

HONORABLE RICHARD A. JONES

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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JTS, INC., et al.,

10 Plaintiffs,

11 v.

12 LOCAL 77 OF THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
13 WORKERS,

14 Defendant.

CASE NO. C13-663RAJ

ORDER

15 **I. INTRODUCTION**

16 This matter comes before the court on a motion to dismiss from Local 77 of the
17 International Brotherhood of Electrical Workers (“the Union”). No one has requested
18 oral argument and the court finds oral argument unnecessary. For the reasons stated
19 herein, the court GRANTS the motion in part and DENIES it in part. Dkt. # 14. The
20 court directs the clerk to promptly issue a new order scheduling initial disclosures and a
21 joint status report.

22 **II. BACKGROUND**

23 JTS, Inc., and its two owners, Kristi and Joaquin Quezada (collectively “JTS”),
24 provide electric power line maintenance services in Western Washington. They allege
25 that after a dispute with the Union over payment of required contributions, the Union
26 terminated its collective bargaining agreement (“CBA”) with JTS in January 2012. This

27 ORDER – 1
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1 case arises from JTS’s assertion that the Union has acted unlawfully to harm JTS’s
2 business prospects since then.

3 In describing the facts underlying this dispute, the court relies solely on the
4 allegations of JTS’s amended complaint, without suggesting an opinion as to the truth of
5 those allegations. The amended complaint was the result of the court’s November 4,
6 2013 order dismissing Plaintiff’s original complaint. In that order (Dkt. # 11), the court
7 dismissed with prejudice JTS’s claims against the City of Seattle, and directed Plaintiff to
8 replead and substantially clarify its claims against Union.

9 JTS asserts that shortly after the Union terminated the CBA, employees at Seattle
10 City Light (the City’s electric power utility) told JTS that it would no longer use JTS’s
11 services because it no longer had a relationship with the Union. Amend. Compl. ¶¶ 22,
12 40-47. The amended complaint contains no specific allegation of a Union representative
13 pressuring the City to take action against JTS, but JTS infers that Union representatives
14 did so based on various statements from City representatives. JTS contends that the City
15 reduced the amount of work it allocated to JTS, eventually forcing JTS to stop working
16 with City Light. *Id.* ¶¶ 63-67.

17 The Union’s efforts to cause others not to work with JTS were not confined to
18 Seattle City Light. JTS attempted to secure work with Centralia City Light. A Union
19 representative “complained to [Centralia City Light] on using JTS.” Amend. Compl.
20 ¶ 56. A Union representative attempted to “block JTS from becoming a Certified
21 Training Agent for Tree Trimmers through the Washington State Apprenticeship
22 program.” *Id.* ¶ 61. Another union representative informed another JTS customer,
23 Tanner Electric, of liens that existed against JTS. *Id.* ¶ 62. The union representative also
24 allegedly made misstatements to Tanner Electric, including that JTS no longer paid its
25 workers prevailing wages and that it had been barred from working for Seattle City Light.

1 JTS also asserts that the Union pressured JTS’s employees to leave the company.
2 Amend. Compl. ¶¶ 49, 57. Those allegations were apparently the subject of a complaint
3 that JTS made to the National Labor Relations Board (“NLRB”). *Id.* ¶ 58. The NLRB
4 concluded its investigation of the complaint after the Union agreed that it would “no
5 longer discriminate against JTS employees and that [the Union] would not retaliate [sic]
6 or blackball any JTS employees.” *Id.* ¶ 60.

7 JTS attempts to state three causes of action based on these allegations. It contends
8 that the Union violated Section 8(b) of the National Labor Relations Act (“NLRA”) both
9 by attempting to convince third parties to stop working with JTS and by attempting to
10 convince JTS employees to leave the company. It also contends that the Union
11 committed trade libel by making false statements about JTS, including that “JTS lacked
12 the capability to do certain work, . . . , w[as] not allowed to do work for City Light, or
13 w[as] having financial difficulties” Amend. Compl. ¶ 80. Finally, it contends that
14 the Union violated the Washington Consumer Protection Act (RCW Ch. 19.86, “CPA”)
15 by “pressuring City Light, among others, to limit the work given to JTS . . . , to alter
16 historical business policies and practices that would place a small company like JTS at a
17 significant competitive disadvantage, including changes in supervisory requirements,
18 having JTS work inspected by competitors on behalf of City Light, to require excessive
19 and groundless callbacks on work completed, changing invoicing requirements, and
20 unilaterally changing payment terms intended to put JTS at a disadvantage compared to
21 its larger unionized competitors.” *Id.* ¶ 85.

22 The Union asks the court to dismiss each of these causes of action for failure to
23 state a claim. *See* Fed. R. Civ. P. 12(b)(6).

24 III. ANALYSIS

25 The court stated the standards applicable to a Rule 12(b)(6) motion to dismiss in
26 its November order, and declines to repeat them here.

1 The court observes that JTS has barely opposed the Union’s motion to dismiss.
2 JTS’s three-page opposition brief does not cite a single assertion of its amended
3 complaint, cites no case law that is applicable to any of its three causes of action, and
4 ignores almost all of the arguments the Union made in its motion to dismiss. If the court
5 could grant a motion to dismiss merely because a plaintiff failed to offer any meaningful
6 opposition, the court would do so in this case.

