STATE OF MICHIGAN

COURT OF APPEALS

BRANSON M. COULTER and DONALD R. LARSON,

Plaintiffs-Appellants,

v

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION and GRAPHIC COMMUNICATIONS INTERNATIONAL UNION LOCAL 289M,

Defendants-Appellees.

UNPUBLISHED
December 26, 2000

No. 214432
Macomb Circuit Court
LC No. 97-001618-CZ

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants. We affirm.

Plaintiffs, nonunion replacement workers, were hired by Tweddle Litho Co. (Tweddle) as press operators. Before they began working, representatives of Graphic Communications International Union (Union) and its Local 289M met with Tweddle's representatives. At this meeting, a Union official allegedly implied that if Tweddle hired plaintiffs, it would have problems in upcoming contract negotiations with the Union. Tweddle subsequently rescinded its employment offers to plaintiffs. Plaintiffs brought suit in state court alleging intentional interference with business relations. Defendants moved for summary disposition, and the trial court granted the motion on the basis that it did not have subject-matter jurisdiction because the conduct at issue was preempted by the National Labor Relations Act (NLRA), 29 USC 151 *et seq*.

On appeal, plaintiffs argue that the trial court erred in granting summary disposition because their claim was not preempted by the NLRA. We disagree. We review de novo a trial court's decision to grant a motion for summary disposition. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(4) alleging a lack of subject-matter jurisdiction, we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact.

Manning v Amerman, 229 Mich App 608, 610; 582 NW2d 539 (1998). Whether a court has subject-matter jurisdiction is a question of law. *Steiner School v Ann Arbor Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999).

The NLRA vests the National Labor Relations Board (NLRB) with the primary authority to interpret and apply labor statutes and regulations. 29 USC 160; *San Diego Bldg Trades Council v Garmon*, 359 US 236, 242-243; 79 S Ct 773; 3 L Ed 2d 775 (1959). In most cases, the NLRB has exclusive jurisdiction over such issues. *Garmon*, *supra*; *Union of Operating Engineers v Jones*, 460 US 669, 680-681; 103 S Ct 1453; 75 L Ed 2d 368 (1983). The NLRA will preempt state action in every instance except where the state's regulation is peripheral to the Act or where the regulated conduct involves "interests so deeply rooted in local feeling and responsibility" that it could not be inferred that Congress deprived the state of the power to act. *Garmon*, *supra* at 243-244.

According to the NLRA, it is an unfair labor practice:

> (1) "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3),"[1] 29 USC 158(b)(2),
>
> (2) "to restrain or coerce employees in the exercise of the rights guaranteed in section 157[2] of this title," 29 USC 158(b)(1)(A), or,
>
> (3) "to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . . . forcing or requiring any person to . . . . cease doing business with any other person." 29 USC 158(b)(4)(ii)(B).

In this case, plaintiffs alleged that they suffered adverse employment action as a result of defendants' intentional interference with Tweddle's decision to hire them. Specifically, plaintiffs claimed that the Union representative's statements were veiled threats to Tweddle that, if it hired

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[1] 29 USC 158(a)(3) provides, in part, that "[i]t shall be unfair labor practice for an employer . . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ."

[2] 29 USC 157 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

plaintiffs, the Union would make things difficult during upcoming contract negotiations. If plaintiffs' allegations are true, defendants' actions would have violated the above cited provisions of the NLRA and the NLRB would have exclusive jurisdiction over the matter. Further, we find no evidence in this case that would lead to the conclusion that the *Garmon* preemption doctrine should not apply here. Plaintiffs' claim for intentional interference with business relations is not "peripheral" to the NLRA because several provisions of the Act directly address the conduct at issue. Further, plaintiffs failed to establish how their claim is so deeply rooted in local feeling and responsibility that the state was not divested of its power to act.

For these reasons, we conclude that plaintiffs' cause of action was preempted by the NLRA, and the court did not err in granting defendants' motion for summary disposition on the basis that it lacked jurisdiction.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell