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

10 DAVIS WIRE CORPORATION,

11 Plaintiff,

12 v.

13 TEAMSTERS LOCAL UNION NO 117,

14 Defendant.

CASE NO. C14-47 MJP

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

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16 THIS MATTER comes before the Court on Defendant Teamsters Local Union No. 117's
17 Motion for Summary Judgment. (Dkt. No. 37.) Having reviewed the motion, Plaintiff Davis
18 Wire Corporation's response, (Dkt. No. 43), and the related record, the Court hereby GRANTS
19 Defendant's motion.

20 **Background**

21 Plaintiff Davis Wire Corporation operates a plant in Kent, Washington for the
22 manufacture of wire for agriculture, construction and utilities, among other things. (Dkt. No. 1 at
23 2) (Complaint ("Compl.") ¶3.) Defendant Teamsters Local Union No. 117 represents a group of
24 employees who perform work at the plant. (Dkt. No. 1 at 2) (Compl. ¶5).

1 Plaintiff and Defendant are signatories to successive collective bargaining agreements
2 (“CBAs”). (Dkt. No. 1 at 2) (Compl. ¶6.); (Dkt. No. 26 at 2) (Answer (“Ans.”) ¶6.) The most
3 recent CBA is the September 1, 2012 through August 31, 2016 agreement (the “2012–2016
4 Agreement”) which covers work performed by union members for Plaintiff at its Kent,
5 Washington plant. (Id.) The prior CBA between the parties had effective dates from December
6 1, 2008 through November 30, 2011. (Dkt. No. 1 at 3) (Compl. ¶8.); (Dkt. No. 26 at 2) (Ans.
7 ¶8.)

8 Section 21.7 of the 2012–2016 Agreement provides “[w]hen the nature of a work
9 assignment prevents an employee from being relieved of duty for a meal period, it is agreed that
10 the employee shall have an on-duty meal period. The on-duty meal period shall be counted as
11 time worked.” (Dkt. No. 39-1 at 13) (Declaration of Spencer Nathan Thal in Support of
12 Defendant’s Motion for Summary Judgment (“Thal Decl.”), Ex. A.) The language of Section
13 21.7 was identical in the CBA immediately preceding the 2012–2016 Agreement. (Dkt. No. 1 at
14 3) (Compl. ¶8); (Dkt. No. 26 at 2) (Ans. ¶8.)

15 In 2011, before the 2008–2011 CBA expired, the parties engaged in negotiations for a
16 new agreement. (Dkt. No. 1 at 3) (Compl. ¶9); (Dkt. No. 26 at 2) (Ans. ¶9.) Negotiations
17 between the parties broke down in the spring and summer of 2012. (Dkt. No. 39 at 2) (Thal
18 Decl. ¶6.); (Dkt. No. 43 at 4.) The 2012–2016 Agreement was executed by Plaintiff in October
19 2012 and by Defendant in November 2012. (Dkt. No. 39 at 2) (Thal Decl. ¶7); (Dkt. No. 1 at 3)
20 (Comp. ¶9.)

21 In early 2012, Defendant informed Dmitri Iglitzin, an attorney, that workers at Plaintiff’s
22 Kent plant “believed they were not getting the rest or meal period breaks to which they were
23 entitled under law.” (Dkt. No. 38 at 2) (Declaration of Dmitri Iglitzin (“Iglitzin Decl.”) in
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1 Support of Defendant’s Motion for Summary Judgment, ¶3); (Dkt. No. 43 at 7.) Mr. Iglitzin
2 advised Defendant of his opinion that Plaintiff’s practices deprived the workers of the meal and
3 rest breaks they were entitled to under Washington law, among other things. (Dkt. No. 38 at 2)
4 (Iglitzin Decl. ¶5.) He also agreed to represent the workers in a suit against Plaintiff. (Id. at 3)
5 (Iglitzin Decl. ¶7.)

6 On or about April 30, 2012, Robert Bruner and Cecil Markley, two employees of Plaintiff
7 who are members of the union and are covered by the 2012–2016 Agreement, filed a class action
8 lawsuit (the “Bruner lawsuit”) against Plaintiff in King County Superior Court. (Dkt. No. 1 at 3)
9 (Compl ¶ 11); (Dkt. No. 26 at 2) (Ans. ¶11.) Defendant was not a party to the lawsuit. (Id.)
10 Among other things, plaintiffs in the Bruner lawsuit alleged that Plaintiff violated Washington
11 law by failing to provide “plaintiffs and class members with thirty-minute meal periods . . .”
12 (Dkt. No. 38-2 at 7) (“Third Amended Complaint” ¶8.2.)

