

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KENNETH FETT,
Plaintiff,
vs.
ASRC ENERGY SERVICES, INC.,
Defendant.

Case No. 3:07-cv-00239 JKS

ORDER

Kenneth Fett, a former employee of ASRC Energy Services, Inc. (ASRC), brought this action in state court alleging that he was fired in retaliation for complaining about safety in violation of Alaska state public policy. Fett did not include any federal claims and did not reference the collective bargaining agreement between his employer and his union.¹ ASRC removed this action to federal court contending that Fett's claims were pre-empted by Section 301 of the Labor Management Relations Act, particularly 29 U.S.C. § 185. Fett moves to remand this action to state court (Docket No. 11) and ASRC moves for summary judgment (Docket No. 20). Fett has requested a hearing for both motions.² Docket No. 39. Since these motions are intertwined they will be addressed in this Order.

¹Fett did include a conclusory statement that his retaliatory termination was “contrary to federal and Alaska law, and stated policies of AES.” Docket No. 6-3 at 5. The Court declines to construe this as the assertion of a federal claim.

²The Court is satisfied that all of the issues have been adequately briefed so that oral argument would not be helpful. The motion for a hearing will be denied accordingly.

The Court has carefully considered the record in this case. It is convinced that Fett's state law claim of retaliatory firing may be resolved without reference to the CBA. Fett must prove: 1) that he complained about safety conditions; 2) that he was fired and 3) that his complaints were a cause of his firing. At most the CBA might help to explain ASRC's contention that it fired Fett for reasons other than concern about his safety complaints. Under controlling law that would not satisfy complete preemption. *See e.g., Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988); *Cramer v. Consol. Freightways Inc.*, 255 F.3d 683 (9th Cir. 2001) (en banc); *Eldridge v. Felec Servs.*, 920 F.2d 1434 (9th Cir. 1990); *Norcon, Inc. v. Kotowski*, 971 P.2d 158, 167 (Alaska 1999). Fett is entitled to have his state law claims tried in state court.

Granting Fett's motion to remand resolves the pending motion for summary judgment which assumes that Fett's sole remedy is an untimely action under the CBA. There are definitely disputed issues of material fact on the existing record regarding ASRC's motive in discharging Fett but that is a matter to be resolved in state court.

IT IS THEREFORE ORDERED:

Fett's motion for a hearing at **Docket No. 39** is **DENIED**. Fett's motion to remand at **Docket No. 11** is **GRANTED**. The pending motion for summary judgment at **Docket No. 20** is moot and is therefore **DENIED** without prejudice to further proceedings in state court. The matter is **REMANDED** to the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

Dated this 25th day of August 2008.

/s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge