HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

KAREY MARTINEZ,

Plaintiff,

v.

SSA MARINE and TOTAL TERMINALS INTERNATIONAL LLC,

Defendant.

Case No. 16-CV-01626-RSL

DEFENDANT TOTAL TERMINALS INTERNATIONAL LLC'S REPLY IN SUPPORT OF MOTION FOR AN INJUNCTION, PURSUANT TO 28 U.S.C. §§ 1446 AND 1651, AGAINST FURTHER STATE COURT PROCEEDINGS, AND A TEMPORARY RESTRAINING ORDER (FED. R. CIV. P. 65; 28 U.S.C. § 1651)

NOTE ON MOTION CALENDAR: December 9, 2016

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REPLY

On December 7, 2016, TTI received through ECF the Letter from Plaintiff (the "Letter"). [Dkt. No. 24.][1] To the extent the Letter is an opposition to TTI's Motion for an Injunction, Pursuant to 28 U.S.C. §§ 1446 and 1651, Against Further State Court Proceedings, and a Temporary Restraining Order (Fed. R. Civ. P. 65; 28 U.S.C. § 1651) (the "Motion for Injunction"), or TTI's Motion to Dismiss Under FRCP 12(b)(6) or for a More Definitive Statement Under FRCP 12(e) (the "Motion to Dismiss"), TTI responds as follows:

First, the December 2, 2016 note on motion calendar date for the Motion to Dismiss has passed. For the Motion for Injunction, the Court in its Order of November 15, 2016, set Mr. Martinez's deadline to oppose as December 2 if filed and served by mail, or December 5 if filed and served electronically. [Dkt. No. 19.] Mr. Martinez's Letter, therefore, is untimely as to both Motions.

Second, Mr. Martinez asks the Court to "allow [his] small claims case to be heard in the Burien court." [Dkt. No. 19.] His arguments and authorities, however, relate to the union grievance process and have nothing to do with removal or jurisdiction. His letter does nothing to rebut the arguments in the Motion for Injunction that this Court should enjoin the state court proceeding because the state court was stripped of jurisdiction by TTI's removal of the case to federal court.

Third, Mr. Martinez's assertion that his case will not deprive TTI of its bargained-for rights because it is over a small amount of money misses the point. A benefit to TTI of the PCLCD and PCWB&FA is the grievance process. TTI will be deprived of that benefit if its employees may circumvent that process.

Fourth, Mr. Martinez's arguments present an inaccurate legal theory. When an employee is a part of a union-represented bargaining unit, the union serves as the

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[1] Capitalized terms used but not defined herein have the meanings assigned to them in TTI's Motion for Injunction or Motion to Dismiss, as applicable.

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employee's representative on issues of wages, hours, and working conditions. *See Vaca v. Sipes*, 386 U.S. 171, 177 (1967) ("It is now well established that, as the exclusive bargaining representative of the employees in [the employee]'s bargaining unit, the ***Union had a statutory duty fairly to represent all of those employees***, both in its collective bargaining with [the employer] ***and in its enforcement of the resulting collective bargaining agreement.***") (internal citations omitted).

Indeed, the very authority Mr. Martinez supplied with the Letter recognizes that union-represented employees must take their grievances to the union, which will decide whether to pursue the grievances against the employer:

> Like most collective-bargaining agreements, the [collective-bargaining agreement] generally allows only the parties to the agreement access to the grievance and arbitration process. ***Individual workers generally cannot advance a grievance to arbitration. This rule recognizes the Union's role, which is to serve as the workers' exclusive representative*** for purposes of collective bargaining, and the Employers' right not to bargain with anyone else who purports to represent the workers.

(*See* Letter at 3 (emphasis added).)[2]

As TTI showed in the Motion to Dismiss, the PCLCD and the PCWB&FA cover all issues of payment, hours, and working conditions, which include Mr. Martinez's claim for lost wages. The PCLCD and the PCWB&FA provide that any related disputes must proceed through the grievance procedures provided by those agreements:

> ***The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement*** or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted.

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[2] TTI's counsel is unable to locate the entire document from which Mr. Martinez excerpted the page attached to his letter.

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(*See* PCLCD (Declaration of Robert Johnson in Support of Motion to Dismiss, Exh. 1) § 17.15; PCWB&FA (*Id.*, Exh. 2) § 17.13 (emphasis added)). Thus, Mr. Martinez must use the grievance process provided by the collective bargaining agreements that cover him.

The requirement that union-represented employees take their grievances to their unions is not a flaw of collective bargaining, but rather a feature encouraged by Congress through the Labor Management Relations Act:

> If the individual employee could compel arbitration of his grievance regardless of its merit, the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer's confidence in the union's authority and returning the individual grievant to the vagaries of independent and unsystematic negotiation. Moreover, under such a rule, a significantly greater number of grievances would proceed to arbitration. This would greatly increase the cost of the grievance machinery and could so overburden the arbitration process as to prevent it from functioning successfully. ***It can well be doubted whether the parties to collective bargaining agreements would long continue to provide for detailed grievance and arbitration procedures of the kind encouraged by L.M.R.A. § 203(d), supra, if their power to settle the majority of grievances short of the costlier and more time-consuming steps was limited by a rule permitting the grievant unilaterally to invoke arbitration.***

Vaca, 386 U.S. at 191–92 (internal citations and footnote omitted) (emphasis added).[3] Thus, Mr. Martinez's Letter is inapposite.[4]

For the foregoing reasons and those stated in TTI's Motion for Injunction, TTI respectfully requests that the Court grant the Motion for Injunction and prohibit

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[3] To the extent Mr. Martinez would rely on any state law claim for lost wages, state law claims that require interpretation of a collective bargaining agreement are preempted by the Labor Management Relations Act. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985); *Firestone v. S. California Gas Co.*, 219 F.3d 1063, 1066 (9th Cir. 2000).

[4] Mr. Martinez's Letter attaches a copy of his email to my firm and SSA's counsel. Mr. Martinez, however, omitted the final sentence of his email to my firm and SSA's counsel. He added: "ps Go f[*]ck yourselves." (*See* Email from Mr. Martinez (Declaration of Thomas A. Lenz, Exh. 1).)

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the District Court in and for the County of King, Washington, from proceeding further in the State Court Action.

Dated: December 9, 2016

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: */s/ Thomas A. Lenz*

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