

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DOUGLAS DUFOUR, et al.,)
)
 Plaintiffs)
)
 v.)
)
 TRANSPORTATION-)
 COMMUNICATIONS)
 INTERNATIONAL UNION,)
)
 Defendant)

Civil No. 95-189-P-H

RECOMMENDED DECISION ON DEFENDANT’S MOTION TO DISMISS

In this action, plaintiff Douglas Dufour (“Dufour”), a former Maine Central Railroad (“MCR”) employee, asserts against his union a federal claim for breach of the duty of fair representation and pendent state-law claims for discrimination and negligent and intentional infliction of emotional distress. His wife, plaintiff Gail Dufour, asserts a state-law loss-of-consortium claim, and both plaintiffs assert a punitive damages claim. The plaintiffs appear pro se. Before the court is the defendant’s motion to dismiss the federal claim as time-barred and the pendent state-law claims as preempted by federal law.¹ I recommend that the defendant’s motion be denied as to the federal claim and granted as to the pendent state-law claims.

¹ The statute-of-limitations issue requires consideration of materials beyond the pleadings. Accordingly, I treat this motion as a motion for partial summary judgment on the statute-of-limitations issue, *see* Fed. R. Civ. P. 12(b), and a motion to dismiss the state-law claims on preemption grounds.

I. Summary Judgment Standards

Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, ‘genuine’ means that ‘the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and “give that party the benefit of all reasonable inferences to be drawn in its favor.” *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, “the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue.” *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir.) (citing *Celotex*, 477 U.S. at 324), *cert. denied*, 132 L. Ed. 2d 255 (1995); Fed. R. Civ. P. 56(e); Local R. 19(b)(2).

In reviewing the allegations in a pro se complaint, the court holds the pro se litigant to a less stringent standard than that which would be applied to a formal pleading drafted by a lawyer. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *see also Slotnick v. Garfinkle*, 632 F.2d 163, 165 (1st Cir. 1980) (pro se complaints to be read “generously”). But this liberal pleading standard applies only to a plaintiff’s factual allegations. *Neitzke v. Williams*, 490 U.S. 319, 330-31 n.9 (1989).

II. Factual Background

The defendant, Transportation-Communications International Union (“TCU”), formerly known as the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (“BRAC”), *Kidwell v. Transportation Communications Int’l Union*, 946 F.2d 283, 285 & n.1 (4th Cir. 1991), *cert. denied*, 503 U.S. 1005 (1992), is a labor organization representing employees of the nation’s major railroads, Declaration of Anthony P. Santoro, Jr. (“Santoro Decl.”) (Docket No. 9) ¶ 1. At all times relevant to this case, Dufour was a member in good standing of TCU. *Id.* ¶ 4.

Dufour began his employment with the MCR in 1974. Second Amended Complaint (Docket No. 14) ¶ 4; Defendant’s Motion to Dismiss (“Deft’s MTD”) (Docket No. 8) at 2. After a series of lease and trackage rights transactions by MCR’s parent company, Guilford Transportation Industries, Inc. (“GTI”), all rail service operation formerly handled by MCR was transferred to Springfield Terminal Railway Co. (“ST”).² Interstate Commerce Commission Decision, Finance Docket No. 30965 (Sub-No. 1), Sept. 24, 1990, at 1 (attached as Exh. 1 to Deft’s MTD). The Interstate Commerce Commission ordered ST to make employment offers to all persons who, at the time of the first transaction, were in active service with MCR and other affected companies. *Id.* at 26.

On November 30, 1990 ST informed Dufour that he had been offered a position with ST, and that if he did not respond within ten days ST would conclude he did not wish to accept. Exh. A to

² In 1986 GTI began implementing a plan to lease rail lines and trackage rights from four of its subsidiaries -- the Delaware and Hudson Railway Co., the Boston & Maine Corp., MCR and the Portland Terminal Co. -- to a fifth subsidiary, ST. These transactions made ST the de facto operator of the entire GTI rail system and effectively subjected the organized employees of these entities to ST’s less favorable pay rates, rules and working conditions. See *Railway Labor Executives’ Ass’n v. United States*, 987 F.2d 806, 808 (D.C. Cir. 1993).

Complaint (Docket No. 1). Dufour replied by letter dated December 6, 1990: “I will accept a position within the Portland Terminal provided my BRAC seniority entitles me to such. In order to protect all my rights & benefits, it is necessary for me to see an updated PT roster of BRAC employees. . . . In *no* manner am I refusing your offer of employment! I am only requesting the information necessary for me to accept the proper position I am entitled to under my protective agreement.” Exh. B to Complaint at 1-2. Dufour sent copies of the November 30 and December 6 letters to the defendant, and indicated that “I will accept a position that is available to me under the conditions of our BRAC Agreement. . . . Please . . . protect my rights concerning such.” Exh. D to Complaint. ST then sent Dufour a letter stating that, “since you did not respond within ten days of the 11/30/90 reminder letter, any rights you may have had as an employee . . . are terminated.” Exh. F to Complaint. This letter was dated December 7, 1990, only seven days after ST’s earlier letter. *Id.*

Dufour informed the defendant of his termination and indicated that, contrary to GTI’s assertion, he responded within the ten day time limit. Exh. G to Complaint at 1. In a letter to the defendant dated January 28, 1991, Dufour appealed the termination and requested a hearing. Exh. L to Complaint at 2. On June 29, 1992, ST informed the defendant that Dufour would not be added to ST’s clerical roster, but that ST and the defendant’s Vice General Chairman were “talking . . . concerning the status of Mr. Dufour.” Exh. N to Complaint.

According to the defendant, Dufour’s December 6, 1990 letter to ST “selected the protective provisions of his BRAC Stabilization Agreement.” *See* Santoro Decl. ¶ 5. The defendant informed Dufour in a letter dated August 13, 1992 that his grievance regarding protective benefits lacked merit and that TCU would not handle it any further. Exh. B to Santoro Decl. at 2. The defendant also advised him of his right to utilize the union’s internal appeal procedure. *Id.* Dufour availed himself

of that appeal, which the defendant denied by letter dated December 17, 1993. Exh. E to Santoro Decl. On December 16, 1993, before receiving the defendant's letter, Dufour again wrote the defendant asking when his grievances would be arbitrated. Exh. F to Santoro Decl. at 2. The defendant reminded Dufour in a letter dated January 11, 1994 of its earlier determinations and of his appeal rights. Exh. G to Santoro Decl.

III. Discussion

A. Statute of Limitations

The defendant characterizes Dufour's federal breach-of-duty-of-fair-representation claim as charging it with failing to submit to arbitration his grievance for protective benefits under the BRAC Stabilization Agreement.³ In response, Dufour contends that an entirely different grievance is the subject of his complaint, namely one concerning his wrongful dismissal by ST.

The complaint fully supports Dufour's contention. Although his pleadings are not a model of clarity, Dufour alleged that the defendant "[f]ail[ed] to process Mr. Dufour's wrongful dismissal in an expedient manner as provided under the collective bargaining agreement & the Railway Labor Act." Second Amended Complaint at 42. As the defendant's motion does not address the facts

³ The defendant argues that this claim is barred by the six-month statute of limitations applicable to cases arising under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.* *Benoni v. Boston & Maine Corp.*, 828 F.2d 52, 56 (1st Cir. 1987) (six-month statute of limitations in section 10(b) of the National Labor Relations Act applies to claims for unfair labor practices under RLA); *Graham v. Bay State Gas Co.*, 779 F.2d 93, 94 (1st Cir. 1985) (claim for breach of duty of fair representation under Labor-Management Relations Act ("LMRA") arises "when the plaintiff knows, or reasonably should know, of the acts constituting the union's alleged wrongdoing"). The defendant contends that Dufour knew or should have known of the defendant's decision not to submit his grievance to arbitration by, at the latest, January 11, 1994, approximately eighteen months before the filing of this action.

surrounding this claim, I express no opinion on when Dufour's breach-of-duty-of-fair-representation claim accrued.

B. Preemption

The Supreme Court first recognized the statutory duty of fair representation in a case arising under the RLA. *IBEW v. Foust*, 442 U.S. 42, 46 (1979) (citing *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192 (1944)). “[W]hen Congress empowered unions to bargain exclusively for all employees in a particular bargaining unit, and thereby subordinated individual interests to the interests of the unit as a whole, it imposed on unions a correlative duty ‘inseparable from the power of representation’ to exercise that authority fairly.” *Id.* (quoting *Steele*, 323 U.S. at 202-04). The duty obligates a union to represent fairly its members’ interests and is breached when the union’s conduct is “‘arbitrary, discriminatory, or in bad faith,’ as, for example, when it ‘arbitrarily ignore[s] a meritorious grievance or process[es] it in [a] perfunctory fashion.’” *Id.* at 47 (quoting *Vaca v. Sipes*, 386 U.S. 171, 190, 191 (1967)).

