

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

PAPER, ALLIED-INDUSTRIAL,)
CHEMICAL AND ENERGY WORKERS)
INTERNATIONAL UNION, LOCAL 1-9)
AFL-CIO, CLC,)

Plaintiff,)

v.)

Civil No. 03-225-B-W

S.D. WARREN COMPANY d/b/a SAPPI)
FINE PAPER NORTH AMERICA)
(Somerset Plant),)

Defendant.)

**ORDER AFFIRMING IN PART AND REJECTING IN PART
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with this Court on June 4, 2004 her Recommended Decision. Plaintiff Paper, Allied-Industrial, Chemical and Energy Workers International, Union Local 1-9, AFL-CIO, CLC (PACE) filed a Limited Objection to Magistrate Judge's Report and Recommendation on June 18, 2004; Defendant S.D. Warren filed its objections to the Recommended Decision on June 21, 2004.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Magistrate Judge's Recommended Decision. I AFFIRM the Recommended Decision in part and REJECT the Recommended Decision in part.

Pending before the Magistrate Judge were: (1) S.D. Warren's Motion to Dismiss filed January 30, 2004; (2) PACE's Motion for Judgment on the Pleadings with respect to Counts I, II and V filed February 26, 2004; and, (3) PACE's Motion for Summary

Judgment with respect to Counts III and IV filed February 26, 2004.¹ In her Recommended Decision, Magistrate Judge Kravchuk recommended this Court take the following actions:

- 1) Deny S.D. Warren's Motion to Dismiss;
- 2) Grant PACE's Motion for Judgment on the Pleadings solely on the question of whether the arbitrator's handling of the reinstatement issue was fundamentally flawed, vacate that portion of the arbitration award, and remand the matter to the arbitrator for further proceedings; and,
- 3) Deny PACE's Motion for Summary Judgment on Counts III and IV.

At oral argument on November 8, 2004, the parties agreed with this Court that in order to arrive at her conclusions, Magistrate Judge Kravchuk had made certain material factual findings, which had been denied by the opposing party and which precluded the granting of these motions.² Accordingly, the parties agreed S.D. Warren's Motion to Dismiss and PACE's Motion for Judgment on the Pleadings should be dismissed. PACE also informed the Court it was no longer proceeding on the fraud and negligent misrepresentation claims set forth in Counts III and IV of its Application and these Counts should be dismissed.³

¹ PACE's Motion for Summary Judgment bears a word of explanation. On February 26, 2004, PACE filed a Motion for Summary Judgment on Counts III, fraud and deceit, and Count IV, negligent misrepresentation. On March 3, 2004, Magistrate Judge Kravchuk ordered briefing on PACE's motion for judgment on the pleadings and treated PACE's motion for summary judgment as a motion to dismiss, allowing S.D. Warren to respond to the contentions in the motion for summary judgment in its response to PACE's motion for judgment on the pleadings. In accordance with the March 3, 2004 Order, S.D. Warren never formally responded to PACE's motion for summary judgment.

² Motions under Fed. R. Civ. P. 12(b)(6) and 12(c) test the legal sufficiency of a complaint. A motion to dismiss is "not an occasion to prove or disprove the facts in the Complaint. Rather, the Court assumes that all facts alleged in the Complaint are true and makes all reasonable inferences from those facts in Plaintiff's favor." *Greenier v. PACE, Local No. 1188*, 201 F. Supp. 2d 172, 176 (D. Me. 2001). Similarly, the "fate of (a motion for judgment on the pleadings) will depend upon whether the pleadings, taken as a whole reveal any potential dispute about one or more of the material facts." *Gulf Coast Bank & Trust Co. v. Reder*, 355 F.3d 35, 38 (1st Cir. 2004). The bare allegations in the PACE Application to Vacate, Modify, or Correct Arbitrator's Award were sufficient to withstand S.D. Warren's Motion to Dismiss; similarly, S.D. Warren's repeated denials of essential allegations in PACE's Application precluded granting PACE's Motion to Dismiss.

³ In its Limited Objection to Magistrate Judge's Report and Recommended Decision, PACE had not objected to the portion of Magistrate Judge Kravchuk's Recommended Decision that had recommended denial of its Motion for Summary Judgment on Counts III and IV. Although Magistrate Judge Kravchuk's

This leaves the parties nearly back where they started. As Magistrate Judge Kravchuk noted, it is not uncommon for motions to confirm arbitration awards to be resolved by dueling motions for summary judgment. *Order (Docket #22)* dated March 29, 2004 at 2; *see JCI Communications, Inc. v. IBEW, Local 103*, 324 F.3d 42, 44 (1st Cir. 2003); *Poland Spring Corp. v. United Food and Commercial Workers Int'l Union, Local 1445*, 314 F.3d 29, 33 (1st Cir. 2002); *Teamsters Local Union No. 42, v. Supervalu, Inc.*, 212 F.3d 59, 65 (1st Cir. 2000). The parties have agreed to proceed on that basis. This Court orders PACE to file a Motion for Summary Judgment on or before January 7, 2005; S.D. Warren will respond and PACE will reply in accordance with the time limits set forth in the Local Rule 7.

This Court AFFIRMS the Recommended Decision of Magistrate Judge Kravchuk regarding its recommendation to deny Plaintiff PACE's Motion for Summary Judgment on Counts III and IV and Defendant S.D. Warren's Motion to Dismiss. This Court REJECTS the Recommended Decision of Magistrate Judge Kravchuk regarding its recommendation to grant Plaintiff PACE's Motion for Judgment on the Pleadings; PACE's Motion for Judgment on the Pleadings is hereby DENIED.

Finally, this Court GRANTS without prejudice PACE's oral motion to dismiss Counts III and IV of its Application to Vacate, Modify or Correct Arbitral Award.

SO ORDERED.

Dated: November 10, 2004

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

recommendation was to deny PACE's Motion for Summary Judgment on these counts, her opinion all but invited a Motion to Dismiss from S.D. Warren on these Counts and PACE wisely has read the writing on the wall.

Plaintiff

**PAPER ALLIED-INDUSTRIAL
CHEMICAL AND ENERGY
WORKERS INTERNATIONAL
UNION LOCAL 1-9 AFL-CIO
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V.

Defendant

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