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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES DAVIS; et al., Plaintiffs-Appellants, v. ABM INDUSTRIES, INC., a Delaware corporation; et al., Defendants-Appellees.	No. 22-55059 D.C. No. 2:21-cv-05623-ODW-MRW MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Argued and Submitted November 17, 2022
Pasadena, California

Before: WARDLAW and W. FLETCHER, Circuit Judges, and KENNELLY,[**] District Judge.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Matthew F. Kennelly, United States District Judge for the Northern District of Illinois, sitting by designation.

Charles Davis and other employees of ABM Industries ("ABM") appeal the district court's order dismissing their complaint with prejudice. The employees formerly worked as Skycaps at the United Airlines Terminal at the Los Angeles International Airport ("LAX"). They filed suit against ABM and their union, United Service Workers West (SEIU Local 1877) ("Union"), alleging a violation of the California Fair Employment and Housing Act ("FEHA") and intentional infliction of emotional distress ("IIED"). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

Because the COVID-19 pandemic caused declines in air travel, United needed fewer Skycaps at LAX. As a result, ABM transferred the plaintiffs to different bargaining unit positions in the airport. In their new positions, the plaintiffs could not use their seniority rights. Those seniority rights are governed by the Union's collective bargaining agreement ("CBA"). Without seniority, plaintiffs lost income and job opportunities.

The district court granted ABM's motion to dismiss and the Union's motion for judgment on the pleadings, dismissing the complaint with prejudice. The court held that § 301 of the Labor Management Relations Act ("LMRA") preempted both claims. We review de novo a district court's finding of preemption under the LMRA. *Milne Emps. Ass'n v. Sun Carriers*, 960 F.2d 1401, 1406 (9th Cir. 1991).

We may affirm "on any basis supported by the record even if the district court did not rely on that basis." *United States v. Washington*, 969 F.2d 752, 755 (9th Cir. 1992).

To evaluate whether § 301 preempts state law claims, we first consider whether the right exists solely as a result of the CBA. *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007). If it does, then the claim is preempted, and the analysis ends. *Id.* But if the right asserted by the employee exists independently of the CBA, the court next determines "whether it is nevertheless substantially dependent on analysis of a collective-bargaining agreement." *Id.* (quotation marks omitted). "Where there is such substantial dependence, the state law claim is preempted by § 301. If there is not, then the claim can proceed under state law." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1033 (9th Cir. 2016) (footnote omitted).

The FEHA claim is preempted by § 301 under the second prong of the analysis. The antidiscrimination right under FEHA is independent of the CBA. *See Ramirez v. Fox Television Station, Inc.*, 998 F.2d 743, 748 (9th Cir. 1993). But the FEHA claim in this case substantially depends on an interpretation of the CBA, for CBA-conferred seniority rights are the cause of plaintiffs' losses and are at the core of plaintiffs' claim. Thus, the FEHA claim's success substantially depends on

interpreting the rights and obligation under the CBA. *See Dent v. Nat'l Football League*, 902 F.3d 1109, 1118, 1121 (9th Cir. 2018); *Audette v. Int'l Longshoremen's & Warehousemen's Union*, 195 F.3d 1107, 1113 (9th Cir. 1999). The IIED claim is also preempted by § 301. Plaintiffs allege that they suffered emotional distress because ABM "refus[ed] to enforce contract provisions which properly recognized Plaintiffs' airport and terminal seniority; engag[ed] in blatant age discrimination and refus[ed] to address Plaintiffs' complaint about same." Section 301 preempts their claim because the alleged outrageous conduct—the alleged contract violation—is not independent of the CBA. *Chmiel v. Beverly Wilshire Hotel Co.*, 873 F.2d 1283, 1286 (9th Cir. 1989) (finding that an IIED claim was preempted because it was "inextricably intertwined" with the conduct that formed the plaintiffs' contract-based claims). Additionally, the claim substantially depends on the CBA to the extent the plaintiffs rely on age discrimination to allege outrageous conduct. As noted above, the age discrimination analysis would turn on whether the Union and ABM violated the CBA. *See Miller v. AT & T Network Sys.*, 850 F.2d 543, 551 (9th Cir. 1988); *see also Newberry v. Pac. Racing Ass'n*, 854 F.2d 1142, 1149 (9th Cir. 1988) ("A determination of the validity of her emotional distress claim will require us to

decide whether her discharge was justified under the terms of the collective bargaining agreement.").

AFFIRMED.