In The

Supreme Court of Virginia

RECORD NO. 130681

RICHARD ANTHONY, *et al.*,

Appellants,

v.

VERIZON VIRGINIA, INC., *et al.*,

Appellees.

BRIEF OF APPELLEE COMMINICATIONS WORKERS OF AMERICA, AFL-CIO, DISTRICT 2

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 3

III. STANDARD OF REVIEW 5

IV. THIS DISPUTE IS ABOUT VERIZON'S RIGHT TO DECLARE A SURPLUS, A QUESTION GOVERNED BY THE COLLECTIVE BARGAINING AGREEMENT 6

V. THE PLAINTIFFS' CLAIMS REQUIRE INTERPRETATION OF AND ARE INEXTRICABLY ENTWINED WITH THE LABOR AGREEMENTS 10

VI. NO INDEPENDENT STATE LAW TORT EXISTS AGAINST CWA 16

VII. THE GENERAL AGREEMENT AND MOA ARE SECTION 301 CONTRACTS 18

VIII. CONCLUSION 20

IX. CERTIFICATE 22

TABLE OF AUTHORITIES

Page(s)

CASES

Allis-Chalmers Corp. v. Lueck,
471 U.S. 202 (1985) .....*passim*

AT&T Tech., Inc. v. Commc'ns Workers of Am.,
475 U.S. 643 (1986) 8-9

Avco Corp. v. Aero Lodge 735,
390 U.S. 557 (1968) 13

Brady v. Trans World Airlines, Inc.,
401 F.2d 87 (3d Cir. 1986).....17

Caterpillar, Inc. v. Williams,
482 U.S. 386 (1987) 6

Clark v. Newport News Shipbuilding & Dry Dock Co.,
937 F.2d 934 (4th Cir. 1991).....17

Commc'ns Workers of Am. v. AT&T Tech., Inc.,
No. 82 C 772, 1987 WL 8973 (N.D. Ill. Mar. 26, 1987).....9

Davis v. Bell Atl.-W. Virginia, Inc.,
110 F.3d 245 (4th Cir. 1997).....6

Filak v. George,
267 Va. 612 (2004) 18

Fox v. Custis,
236 Va. 69 (1988) 5

Foy v. Giant Food Inc.,
298 F.3d 284 (4th Cir. 2002).....10

Fun v. Virginia Military Institute,
245 Va. 249 (1993) 6

Hechler Chevrolet, Inc. v. General Motors Corp.,
230 Va. 396 (1985) 5

International Brotherhood of Boilermakers v. Transue & Williams Corp.,
879 F.2d 1388 (6th Cir. 1989) 19-20

Jared & Donna Murayama 1997 Trust v. NISC Holdings, LLC,
284 Va. 234 (2012) 11-12

Lingle v. Norge Div. of Magic Chef, Inc.,
486 U.S. 399 (1988) 11

Local 368, United Fed'n of Eng'rs v. W. Elec. Co., Inc.,
359 F. Supp. 651 (D.N.J. 1973) 9

McCormick v. AT & T Technologies, Inc.,
934 F.2d 531 (4th Cir. 1991) 13, 14, 16

Retail Clerk Int'l Ass'n v. Lion Dry Goods,
369 U.S. 17 (1962) 19

Richmond Metro. Auth. v. McDevitt Street Bovis, Inc.,
256 Va. 553 (1998) 2, 17

Smith v. Kerrville Bus Co., Inc.,
709 F.2d 914 (5th Cir. 1983) 20

Success Vill. Apartments, Inc. v. Amalgamated Local 376,
380 F. Supp. 2d 95 (D. Conn. 2005) 9

United Mine Workers of America v. Stonega Mining and Processing Co.,
No. 2:03 CV 00154, 2005 WL 2010165 (W.D. Va. 2005) 19

United Steelworkers of America v. Warrior & Gulf Navigation Co.,
363 U.S. 574 (1960) 9, 14

Vaca v. Sipes,
386 U.S. 171 (1967) 2, 10

Ward's Equip., Inc. v. New Holland N. Am., Inc.,
254 Va. 379 (1997) 5, 6

Warehouse Union, Local 860 v. NLRB,
652 F.2d 1022 (D.C. Cir. 1981)..... 17

Williams v. Pac. Mar. Ass'n,
617 F.2d 1321 (9th Cir. 1980)..... 17

STATUTE

29 U.S.C. § 185..... 2, 7

I. INTRODUCTION

The Plaintiffs come to this court attempting to resuscitate claims against CWA based on facts that barely suggest any breach of duty, much less a claim that withstands complete federal preemption. Plaintiffs allege that the union engaged in speculation about their risk of being laid off and told them they would receive fewer benefits under a future layoff. Given the terms of the enhanced severance package at issue, the alleged speculations about risk of layoff were entirely logical. And, given that the severance benefits were temporarily enhanced, of course they would be lower once the enhancement ended.[1] The Plaintiffs do not allege that the union intentionally lied or that it acted with improper motivation. Plaintiffs use the word "misrepresentation" to gain a foothold in state tort law, but their efforts fail because the essence of the suit is founded in contract. The dispute hinges on Plaintiffs' belief that Verizon had no right to declare a surplus if it did not actually have a surplus of employees. This is a question governed by the General Agreement between Verizon and CWA; hence, it is a contract claim, not a tort. The union's fault, if there is any fault to be found, would be in failing to challenge Verizon on this question. In short,

[1] The complaints actually state that Plaintiffs were told they would receive fewer or *no* benefits under future layoffs, but the "no benefits" part is nonsensical, as discussed in Section V of this brief.

this is a classic hybrid duty of fair representation/breach of contract claim, as the Supreme Court articulated in *Vaca v. Sipes*, 386 U.S. 171 (1967). Accordingly, it is completely preempted by Section 301 of the Labor Management Relations Act. 29 U.S.C. § 185.

Even if there were potential for a state tort claim here, establishing a breach of duty would require extensive interpretation of collective bargaining agreements. And, any claim's resolution would be inextricably entwined with the meaning of those agreements. Therefore, preemption is required. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

Finally, even if Plaintiffs' claims against Verizon were to survive as independent state torts, those against CWA could not because they describe performance of duties covered by a contract. In communicating with Plaintiffs about the enhanced severance benefit, the union fulfilled its contractual duty to advise them about contractual benefits. Therefore, under Virginia law, the matter may only be brought as a contract claim, *Richmond Metro. Auth. v. McDevitt Street Bovis, Inc*., 256 Va. 553 (1998), which leads to Section 301 preemption.

II. FACTUAL BACKGROUND

The Plaintiffs allege that CWA passed on inaccurate information from Verizon while they considered taking an enhanced severance benefit. See Anthony Complaint ("Compl.") ¶¶ 5-8, 16-17; Joint Appendix ("J.A.") at 1-4.[2] CWA is the Communications Workers of America, the labor union that represented the Plaintiffs as Verizon employees. The enhanced severance benefit was negotiated between CWA and Verizon and memorialized in a Memorandum of Agreement ("MOA"). J.A. at 136-139. CWA's role as collective bargaining representative is described in Articles 1 and 2 of the General Agreement between CWA and Verizon. J.A. at 123.[3]

The MOA affected thousands of Verizon employees across many different states. MOA intro., § XI; J.A. at 136, 139. It provided a potential 12 month layoff protection for bargaining unit employees hired on or after August 1, 2003, and temporarily enhanced the existing contractual severance benefits. MOA §§ I & VI; J.A. at 136,138. The existing

[2] The complaints are virtually identical, so for simplicity's sake, we will refer to the complaint for *Anthony v. Verizon*, Case No. CL11003068-00.

[3] Portions of the General Agreement not included in the Joint Appendix will be cited as GA. The entire General Agreement was included in Exhibit A of the Motion Craving Oyer, which can be found in the record for the *Anthony v. Verizon* case, No. CL11003068-00, at 93-439. Article 2 of the General Agreement, cited above, is on p. 4 of the GA. It provides that negotiations over modifications to the agreement (such as the MOA) are exclusively reserved to the union's and the employer's designated representatives.

severance benefits are described in Article 36A of the General Agreement.[4] Through the MOA, the parties agreed to a temporary improvement in those benefits for eligible bargaining unit members, including enhanced severance and pension formulas, plus a $40,000 lump sum payment to be added to the $10,000 payment provided under Article 36A. MOA § I; J.A. at 136.