Preemption doctrine is founded on the Supremacy Clause of the United States Constitution. *O’Brien v. Consolidated Rail Corp.*, 972 F.2d 1, 3 (1st Cir. 1992), *cert. denied*, 122 L. Ed. 2d 134 (1993). Under the Supremacy Clause, state laws that “interfere with, or are contrary to” the laws of Congress are invalid. *Id.* (citation omitted). Preemption may be express or implied, and is compelled whether Congress’ intent is explicit in the statute’s language or implied in its structure and purpose. *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57 (1990) (citations omitted). Absent express preemption, “the challenged state law must yield when it ‘regulates conduct in a field that Congress intended the Federal Government to occupy exclusively’ . . . [or] where the state law ‘actually

conflicts with federal law.”” *Pedraza v. Shell Oil Co.*, 942 F.2d 48, 51 (1st Cir. 1991) (quoting *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990)), *cert. denied*, 502 U.S. 1082 (1992).

I find Dufour’s pendent state-law claims to be preempted by the RLA. A “union’s rights and duties as the exclusive bargaining agent in carrying out its representational functions” constitute an area in which Congress has “occupied th[e] field and closed it to state regulation.” *Condon v. Local 2944, United Steelworkers*, 683 F.2d 590, 594-95 (1st Cir. 1982) (internal quotation marks and citation omitted). Dufour’s state-law claims arise from the same conduct as his federal claim: the defendant’s failure to adequately process his wrongful dismissal grievance. Thus, they relate solely to the defendant’s duty in carrying out its representational function under the RLA, an area in which Congress has occupied the field and closed it to state regulation.⁴ *See id.*; *see also In re Glass Workers Int’l Union, Local No. 173*, 983 F.2d 725, 728-29 (6th Cir. 1993) (LMRA preempts claim that union provided inadequate assistance in processing grievance because the “purported state claims . . . are clearly related to its duty of fair representation”); *Clark v. Newport News Shipbuilding & Dry Dock Co.*, 937 F.2d 934, 938 (4th Cir. 1991) (LMRA preempts claim that union negligently represented plaintiff after his discharge because it must be determined by reference to federal statutory duty of fair representation).⁵

⁴ The Supreme Court has allowed a claim that a union engaged in “intentional and outrageous conduct” causing “severe emotional distress” to survive preemption, despite its relationship to an unfair labor practice. *Farmer v. United Bhd. of Carpenters & Joiners, Local 25*, 430 U.S. 290, 305 (1977). In making that exception, however, the Supreme Court warned that the state tort at issue must be either unrelated to the unfair labor practice or a function of the particularly abusive manner in which that practice is accomplished. *See id.* at 305. In *Farmer* the plaintiff alleged not only that the union discriminated against him in employment referrals, but also that the union engaged in threats and intimidation that caused him grievous emotional distress. *Id.* at 293. Dufour simply alleges that the defendant did not process his grievances properly. His labeling the defendant’s conduct “intentional” and causing “severe emotional distress” in Count IV cannot avert preemption.

⁵ To the extent that the punitive damages claim depends on the state-law claims, it must be
(continued...)

IV. Conclusion

For the foregoing reasons, I recommend that the defendant's motion for partial summary judgment on Count I (Breach of Duty of Fair Representation) be **DENIED**, and that its motion to dismiss Counts II (Discrimination), III (Negligent Infliction of Emotional Distress to Douglas Dufour), IV (Intentional Infliction of Emotional Distress), V (Punitive Damages), VI (Loss of Consortium) and VII (Negligent Infliction of Emotional Distress to Gail Dufour) be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 1st day of February, 1996.

*David M. Cohen
United States Magistrate Judge*

⁵ (...continued)
dismissed as well. Furthermore, although the defendant has not argued this point, punitive damages “may not be assessed against a union that breaches its duty of fair representation by failing properly to pursue a grievance.” *Foust*, 442 U.S. at 52.