Whistleblower Protection Denied to Maine Union Members

by Julie D. Farr, Esq.

On November 13, 2019, Aroostook County Superior Court Justice Harold Stewart issued a decision which appears would effectively preclude all union employees in Maine from protection under the Maine Whistleblower Protection Act (MWPA). That decision held that for a union employee covered by a collective bargaining agreement, a claim under the MWPA would be preempted under the federal Labor Management Relations Act.

Plaintiff is represented in this matter by Attorneys Andrew Cotter and James Clifford of Clifford & Clifford, LLC in Kennebunk, and defendant is represented by James Erwin and Charles Einsiedler of Pierce Atwood in Portland.

Plaintiff Bernard Nadeau claimed that defendant Twin Rivers Paper Co. disciplined him and ultimately terminated his employment in retaliation for Nadeau's complaints about unsafe working conditions in defendant's Madawaska mill. Twin Rivers moved for summary judgment, arguing that because Nadeau was a member of the United Steelworkers Union and worked under the terms of a collective bargaining agreement (CBA), his MWPA claim was preempted by Section 301(a) of the Labor Management Relations Act (LMRA). That section provides for federal jurisdiction over suits for violation of contracts between employer and labor union without respect to the amount in controversy or the citizenship of the parties, and has been interpreted by the U.S. Supreme Court as precluding state law claims "whenever resolution of a state-law claim is substantially dependent upon analysis of the terms" of a CBA. *Allis-Chalmers Corp. v. Lueck* (1985).

James Erwin

Charles Einsiedler

Justice Stewart noted that not all labor disputes in the form of a state law claim are preempted under that standard, but are only preempted when there is a real interpretive dispute of a CBA's terms, rather than mere consultation of the CBA. He recognized that the policy purpose and interests underlying preemption were significant, as "Congress intended federal labor law to uniformly prevail over inconsistent local rules, meaning that the construction given to terms in collective-bargaining agreements must be determined by uniform federal law."

Justice Stewart then considered whether adjudication of Nadeau's MWPA claim would require the Court to actively interpret the CBA that Nadeau was working under during his employment. The Court looked to the MWPA statute, which provides, at 26 M.R.S. § 837: "This subchapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement."

Justice Stewart looked to First Circuit case law, which had interpreted similar language in the Massachusetts Workers Compensation Act and had found that the statute required the Court to actively interpret the CBA to determine if it was inconsistent with state law and, therefore ,preempted. Justice Stewart also noted that on three occasions, the U.S. District Court for the District of Maine had found that MWPA claims brought by employees subject to a CBA are preempted by Section 301(a) of the LMRA because Section 837 of the MWPA "obligates the Court to impermissibly interpret the agreement to determine whether it is inconsistent with state law."

In one of those cases, the U.S. District Court had held that "even if the plaintiff-employee's claim could be stated and proven without reference to the CBA, the Court would still first have to interpret the CBA to determine whether or not the MWPA would diminish or impair the rights of employees or management under the CBA." *Carmichael v. Verso Paper, LLC*, 679 F.Supp.2d 109, 136 (D. Me. 2010).

Justice Stewart agreed with that reasoning, adding that even if that were not the case, given plaintiff's allegations, "further adjudication of this matter would require the Court to engage in a substantial analysis of the terms and structure of the CBA at issue in this case." Among other things, "it would be necessary for the Court to analyze … the work rules in the CBA that plaintiff allegedly violated and were the purported basis for the defendant's decision to terminate." As such, Nadeau's claim was preempted by § 301 of the LMRA, and granted Twin Rivers' motion for summary judgment on that basis.

On behalf of plaintiff, Attorney Clifford said that an appeal to the Maine Supreme Judicial Court had been filed on December 2, 2019. He commented, "We believe the Superior Court's decision was based on an incorrect reading of Section 837 of the Maine Whistleblowers' Protection Act. We look forward to presenting the case to the Law Court."

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Whistleblower *continued*

On behalf of defendant, Attorney Erwin praised Justice Stewart's decision, stating that: "Allowing state-law whistleblower claims to proceed after the parties have already resolved union members' discharge claims would: 1) create inconsistencies among various jurisdictions as to the meaning of the terms of collective bargaining agreements — a result which § 301 preemption cases expressly reject; 2) intrude into the parties' carefully developed collective bargaining relationship; and 3) open the door to collateral attacks on final decisions that emanate from the collective bargaining agreement."

The decision in *Bernard Nadeau v. Twin Rivers Paper Co., LLC*, MLR /SC#340-19, is summarized in *Maine Lawyers Review*, December 26, 2019 at page 7.

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