13 In April 2012, Defendant agreed to advance expenses Mr. Iglitzin’s firm was likely to
14 incur in the Bruner lawsuit, subject to reimbursement from any award of costs the plaintiffs
15 might receive. (Dkt. No. 39 at 3) (Thal Decl. ¶9.) The agreement was not reduced to writing at
16 that time. (Id.) The parties dispute whether Defendant agreed to pay litigation costs or both
17 litigation costs and attorney’s fees. (Dkt. No. 1 at 3) (Compl. ¶12); (Dkt. No. 26 at 2–3) (Ans.
18 ¶12.) The parties also dispute whether Defendant subsequently agreed, in writing, to pay all
19 litigation costs associated with the Bruner lawsuit, i.e. after the 2012–2016 Agreement was
20 executed. (Dkt. No. 38 at 3) (Iglitzin Decl. ¶8); (Dkt. No. 43 at 8.)

21 On January 9, 2015, following a six-week bench trial, King County Superior Court
22 Judge Dean Lum found that Plaintiff’s meal break practices violated the Washington Industrial
23 Welfare Act, RCW 49.12 and WAC 296-126-092. (Dkt. No. 38 at 6) (Iglitzin Decl. ¶20); (Dkt.
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1 No. 43 at 6.) The total judgment for the class in the Bruner lawsuit, including backpay and
2 prejudgment interest, was \$794,126.95. (Dkt. No. 38 at 6) (Iglitzin Decl. ¶20.)

3 On June 24, 2013, Plaintiff filed an unfair labor practice (“ULP”) charge with the
4 National Labor Relations Board (“NLRB”), alleging Defendant violated Section 8(b)(3) of the
5 National Labor Relations Act (“NLRA”), 29 U.S.C. §158(b)(3), by funding the Bruner lawsuit
6 without disclosing this fact to Plaintiff. (Dkt. No. 15-1 at 3) (“Charge Against Labor
7 Organization or its Agents.”) The NLRB investigated the charge and dismissed it on January 22,
8 2014, finding there was “insufficient evidence to establish a violation of the Act.” (Dkt. No. 15-
9 1 at 4.)

10 Plaintiff commenced this suit on January 10, 2014 under Section 301 of the Labor-
11 Management Relations Act (“LMRA §301”), 29 U.S.C. §185, while the Bruner lawsuit was still
12 ongoing. (Dkt. No. 1.) Plaintiff alleged that by funding the Bruner lawsuit, Defendant breached
13 Section 21.7 of the 2012–2016 Agreement and breached the implied covenant of good faith and
14 fair dealing. (Id. at 3–4.) On January 30, 2014, Defendant filed a motion to dismiss Plaintiff’s
15 complaint. (Dkt. No. 15.) Defendant argued: (1) Plaintiff failed to cite to any provision of the
16 2012–2016 Agreement that Defendant could have conceivably breached; (2) to the extent
17 Plaintiff’s claim could be understood as a good faith and fair dealing claim, such a claim was
18 preempted by the NLRA; and (3) Plaintiff’s claims were time-barred. (Id. at 1.)

19 On April 2, 2014, the Court denied Defendant’s motion to dismiss. (Dkt. No. 20.) The
20 Court agreed with Defendant that Plaintiff could not state a claim for breach of Section 21.7 of
21 the 2012–2016 Agreement, because nothing in Section 21.7 prevented Defendant from
22 “supporting litigation arising from the CBA . . .” (Id. at 3.) The Court, however, disagreed with
23 Defendant that Plaintiff’s claim was preempted by the NLRA as a ULP claim. (Id. at 4.) In so
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1 ruling, the Court found Plaintiff “states a plausible claim for breach of the implied covenant of
2 good faith and fair dealing.” (Id. at 4.) The Court also found Plaintiff’s claims were not barred
3 by the statute of limitations. (Id. at 5–6.)

4 Defendant now moves for summary judgment arguing: (1) Defendant owed no implied
5 duties to Plaintiff where there was no agreement in effect between the parties; (2) Defendant’s
6 fiduciary duties to its members trump any implied duty Defendant may have owed to Plaintiff
7 after the parties executed the 2012–2016 Agreement as a matter of law; (3) even if Defendant
8 owed an implied duty to Plaintiff to discontinue funding a lawsuit that might conflict with the
9 terms of the 2012–2016 Agreement, Defendant did not breach that duty because Section 21.7
10 does not conflict with state law; and (4) Plaintiff cannot show that Defendant’s conduct caused it
11 any damage. (Dkt. No. 37 at 8.) Plaintiff opposes Defendant’s motion arguing the existence of
12 material issues of fact precludes summary judgment. (Dkt. No. 43.)

13 **Discussion**

14 **A. Legal Standard**

15 Summary judgment is not warranted if a material issue of fact exists for trial. Warren v.
16 City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S. 1171 (1996). The
17 underlying facts are viewed in the light most favorable to the party opposing the motion.
18 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). “Summary
19 judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict for
20 the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party
21 moving for summary judgment has the burden to show initially the absence of a genuine issue
22 concerning any material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970). Once the
23 moving party has met its initial burden, however, the burden shifts to the nonmoving party to
24 establish the existence of an issue of fact regarding an element essential to that party’s case, and

1 on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317,
2 323-24 (1986). To discharge this burden, the nonmoving party cannot rely on its pleadings, but
3 instead must have evidence showing that there is a genuine issue for trial. Id. at 324.

4 **B. Implied Covenant of Good Faith and Fair Dealing**

5 LMRA §301 provides federal jurisdiction over suits alleging breach of contract, such as a
6 CBA, between an employer and a labor union. 29 U.S.C. § 185(a). Section 301 also confers
7 federal jurisdiction over a claim based on breach of the implied covenant of good faith and fair
8 dealing because the covenant “derives from the [CBA] and is defined by the contractual
9 obligation of good faith.” Audette v. Int’l Longshoremen’s & Warehousemen’s Union, 195 F.3d
10 1107, 1112 (9th Cir. 1999) (citing Allis-Chalmers Corp v. Lueck, 471 U.S. 202, 218 (1985)).

11 This covenant requires that neither party act to “frustrate the object of [the] contract” or
12 “[destroy] or [injure] the right of the other party to receive the fruits of the contract.” Local 3-7,
13 Int’l. Woodworkers of Am. v. DAW Forest Prods. Co., 833 F.2d 789, 795 (9th Cir. 1987).

14 **C. Plaintiff’s Implied Covenant of Good Faith and Fair Dealing Claim**

15 Defendant first argues: (1) it could not have breached the implied covenant of good faith
16 and fair dealing when no agreement was in effect between the parties; and (2) that its fiduciary
17 duties to its members trump any implied duty it may have owed to Plaintiff to discontinue
18 funding the Bruner lawsuit after the 2012–2016 Agreement was executed. (Dkt. No. 37 at 9–13)
19 (citing GTE North v. Comm’n Workers of America, Local 4773, 927 F. Supp. 296 (N.D. Ind.
20 1996).) The Court agrees with Defendant and, therefore, does not reach Defendant’s remaining
21 arguments.

22 Plaintiff’s claim that Defendant breached the implied covenant of good faith and fair
23 dealing is based on the following actions taken by Defendant: (1) Defendant determined
24 Plaintiff’s meal and rest period practice violated Washington law in early 2012 and failed to

1 inform Plaintiff of that determination; (2) Defendant secretly agreed to fund the Bruner lawsuit
2 in April 2012 (without reducing the agreement to writing); (3) Defendant misrepresented its
3 participation in the Bruner lawsuit when Plaintiff asked about it in May 2012; (4) Defendant
4 entered into the Last and Best Final Offer and represented it had no claims under the prior CBA
5 at the time the parties executed the 2012–2016 Agreement; (5) Defendant increased its financial
6 commitment to the Bruner lawsuit after the parties entered into the 2012–2016 Agreement; and
7 (6) Defendant continues to fund the Bruner lawsuit to this date and put itself first in line for
8 recovery of costs of the suit. (Dkt. No. 34 at 11–13.)

9 Viewing these facts in the light most favorable to Plaintiff, the Court cannot conclude
10 that genuine issues of material fact exist as to whether Defendant could be liable to Plaintiff for
11 breach of the implied covenant of good faith and fair dealing.

12 First, Defendant’s conduct before the parties executed the 2012–2016 Agreement cannot
13 support a claim for breach of the implied covenant of good faith and fair dealing, because a claim
14 for breach of the implied covenant of good faith and fair dealing arises where there is an
15 enforceable contract in place between the parties. See Local 3–7, Int’l Woodworkers of Am.,
16 833 F.2d at 794.

17 Further, while Plaintiff now argues Defendant’s pre-Agreement conduct is relevant to its
18 implied covenant of good faith and fair dealing claim, (Dkt. No. 43 at 12–14), Plaintiff has
19 previously argued to this Court that its claim is not based on Defendant’s conduct during the
20 bargaining process and is, therefore, not preempted by the NLRA. (Dkt. No. 17 at 7, n.3)
21 (“Plaintiff’s Opposition to Defendant’s Motion to Dismiss”) (. . . “Davis Wires’ claims in this
22 case focus on Defendant’s breach of its legal obligations after the parties agreed to and executed
23 the new CBA.”) Indeed, the Court accepted Plaintiff’s earlier position and interpreted Plaintiff’s
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1 claim as a claim for breach of the implied covenant of good faith and fair dealing under the
2 2012–2016 Agreement. (Dkt. No. 20 at 4.) Because Plaintiff cannot now seek to gain advantage
3 by broadening the scope of its claim, Plaintiff is estopped from taking the position that
4 Defendant’s conduct prior to the execution of the 2012–2016 Agreement is the basis of its
5 implied covenant of good faith and fair dealing claim. See Hamilton v. State Farm Fire & Cas.
6 Co., 270 F.3d 778, 782 (9th Cir. 2001) (courts may consider the following factors when
7 determining whether to apply judicial estoppel: (1) the party’s later position is clearly
8 inconsistent with its earlier position; (2) the party succeeded in persuading the court to accept its
9 earlier position; and (3) the party seeking to assert an inconsistent position would derive an
10 unfair advantage if not estopped).

11 Plaintiff’s remaining allegations—based on Defendant’s conduct after the parties
12 executed the 2012–2016 Agreement—can be summarized as advancing the position that a union
13 breaches the implied covenant of good faith and fair dealing by providing financial support to its
14 members who are bringing a lawsuit that conflicts with a provision of a CBA and by failing to
15 notify the employer that it is providing such support. (Dkt. No. 43 at 12–13.) For reasons stated
16 below, the Court declines Plaintiff’s invitation to embrace this position.

17 Defendant owes fiduciary duties to its members, including the duty of fair representation.
18 Air Line Pilots Assoc., Int’l v. O’Neill, 499 U.S. 65, 74–75 (1991) (“ . . . a union owes employees
19 a duty to represent them adequately as well as honestly and in good faith.”) Even if Defendant
20 funded the Bruner lawsuit and even if it did so without disclosing this fact to Plaintiff, these
21 actions did not violate the implied covenant of good faith and fair dealing. To find that they did
22 would require the Court to conclude that Defendant “was required to act in concert with
23 [Plaintiff] even if it had the good faith, honest belief that the [2012–2016 Agreement] contained
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1 elements that violated the [] rights of [Defendant’s] members.” GTE North, 927 F. Supp. at 300.
2 Such a conclusion would mean that Defendant “owed a greater duty to [Plaintiff], by virtue of
3 terms implicit to the [2012–2016 Agreement], than it did to its own members, and thus breached
4 that duty by representing the best interests of its members rather than the interests of [Plaintiff].”

5 Id.

6 Such a conclusion has no basis in the law and would lead to objectionable results.
7 Plaintiff cites to no cases where a court has found that a union breaches the implied covenant of
8 good faith and fair dealing under facts similar to this case. (Dkt. No. 43.) In the only published
9 case that the parties cite to in which an employer brought a claim for breach of the implied
10 covenant of good faith and fair dealing based on similar facts, the court found that such a claim
11 cannot lie, as a matter of law, in light of a union’s fiduciary duties to its members. GTE North,
12 927 F. Supp. at 301. Further, as Defendant points out in its motion, Plaintiff’s position would
13 require a labor union “to analyze whether any administrative investigation, litigation, legislative
14 agenda, or political action it wanted to pursue on behalf of its members somehow conflicted,
15 however slightly, with a provision that had been agreed to in a contract with an employer.” (Dkt.
16 No. 37 at 13.) This would dramatically restrict a union’s ability to advocate for its members.

17 Plaintiff argues Defendant attempts to improperly re-litigate the Court’s ruling on
18 Defendant’s motion to dismiss by arguing it cannot be liable for breach of the implied covenant
19 of good faith and fair dealing as a matter of law in light of its fiduciary duties to its members.
20 (Dkt. No. 43 at 2.) But the issue of whether a union’s implied duties can exceed its fiduciary
21 duties to its members was not before the Court when it ruled on Defendant’s motion to dismiss.
22 (See Dkt. No. 15.) To the extent the Court’s ruling on Defendant’s motion to dismiss implied
23 that a union can be liable for breach of the implied covenant of good faith and fair dealing under
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1 the facts of this case, the Court finds that such an implication was in error and departs from it.
2 See U.S. v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997) (“A court may have discretion to
3 depart from the law of the case where . . . the first decision was clearly erroneous . . .”)

4 Defendant cannot be liable to Plaintiff for breach of the implied covenant of good faith
5 and fair dealing under the facts of this case, because such an implied duty would conflict with
6 Defendant’s fiduciary duties to its members. Therefore, Plaintiff fails to show genuine issues of
7 material fact exist with respect to its implied covenant of good faith and fair dealing claim and
8 summary judgment is appropriate.

9 **Conclusion**

10 Because Plaintiff fails to show genuine issues of material fact exist with respect to its
11 implied covenant of good faith and fair dealing claim, the Court GRANTS Defendant’s motion
12 for summary judgment.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated this 8th day of May, 2015.

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17 Marsha J. Pechman
18 United States District Judge
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