

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PETER RAND, *et. al.*,
Plaintiffs

v.

Civil No. 99-227-P-C

BATH IRON WORKS CORPORATION,
Defendant

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Plaintiffs, six former employees of Bath Iron Works Corporation (“BIW”), brought this action in Maine Superior Court alleging Fraud (Count I), Negligence (Count II), Breach of Contract (Count III), and seeking, among other relief, Punitive Damages (Count IV). State Court Complaint (Docket No. 1A). Defendant removed the action to federal court on the basis of federal question jurisdiction. 28 U.S.C. § 1331. Notice of Removal (Docket No. 1). In particular, Defendant contended the Complaint implicates the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185. Currently before the Court is Defendant’s Motion to Dismiss (Docket No. 3), pursuant to Fed. R. Civ. P. 12(b)(7) and 19, for failure to join a necessary party.

The factual history underlying this Complaint is familiar to this Court for reasons that will become clear. According to Plaintiffs, during the summer of 1995, Defendant found itself in need of approximately 100 additional electricians and pipe fitters to complete shipbuilding projects within contractual time limits. Complaint ¶ 9. Defendant proceeded to advertise the job openings, to interview numerous candidates, and to hire approximately 100 electricians and pipe fitters. *Id.* ¶¶ 15, 30-31. During the period at issue, BIW and its unionized employees were subject to a collective bargaining agreement, and all new employees were required to join a

union. *Id.* ¶ 18. Plaintiffs contend that during the interview process prospective employees were informed that they would not be protected by the collective bargaining agreement's no-layoff provision. *Id.* ¶ 26. However, prospective employees were also told not to worry about the possibility of layoff because BIW had plenty of work to keep them busy through the current collective bargaining agreement, which expired at the end of 1997. *Id.* Indeed, Plaintiffs contend they were told that BIW had enough work to keep them employed until at least 2000. *Id.* In February 1996, approximately four months after BIW had hired them, the approximately 100 electricians and pipe fitters were laid off. *Id.* ¶ 39.

Plaintiffs claim that BIW intentionally misled the new hires regarding their prospects for long-term employment and that BIW knew they would be laid off in the near future. *Id.* ¶ 11. Plaintiffs allege that BIW needed these additional employees only to complete discrete projects. *Id.* Furthermore, Plaintiffs contend that BIW did not want to hire long-term employees for fear that it would upset BIW's ongoing acquisition by General Dynamics Corporation. *Id.* ¶ 13. Finally, Plaintiffs admit that union representatives participated in the interviewing process. *Id.* ¶ 18.

The Complaint, however, fails to relate another relevant chapter in this story. Following the layoffs in early 1996, some of the former BIW employees formed an organization called BIW Deceived. *See BIW Deceived v. Local S6, Industrial Union of Marine and Shipbuilding Workers of America*, 132 F.3d 824, 827 (1st Cir. 1997). The organization and individuals then sued Local S6, Industrial Union of Marine and Shipbuilding Workers of America ("the Union"), in state court, alleging negligence, fraud, intentional infliction of emotional distress, and unjust enrichment, among other claims. *Id.* The defendant removed that case to this Court, and the plaintiffs sought remand to the state court on the grounds that all claims arose under state law. *Id.* The Union countered by arguing that all the claims were preempted by either the National Labor Relations Act, 29 U.S.C. § 151 *et. seq.*, or the LMRA. *Id.* This Court denied the plaintiffs motion, finding merit in the defendant's argument. *Id.* at 827-28. Subsequently, the plaintiffs

sought, and obtained, an entry of final judgment in favor of the defendant, without prejudice of the plaintiffs' right to appeal. *Id.* at 828. The plaintiffs then appealed this Court's denial of the plaintiffs' motion to remand to the state court. *Id.* The Court of Appeals for the First Circuit affirmed this Court's denial of the plaintiffs' motion to remand and then affirmed the judgment in favor of the defendant. *Id.* at 834.

