit represented by the International Brotherhood of Teamsters, Local 326 (the "Union"). The plaintiffs were all previously employed by UPS as part-time employees and were paid according to the Agreement. While working as part-time drivers, the plaintiffs each signed a "bid list" for temporary drivers to cover for vacations and peak season. According to the complaint, the plaintiffs were promised by UPS management that the extra time they worked would count towards their two year pay progressions. Phillips and Maxwell gained full-time driver status on September 7, 1999, Baker became a full-time driver on January 4, 1999, and Poorman became a full-time driver on January 3, 2000. Each plaintiff was paid the "Start" rate for full-time drivers pursuant to a wage progression

scale outlined in the Agreement. The plaintiffs contend they each should have earned credit towards the Agreement's "Seniority Date plus two (2) years" pay rate, or the "Top Rate" and should have been paid accordingly.

The complaint and the plaintiffs' papers contain little information regarding Poorman, Baker, and Maxwell. There is no indication that these plaintiffs had any communication with UPS or the Union regarding their wage dispute prior to the filing of the complaint. According to his affidavit, Phillips, however, had previous interactions with UPS and the Union. He filed a grievance with the Union regarding his salary on November 24, 1999. Filing a grievance is the first stage in the arbitration procedure outlined in the Agreement. In his affidavit, Phillips states that on March 23, 2000, he met with the Union's business agent, Jim Young, shop steward Paul Thornburg, and labor relations manager, Aaron, as well as members of UPS management, Gary Crutchfield and Steve Duca. At this meeting, Phillips was advised that more investigation into his grievance was needed. Since the meeting resulted in no action, Phillips filed a second grievance with a shop steward on July 7, 2000.[5] A second meeting was conducted on August 9, 2000 with Young, Thornburg, Ryan, Aaron and UPS manager Larry Hutchinson. Phillips was informed that UPS wanted to rewrite the "casual driving contract" with its drivers. Phillips avers that outside of the meeting room, Young privately advised Phillips that the Union was no longer going to fight his salary claim because it lacked merit.

[5]A copy of what Phillips contends is the second grievance is contained in the appendix to the defendant's brief in support of its motion (D.I. 12). Under the "nature of grievance" section, Phillips stated "Pay rate should be $21.82 per hr. Have been getting paid $15.02. Started driving Aug. 27, 1999. After many requests, pay rate remains $15.02." Shop Steward John Ryan, who signed the greivance, stated that Phillips "[r]equest[ed] all back pay since Aug. 27, 1999 plus penalties."

According to Phillips, following Young's recommendation, he withdrew his grievance.[6] Although Phillips's affidavit states that Aaron subsequently told him that he had a "proposition" for the plaintiffs, there is no evidence he had any further contact with UPS or the Union regarding this matter.

IV. DISCUSSION

In their complaint, the plaintiffs claim that UPS advanced them to full-time employment status at an improper pay rate. They further assert the existence of an oral agreement between the plaintiffs and UPS that is contrary to the terms of pay provisions and of pay progression dates set forth in the Agreement. The language of the Agreement, however, specifically provides for the invalidation of any contrary or outside understandings or agreements. It also states that the resolution of the plaintiffs' claim is wholly dependant upon its terms.

Aside from potential evidentiary issues,[7] the plaintiffs' claims are barred on procedural grounds. Since the resolution of the plaintiffs' claims are more than "substantially dependant upon the analysis of the terms of an agreement made between the parties in a labor contract," their original state law claim is pre-empted by the LMRA. *See Allis-Chalmers v. Lueck*, 471 U.S. 202 at 220, (1985); *see also Antol v. Esposito*, 100 F.3d 1111, 1117 (3d Cir. 1996) (*citing Wheeler v. Graco Trucking Corp.*, 985 F.2d 108, 113 (3d Cir. 1993)) (holding Pennsylvania Wage Payment and Collection Law claim was pre-empted under § 301 as suit was based "squarely on the terms of

[6]The plaintiffs did not provide the court with any affidavit by Young on this issue.

[7]The crux of the plaintiffs' claim – their contention regarding the existence of an oral agreement – appears to be inadmissable under the parol evidence rule. *See Restatement (Second) of Contracts*, at 213. Although this is the early stages of this case, the court is compelled to examine admissible evidence only. *Cf.* Fed. R. Civ. P. 56(e) (requiring affidavits be made on personal knowledge and set forth "such facts as would be admissible in evidence . . .").

collective bargaining agreement"). Furthermore, despite having ample opportunity, the plaintiffs have failed to amend their claim to state a cause of action under the LMRA.

Even if the plaintiffs can overcome the procedural hurdles, their claim must fail on substantive grounds as well. It is well established law that an employee seeking a remedy for a breach of a collective bargaining agreement between the employer and the union must attempt to exhaust the grievance and arbitration procedures outlined in that agreement before a suit can be brought under the LMRA. *See Clayton v. Int'l Union*, 451 U.S. 679, 681 (1981) (*citing Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 563 (1976)); *Vaca v. Sipes*, 386 U.S. 171, 184 (1967); *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53 (1965). Three of the plaintiffs, Poorman, Baker, and Maxwell, did not even file a grievance with UPS. Although Phillips apparently filed a grievance, he voluntarily withdrew it. Further, the plaintiffs have not supplied any evidence to support their allegation that the Agreement's arbitration process was futile. Given these gaps in the record, the court cannot conclude that the plaintiffs can satisfy their prima facie burden.

V. CONCLUSION

Under the LMRA, the plaintiffs are pre-empted from bringing their state law claim. The plaintiffs have also failed to amended their complaint to state a federal cause of action. Additionally, even if the plaintiffs had claimed violations of the LMRA, their failure to demonstrate that they participated in arbitration means that they cannot, on the current record, meet their prima facie burden.[8]

Therefore, IT IS HEREBY ORDERED that:

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[8]Given its holding, the court need not address the statute of limitations issue raised by UPS.

1. UPS's motion for summary judgment (D.I. 10) is GRANTED.

2. Summary judgment BE AND IS HEREBY ENTERED in favor of UPS on all claims pending against it.

Dated: June 20, 2001

Gregory M. Sleet

UNITED STATES DISTRICT JUDGE