7 But the court cannot ignore its own prior order, which acknowledged that JTS
8 could possibly state a claim for violations of the NLRA’s secondary boycott provisions
9 (29 U.S.C. § 158(b)(4)) and could possibly plead violations of Washington law beyond
10 the preemptive scope of the NLRA. The court thus considers whether the new
11 allegations in the amended complaint suffice.¹

12 JTS has stated a claim based on conduct within the scope of the NLRA’s
13 secondary boycott provisions. The court’s November order explained that section 303 of
14 the Labor and Management Relations Act (“LMRA”), 29 U.S.C. § 187, creates a private
15 right of action for a violation of the NLRA’s secondary boycott provisions. Those
16 provisions cover both a union’s efforts to “induce or encourage” people to refuse to use
17 the goods or services of another (except via a strike), 29 U.S.C. § 158(b)(4)(i), as well as
18 a union’s use of threats, coercion, or other restraints to force or require any person to
19 cease doing business with another, 29 U.S.C. § 158(b)(4)(ii)(B). The court finds that the
20 amended complaint suffices to put the Union on notice of a plausible claim that it exerted
21 pressure that caused Seattle City Light and other employers to stop working with JTS,
22 and did so in a manner that violates the NLRA’s secondary boycott provisions.

23 JTS has not, however, pleaded a federal claim to the extent that it attempts to state
24 a claim based on the Union’s attempt to convince JTS employees to leave their jobs.

25 ¹ Much of the amended complaint is not new, it merely repeats verbatim the allegations of the
26 original complaint. The new complaint is often difficult to follow and repeats itself for no
27 apparent reason. For example, paragraphs 29 and 42 are identical, although there is no apparent
28 need to repeat them.

1 Those activities are not within the scope of the NLRA’s secondary boycott provisions,
2 and thus are not within the scope of LMRA section 303. JTS makes no attempt to
3 demonstrate that another statute gives it a private right of action to sue for this conduct.
4 Indeed, its amended complaint acknowledges that the NLRB has already addressed that
5 claim. The court need not decide whether the NLRB has exclusive jurisdiction over that
6 claim, it merely concludes that JTS has not demonstrated that any federal law permits it
7 to bring that claim in this court.

8 As to JTS’s causes of action arising under Washington law, it has ignored the
9 court’s November order. That order explained that LMRA section 303 completely
10 preempts all state law causes of action based on conduct within the scope of the NLRA’s
11 secondary boycott provisions. Nov. 4, 2013 ord. (Dkt. # 11) at 5-7. The court noted that
12 JTS’s original complaint “lack[ed] any detail that would permit the court (or the Union)
13 to reach any conclusions” about whether JTS had “one or more claims based on conduct
14 outside the scope of section 303” *Id.* at 9-10. It ordered JTS to “substantially clarify
15 its allegations.” *Id.* at 10. To the extent that JTS clarified its Washington-law causes of
16 action at all, it merely clarified that they are based on conduct within the scope of the
17 NLRA’s secondary boycott provisions. The only conduct JTS mentions in those causes
18 of action is the Union’s efforts to persuade Seattle City Light and others not to work with
19 JTS. JTS did not assert that either its trade libel or CPA allegations were based on
20 conduct outside the scope of the NLRA’s secondary boycott provisions. It did not assert,
21 for example, that the Union committed trade libel or violated the CPA by conduct
22 designed to convince JTS’s employees to quit.² Moreover, JTS did not respond to the
23 Union’s argument in its motion to dismiss that those Washington-law claims were

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25 ² The court doubts, moreover, that any attempt to state a CPA claim based on the Union’s
26 conduct targeting JTS employees could survive the CPA’s exclusion of organized labor disputes.
27 *See Ernst Home Ctr., Inc. v. United Food & Comm. Workers Int’l Union, Local 1001*, 77 Wn.
28 App. 33, 46 (1995) (“RCW 19.86.070 exempts labor organizations from the scope of the
[CPA].”).

1 preempted. Indeed, JTS made no specific argument at all about its Washington-law
2 causes of action. The court has already given JTS leave to replead those causes of action,
3 and JTS neither pleaded them adequately nor convinced the court that it could plead them
4 adequately if given leave to amend again. The court accordingly dismisses those causes
5 of action with prejudice.

6 **IV. CONCLUSION**

7 For the reasons previously stated, the court GRANTS in part and DENIES in part
8 the Union's motion to dismiss. Dkt. # 14. JTS has stated a claim under section 303 of
9 the LMRA that the Union violated the secondary boycott provisions of the NLRA by
10 acting to stop third parties from using JTS's services. JTS has not stated any other claim,
11 including any claim based on the Union's efforts to convince JTS employees to leave
12 JTS, and including any claim based on Washington law. The court dismisses those
13 claims with prejudice.

14 The court directs the clerk to promptly issue a new order scheduling initial
15 disclosures and a joint status report.

16 DATED this 8th day of May, 2014.

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19 The Honorable Richard A. Jones
20 United States District Court Judge