Under a motion pursuant to Fed. R. Civ. P. 12(b)(7), the moving party carries the burden of showing why an absent party should be joined. In meeting its burden, the moving party may present, and the court may consider, evidence outside of the pleadings. 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1359 (2d ed. 1990). To that end, Defendant attached to its Motion a copy of the collective bargaining agreement in place at the time Plaintiffs were hired and fired, as well as a copy of the complaint from the *BIW Deceived* case. In addition to these documents, the Court will take judicial notice of the entire *BIW Deceived* litigation.

A person shall be joined as a party to a lawsuit, under Rule 19, if

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition for the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19(a). If a court determines that a party should be joined, pursuant to Rule 19(a), but that party is incapable of being joined – because joinder would defeat subject matter jurisdiction, or the court does not have personal jurisdiction over the party to be joined, or because the party to be joined has a valid objection to the venue of the action – then the court must conduct the analysis set forth in Rule 19(b). Fed. R. Civ. P. 19(a); 7 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1610 (2d ed. 1990). In particular, if a party should be joined per Rule 19(a), but is incapable of being joined, “the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or

should be dismissed, the absent person being thus regarded as indispensable.” Fed. R. Civ. P. 19(b). In summary, if a moving party successfully demonstrates a person should be joined pursuant to Rule 19(a), then the court shall join that person as a party. If, however, joinder is impossible because it would destroy subject matter jurisdiction or the party to be joined is not subject to the court’s jurisdiction or has a valid objection to the venue of the court, then the court shall dismiss the case if the absent party is deemed indispensable.

By its Motion, BIW seeks to dismiss the Complaint. BIW has not alleged, however, that the Union could not be joined as a party by this Court if this Court decides joinder is necessary under Rule 19(a). In other words, BIW does not contend that joinder of the Union would defeat this Court’s subject matter jurisdiction, or that the Union is outside of this Court’s jurisdiction, or that the Union would have a proper objection to this Court’s jurisdiction.¹ Indeed, all three of these points are refuted by the litigation before this Court of the *BIW Deceived* case in which the Union was the defendant. Accordingly, Rule 19(b) cannot be implicated by Defendant’s Motion, and the remedy of dismissal is, therefore, unavailable.²

¹ Defendant’s reliance on *Acton Co., Inc. v. Bachman Foods, Inc.*, 668 F.2d 76 (1st Cir. 1982), in support of dismissal is misplaced. In *Acton*, joinder of the absent party would have destroyed diversity jurisdiction. Accordingly, the trial court determined that the absent party was indispensable and dismissed the case under Rule 19(b). *Id.* at 78. Here, the joinder of the Union would not disturb this Court’s jurisdiction, which is predicated on a federal question, not on diversity. The holding of *Acton*, at least with respect to dismissal, is distinguishable from this case.

² The Court notes that Defendant’s Motion makes a singular, passing reference to the alternative remedy of joinder, as opposed to dismissal. Defendant’s Motion at 7. Defendant’s Reply (Docket No. 13) makes no reference to joinder, but seeks only dismissal as a remedy. By its title and its contents, the Court takes Defendant’s Motion to be what it is labeled – a motion to dismiss and nothing more. Having found that dismissal on the grounds presented is not an available remedy, the Court will not proceed to treat Defendant’s Motion to Dismiss as a motion to join in the alternative. The Court is particularly uninterested in such an adventure without the guidance of the parties, because Defendant’s arguments and Plaintiffs’ responses were tailored to dismissal under Rule 19(b), not to joinder under Rule 19(a).

Accordingly, it is hereby **ORDERED** that Defendant's Motion to Dismiss be, and it is hereby, **DENIED**.

GENE CARTER
District Judge

Dated at Portland, Maine this 21st day of March, 2000.

U.S. District Court District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 99-CV-227
RAND, et al v. BATH IRON WORKS
Filed: 07/15/99

Assigned to: JUDGE GENE CARTER

Jury demand:

Plaintiff Demand: \$0,000

Nature of Suit: 720

Lead Docket: None

Jurisdiction: Federal Question

Cause: 29:185 Labor/Mgt. Relations (Contracts)

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