

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 08-cv-00479-RPM

VIRGINIA BALLARD,

Plaintiff,

v.

DEAN FOODS COMPANY (a Delaware corporation),
DEAN WEST, LLC (a Delaware Limited Liability Company),
SOUTHERN FOODS GROUP, LLC (a Delaware Limited Liability Company)
doing business as MEADOW GOLD DAIRY, and
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 455,

Defendants.

ORDER OF DISMISSAL AS TO INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL
UNION NO. 455

On March 23, 2009, Defendant International Brotherhood of Teamsters Local Union No. 455 ("Union") filed a motion to dismiss all claims against it pursuant to Fed.R.Civ.P. 12(b)(1) for the failure of the plaintiff to file a charge of discrimination against it with the EEOC and attached copies of the charges filed against the employer. The plaintiff filed her response to that motion on April 10, 2009, contending that her claim against the Union is for the failure to represent her fairly for her claims of violations of the Collective Bargaining Agreement. The Union then filed a motion to dismiss any claim under Section 301 of the Labor Management Relations Act under Rule 12(b)(6) for the failure of the amended complaint to allege factual support for any claim as well as the failure of the plaintiff in the amended complaint to allege that statute as a basis for recovery.

Upon examination of the amended complaint, accepted for filing on December 3, 2008, the Court agrees with the Union's position. While numerous paragraphs in the amended complaint refer to meetings attended by the Union's representative, there is no sufficient factual

support shown for maintaining a hybrid action against the Union and the plaintiff has not referred to the LMRA in her pleading.

Finding that the amended complaint does not show compliance with the requirement of an administrative charge against the Union under Title VII or the ADEA and that the amended complaint is insufficient to state a claim for relief under the LMRA, it is

ORDERED that the motions of International Brotherhood of Teamsters Local Union No. 455 are granted and the Union is dismissed as a defendant in this civil action.

Dated: April 28th, 2009

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge