UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PATRICK CROWLEY,	:	
	:	
Plaintiff	:	No. 3:04 cv 01486 (MRK)
	:	
v.	:	
	:	
FIRST STEP, INC.,	:	
	:	
Defendant.	:	

RULING AND ORDER

In this case, Plaintiff Patrick Crowley, a former employee of the Defendant First Step, Inc., sued First Step in state court on a two-count complaint for damages arising from First Step's termination of Mr. Crowley's employment. Count One, a claim under § 31-51q of the General Statutes of Connecticut ("§ 31-51q"), asserted that Mr. Crowley had been wrongfully terminated for exercising his First Amendment right to criticize First Step for its alleged billing practices. Count Two, a common law claim for breach of the implied duty of good faith and fair dealing, was based on First Step's alleged failure to "perform[] and enforce[]" a collective bargaining agreement between First Step and the New England Health Care Employees Union, dated April 1, 2001 (the "Collective Bargaining Agreement"). *See* Notice of Removal [doc. # 1] at Ex. 1, Complaint, Count Two ¶¶ 4 & 9. First Step timely removed the action to federal court on the basis of federal question jurisdiction, 28 U.S.C. § 1331, since First Step alleged that Plaintiff's causes of action were governed by § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a). Presently pending before the Court are Plaintiff's Motion to Remand [doc. # 5] and Defendant's Motion to Dismiss [doc. # 10].

Addressing first the Motion to Remand, this Court has recently had occasion to explain what is known as the "complete preemption corollary" to the well pleaded complaint rule and the application of that corollary to § 301 of the LMRA. *See Williams v. Comcast Cablevision of New Haven, Inc.*, 322 F. Supp. 2d 177 (D. Conn. 2004). Without repeating what was said in *Williams*, it suffices to say that the Court is convinced that Court Two of Plaintiff's claim falls squarely within the corollary because, as the Complaint itself makes clear, Plaintiff's claim in Count Two is " 'inextricably intertwined with consideration of the terms of the [Collective Bargaining Agreement].' " *Id.* at 182 (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985)); *see* Notice of Removal [doc. # 1] at Ex. 1, Complaint, Count Two ¶¶ 4, 5, 9 (expressly invoking the Collective Bargaining Agreement). Because Count Two of Plaintiff's Complaint is preempted by § 301 of the LMRA, "that count alone provides an adequate basis for [First Step's] assertion of federal question jurisdiction and its removal of this action to federal court." *Williams*, 322 F. Supp. 2d at 184. Accordingly, the Court cannot remand this case to state court upon the grounds asserted in Plaintiff's Motion to Remand.

Turning next to First Step's Motion to Dismiss, as was the case in *Williams*, what the Court has previously said about LMRA preemption of the claims in Count Two also requires dismissal of that count. It is apparent from the face of the Complaint itself that Count Two involves the "performance and enforcement" of the Collective Bargaining Agreement. Notice of Removal [doc. # 1] at Ex. 1, Complaint, Count Two ¶ 4, 5, 9. As such, the Court concludes that Plaintiff's state common law claim in Count Two is completely preempted by the LMRA and must be dismissed. *Williams*, 322 F. Supp. 2d at 185-86 (finding claim for breach of implied covenant of good faith and fair dealing preempted by LMRA); *see Allis-Chalmers*, 471 U.S. at

219 ("Since nearly any alleged wilful breach of contract can be restated as a tort claim for breach of a good-faith obligation under contract, the arbitrator's role in every case could be bypassed easily if § 301 is not understood to pre-empt such claims."); *Carvalho v. Int'l Bridge & Iron Co.*, No. 3:99CV605 (CFD), 2000 WL 306456, at *7-8 (D. Conn. Feb. 25, 2000) (dismissing state law good faith and fair dealing claims as preempted under § 301).

Though First Step urges the Court to do so, the Court cannot reach the same conclusion regarding Count One. The Court can certainly envision a case in which the LMRA might preempt a state statutory claim under § 31-51q, where, for example, resolution of the claim required construction and interpretation of a collective bargaining agreement. *See Wall v. Construction & General Laborer's Union, Local 230*, 224 F.3d 168, 178 (2d Cir. 2000) (noting that district court had dismissed § 31-51q claim as preempted where it required interpretation of a collective bargaining agreement). However, that does not appear to be the situation presented by Plaintiff's Complaint. Count One merely asserts that he exercised his First Amendment rights by criticizing First Step for engaging in what he claims were unlawful billing practices and that he was fired "in retaliation for his speech." Notice of Removal [doc. # 1] at Ex. 1, Complaint, Count One ¶ 9. On its face, the claim does not require any interpretation or construction of the Collective Bargaining Agreement. Instead, the claim requires a determination of whether Plaintiff engaged in First Amendment activities (alleged activities that have nothing to do with the Collective Bargaining Agreement), whether he was terminated in retaliation for those activities, and whether those activities substantially or materially interfered with his bona fide job performance or working relationship with First Step. *See, e.g.*, *Cotto v. United Technologies Corp.*, 251 Conn. 1, 6 (1999); Conn. Gen. Stat. § 31-51q.

As the Supreme Court held in *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987), "a plaintiff covered by a collective-bargaining agreement is permitted to assert legal rights *independent* of" a collective bargaining agreement. *Id.* at 396 (emphasis in original). "[I]t is the legal character of a claim, as independent of the rights under a collective bargaining agreement . . . that decides whether a state cause of action may go forward . . . [and] when the meaning of a contract term is not the subject of dispute, the bare fact that a collective-bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished." *Livadas v. Bradshaw*, 512 U.S. 107, 123-24 (1994); *see Lawton v. United Parcel Serv., Inc.*, 338 F. Supp. 2d 347, 349 (D. Conn. 2004) (state law defamation and false light tort claims not preempted by § 301 of the LMRA because they did not require interpretation of a collective bargaining agreement). Accordingly, the Court will not dismiss Count One of Plaintiff's Complaint.

As a result of the Court's resolution of Defendant's Motion to Dismiss, Plaintiff is left with a single claim, Count One, which is an un-preempted state-law claim for violation of § 31-51q. However, because there are no federal claims left and the parties agree that there is no diversity of citizenship, unless this Court exercises supplemental jurisdiction over Plaintiff's remaining state law claim, the Court lacks subject matter jurisdiction over this case. A district court's exercise of supplemental jurisdiction is governed by 28 U.S.C. § 1367. Section 1367(a) states, in relevant part, that

> in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a). However, § 1367(c) states that

> [t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--
> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). According to the Supreme Court:

> [A] district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate. The discretion to remand enables district courts to deal with cases involving pendent claims in the manner that best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine.

Carnegie-Mellon University v. Cohill, 484 U.S. 343, 357 (1988). The Second Circuit has advised district courts that " 'in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to exercise jurisdiction over the remaining state-law claims.' " *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 305 (2d Cir. 2003) (quoting *Cohill*, 484 U.S. at 350 n.7).

This is the "usual case" envisioned in *Valencia.* All that remains in this case is a single state law claim and because this case was only recently filed, there has been relatively little time and resources expended in federal court. Therefore, in the interests of judicial economy, convenience, fairness, and comity, the Court *sua sponte* declines to exercise supplemental jurisdiction over Count One. Since there is no longer subject matter jurisdiction over the claims

in this action and it was originally begun in state court, the case should be remanded under 28 U.S.C. § 1447(c) to the state court in which the action was filed. *See Cohill,* 484 U.S. at 357, *Valencia*, 316 F.3d at 308.

In sum, the Court GRANTS IN PART and DENIES IN PART Defendant's Motion to Dismiss [doc. #10] and GRANTS Plaintiff's Motion to Remand [doc. #5], albeit upon grounds different from those asserted in Plaintiff's motion. The Clerk is directed to remand this action to the Connecticut Superior Court for the Judicial District of New London at New London. Each side shall bear its own costs and attorneys' fees. **The Clerk is directed to close this file.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 6, 2004