The Plaintiffs resigned their employment with Verizon to receive the enhanced severance, pension, and $50,000 payment(s). They later filed this lawsuit because, according to their allegations, they took advantage of the MOA only because they were under the impression that their jobs were at risk. Compl. ¶¶ 6-9; J.A. at 2-3. They allege that CWA passed on information from Verizon that erroneously inflated their risk of layoff. Compl. ¶ 5-6, 16; J.A. at 2 & 4. They allege that Verizon did not actually have a surplus of employees, but that it only offered the enhanced severance to rid itself of highly paid workers. Compl. ¶¶ 14-15; J.A. at 3-4.

Plaintiffs do not allege that CWA purposefully lied to them. They do not even allege facts supporting that CWA should have known about

[4] Article 36A of the GA is at pp 78-79 of that document, see Ex. A to Motion Craving Oyer, pp. 93-439 of *Anthony*. Article 36A is titled "Income Security Plan" and is sometimes referred to as the "ISP." Similarly, the enhanced severance benefit under the MOA is sometimes referred to as the "EISP" for enhanced income security plan.

Verizon's motives. In describing how they received the (allegedly) erroneous information, Plaintiffs state that they "were told" or "advised" by "each of the defendants." Compl. ¶¶ 4-5; J.A. at 2. They provide no details identifying the person or persons who communicated with them. They provide no facts about the authority of those individuals to speak for CWA or Verizon. They do not describe the manner in which the information was communicated or whether it was communicated simultaneously by each defendant or in different ways and at different times.

III. STANDARD OF REVIEW

During review of the Circuit Court's consideration of the demurrer, properly pleaded material facts are admitted as truthful and reasonable inferences from those facts are considered. *Ward's Equip., Inc. v. New Holland N. Am., Inc.*, 254 Va. 379, 382 (1997). "'However, a demurrer does not admit the correctness of the pleader's conclusions of law.'" *Id.*, citing *Fox v. Custis*, 236 Va. 69, 71 (1988). Also relevant here is that, "[w]hen a demurrant's motion craving oyer has been granted, the court in ruling on the demurrer may properly consider the facts alleged as amplified by any written agreement added to the record on the motion." *Id*. at 382-83, citing *Hechler Chevrolet, Inc. v. General Motors Corp.*, 230 Va. 396, 398 (1985). "Furthermore, and significant in this appeal, a court

considering a demurrer may ignore a party's factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings." *Id.*, citing *Fun v. Virginia Military Institute*, 245 Va. 249, 253 (1993).

IV. THIS DISPUTE IS ABOUT VERIZON'S RIGHT TO DECLARE A SURPLUS, A QUESTION GOVERNED BY THE COLLECTIVE BARGAINING AGREEMENT

The lawsuit is preempted by Section 301 because Plaintiffs' complaints, at their core, allege breach of a collective bargaining agreement. When one considers the terms of the MOA, it becomes clear that the alleged statements regarding risk of layoff were more in the way of logical speculation than misrepresentation. The Plaintiffs' complaints accuse Verizon of declaring a surplus with the sole purpose of shedding highly paid workers. Compl. ¶ 15; J.A. at 3. *That* is the core of the alleged misrepresentation. It is also a question covered by the collective bargaining agreements, and thus exclusively by federal law. "[S]tate law does not exist as an independent source of private rights to enforce collective-bargaining contracts." *Davis v. Bell Atl.-W. Virginia, Inc.*, 110 F.3d 245, 247 (4th Cir. 1997), citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987).

Under Article 35, Section I of the General Agreement, Verizon can declare a surplus due to a "technological change" or "for reasons other than a technological change." J.A. at 130. In doing so, the Company may "determine the extent of the adjustment required, the effective date or dates thereof, and the job titles, work groups and localities affected." GA Art. 35, § I; J.A. at 130. Certainly, the union would argue that Verizon violates this provision if there really is no shortage of work for the existing employees. But, that claim must be brought as a contract violation under Section 301, which covers "[s]uits for violation of contracts between an employer and a labor organization representing employees . . . ." 29 U.S.C.A. § 185. "[A] suit in state court alleging a violation of a provision of a labor contract must be brought under § 301 and be resolved by reference to federal law. A state rule that purports to define the meaning or scope of a term in a contract suit therefore is pre-empted by federal labor law." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210 (1985).

The Plaintiffs say that when the MOA was first negotiated, they heard they were not at risk of layoff. Compl. ¶ 4; J.A. at 2. But, as the end of the 30 day period for consideration of the enhanced severance approached, they heard their risk of layoff had increased. Compl. ¶ 5; J.A. at 2. This is consistent with the MOA, which provides that employees hired after August

1, 2003 would receive a 12 month layoff protection only if at least 12,000 people took the enhanced severance. See MOA § VI; J.A. at 138. Thus, the Plaintiffs' risk of layoff may have seemed low at first if they were among the more senior of the post-August 1, 2003 hires (Plaintiffs were hired around 2005).[5] But, as the closing date neared, their risk of layoff would have increased if a relatively low number of people had elected the enhanced severance. In short, Plaintiffs' allegations simply reflect the normal weighing of risks and benefits involved in deciding whether to take an offer such as that provided by the MOA. Whether or not Verizon was actually experiencing a decline in workload is a separate question. Oddly, in their complaints, Plaintiffs allege that 84 employees were recalled, which implies that at least that many were laid off. Compl. ¶ 11; J.A. at 3. Ultimately, whether Verizon was really experiencing a surplus is secondary to the question of whether it had a right to declare one, and under what circumstances.

Verizon's right as to when it may declare a surplus is a contract question. In fact, CWA fought over this very question in a breach of contract case that went to the Supreme Court. In *AT&T Tech., Inc. v.*

[5] *Anthony* Complaint, ¶ 2; J.A. at 2. All Plaintiffs except for Rosser state that they were hired in 2005. Rosser states it was in 2003. *Rosser* Complaint, ¶ 4; J.A. at 75.

Commc'ns Workers of Am., 475 U.S. 643, 645-46 (1986), CWA grieved AT&T's decision to institute layoffs at a site where there was no lack of work. The case went to the Supreme Court over arbitrability. On remand, it was deemed arbitrable.[6] Of course, whether it was arbitrable is irrelevant here. The point is that whether the employer is allowed to declare a surplus when there is no lack of work depends on the contract's terms. Whether that dispute goes to arbitration or into federal court, it is a claim for breach of the collective bargaining agreement.[7] *See also*, *Local 368, United Fed'n of Eng'rs v. W. Elec. Co., Inc.*, 359 F. Supp. 651, 652 (D.N.J. 1973) (involving a breach of contract claim over whether layoffs were permissible when there was no lack of work); *Success Vill. Apartments, Inc. v. Amalgamated Local 376*, 380 F. Supp. 2d 95, 99 (D. Conn. 2005) (upholding arbitrator's decision that seasonal layoffs were prohibited by contract that permitted layoffs due to lack of work).

As with the cases cited above, if the Plaintiffs believe that Verizon was not allowed to declare a surplus unless there was a lack of work, they

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[6] *Commc'ns Workers of Am. v. AT&T Tech., Inc.*, No. 82 C 772, 1987 WL 8973 (N.D. Ill. Mar. 26, 1987).

[7] Section 301 governs claims for breach of labor agreements and many of those agreements require such disputes to go to arbitration. *See*, *e.g.*, *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960).

must bring that as a contract claim. If Plaintiffs also believe that the union should have pursued this issue, they must use the hybrid duty of fair representation/Section 301 claim that the Supreme Court articulated in *Vaca v. Sipes*, 386 U.S. 171, 186 (1967). "[S]uch a breach of duty by the union is an unfair labor practice . . . . The employee's suit against the employer, however, remains a [Section] 301 suit, and the jurisdiction of the courts is no more destroyed by the fact that the employee, as part and parcel of his [Section] 301 action, finds it necessary to prove an unfair labor practice by the union, than it is by the fact that the suit may involve an unfair labor practice by the employer himself." *Id.*

V. THE PLAINTIFFS' CLAIMS REQUIRE INTERPRETATION OF AND ARE INEXTRICABLY ENTWINED WITH THE LABOR AGREEMENTS

Even if the Plaintiffs had alleged facts supporting a state tort claim, the lawsuit would be preempted because it requires interpretation of the General Agreement and the MOA. Additionally, resolution of any state claims would be inextricably entwined with consideration of those labor agreements' terms. *See Foy v. Giant Food Inc.*, 298 F.3d 284, 287 (4th Cir. 2002) ("[a] state law claim is preempted when resolution of the claim 'requires the interpretation of a collective-bargaining agreement' ***or*** is 'inextricably intertwined with consideration of the terms of the labor

contract.'") citing *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405–06 (1988), *Lueck*, 471 U.S. at 213 (emphasis added).

The Plaintiffs may not realize it, but their complaints are riddled with references to collectively bargained contracts. Each complaint mentions the enhanced severance benefit ("EISP") at least *seven* times. This is a direct reference to a collectively bargained agreement: the MOA between CWA and Verizon.[8, 9] The Plaintiffs discuss their "seniority." Compl. ¶ 15; J.A. at 3-4. Seniority, as used here, is a term from the General Agreement between CWA and Verizon, described in detail in Article 34. J.A. at 127. The Plaintiffs refer to the benefits they would get if they were laid off. Those benefits are found in Article 36A of the General Agreement and in the MOA. The Plaintiffs allege a recall of 84 Verizon employees. Recall, or re-employment of laid-off employees, is governed by Article 35 of the General Agreement. J.A. at 130.

To illustrate how the MOA and General Agreement must be interpreted here, one may apply the reasonable reliance element for a fraud claim in Virginia. *See*, *e.g.*, *Jared & Donna Murayama 1997 Trust v.*

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[8] As explained in Section VII of this brief, Plaintiffs' arguments suffer from a misunderstanding of the term "CBA." The MOA and the GA are both labor contracts (a/k/a collective bargaining agreements) governed by § 301.

[9] With 10 complaints, this makes at least 70 direct references to the MOA, discrediting Plaintiffs' contention that they made no mention of a CBA.

NISC Holdings, LLC, 284 Va. 234, 246 (2012) (plaintiffs pleading fraud must show justifiable reliance). Without the General Agreement and the MOA, the Plaintiffs have no basis for demonstrating reasonable reliance on the union's statements regarding their severance or risk of layoff. First, the Plaintiffs only paid attention to the union's statements about the MOA because the union negotiated it on their behalf, as provided by Articles 1 and 2 of the General Agreement. Second, the substance of the union's alleged statements can only be analyzed by referring to the General Agreement and the MOA.

The Plaintiffs say that they were told they would receive fewer or no benefits if they did not take advantage of the MOA. Compl. ¶ 6; J.A. at 2. They were reasonable in believing that they would receive fewer benefits if they did not take the enhanced severance and were later laid off because that was true. Without the enhancement under the MOA, the severance under Article 36A is worth less money. The lump sum payment would decrease by $40,000 compared to under the MOA, and the pension and severance calculations would be lower. But, the Plaintiffs were unreasonable if they believed a statement that they would receive ***no*** benefits if they did not take advantage of the MOA and were later laid off. That would have required Verizon to repudiate its obligations under the

General Agreement overall, and Article 36A in particular. While this may not be the time to determine whether the Plaintiffs can show reasonable reliance, the discussion demonstrates that one must consult both the General Agreement and the MOA when making such an inquiry.

The Supreme Court has held that a state law claim that requires interpretation of a collective bargaining agreement is preempted by Section 301. "[W]hen resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim, *see Avco Corp. v. Aero Lodge 735*, 390 U.S. 557 (1968), or dismissed as pre-empted by federal labor-contract law." *Lueck*, 471 U.S. at 220. The Fourth Circuit applied this precedent to a suit for conversion and negligent infliction of emotional distress where an employer took possession and then disposed of a bargaining unit employee's personal effects after he was terminated. *McCormick v. AT & T Technologies, Inc*., 934 F.2d 531 (4th Cir. 1991). In *McCormick*, the court found the matter to be preempted by Section 301, stating "[t]he rightness or wrongness of the action has not been committed to the common law of tort, but to the legal arrangements embodied in a contractual agreement, in this case through collective bargaining." *McCormick*, 934 F.2d at 536. Similarly, here, the "rightness or wrongness"

of declaring a surplus without lack of work is determined by the collectively bargained contracts. This would be so even if the contracts had addressed Verizon's right to declare a surplus less directly. "Although management's rights and responsibilities regarding [this exact circumstance] are not explicitly delineated in the agreement, a collective bargaining agreement 'is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate.' . . . Thus, the agreement creates in employees and their employers implied rights and duties, the contours of which are a matter 'of federal contract interpretation.'" *Id.*, citing *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960); *Lueck*, 471 U.S. at 215.

Preemption is particularly appropriate here because evaluating the Plaintiffs' claims cannot be done without understanding the complexities of the collective bargaining relationship. The MOA involved negotiations with more than one union, covered thousands of employees, and several states. MOA § XI; J.A. at 139. The MOA's effectiveness depended upon the agreement of CWA local affiliates in the Mid-Atlantic region and in New England, as well as multiple local affiliates of the International Electrical Workers (IBEW). MOA § XI; J.A. at 139. After the MOA was executed by the parties, employees received information about its benefits through a

summary document published by Verizon. J.A. at 144-147. That document contained a section "Where to find additional information," with financial counselors, a webcast, and a website where employees could ask more questions. *Id.*

Preemption protects these bargaining parties from facing miscellaneous state law claims about how these agreements are negotiated and implemented. "Were state law allowed to determine the meaning intended by the parties in adopting a particular contract phrase or term, . . . [t]he parties would be uncertain as to what they were binding themselves to when they agreed to create a right to collect benefits under certain circumstances. As a result, it would be more difficult to reach agreement, and disputes as to the nature of the agreement would proliferate." *Lueck*, 471 U.S. at 211.

Here, from the thousands of employees affected by the MOA, ten have alleged that their decisions were influenced by—using the facts from the complaints—little more than rumor. The employer provided a carefully drafted explanation of the enhanced severance benefit. J.A. at 144-145. The union is not even alleged to have lied or to have had any motive to mislead the Plaintiffs. One of the allegations against the union—that it said Plaintiffs would receive no severance benefits under future layoffs—is

nonsensical in this context. The other—that the union said severance benefits under future layoffs would be lower—describes accurate communications of the contracts' terms. This is precisely the type of lawsuit that Section 301 was intended to preempt. Keeping such claims in federal court allows the bargaining parties to operate under a consistent and predictable set of rules that are intended to encourage collective bargaining and labor peace. "[T]he question in preemption analysis is not whether the source of a cause of action is state law, but whether resolution of the cause of action requires interpretation of a collective bargaining agreement. This approach advances § 301's goal of ensuring uniform interpretation of collective bargaining agreements, and thus promoting the peaceable, consistent resolution of labor-management disputes." *McCormick v. AT & T Technologies, Inc.*, 934 F.2d 531, 535 (4th Cir. 1991) (internal citations and quotations omitted).

VI. NO INDEPENDENT STATE LAW TORT EXISTS AGAINST CWA

Even if Plaintiffs' allegations were deemed sufficient to bring independent state tort claims against Verizon, they would still fail with respect to CWA. The allegations against the union all describe giving advice about contractual matters in the course of performing contractual duties. Under Virginia law, "allegations of negligent performance of

contractual duties . . . are . . . not actionable in tort." *Richmond Metro. Auth. v. McDevitt Street Bovis, Inc*., 256 Va. 553 (1998). Since any claim against the union here must be brought under contract, it is preempted by Section 301.

When CWA provided information about severance benefits and layoffs, it was performing its duty to represent the covered employees. *Williams v. Pac. Mar. Ass'n*, 617 F.2d 1321, 1331 (9th Cir. 1980) (unions have a duty to "explain to members of the bargaining unit their rights and duties under the collective bargaining agreement"); *Warehouse Union, Local 860 v. NLRB*, 652 F.2d 1022 (D.C. Cir. 1981) (unions have a duty to inform members of employer's threats to eliminate their jobs); *Brady v. Trans World Airlines, Inc*., 401 F.2d 87 (3d Cir. 1986) (unions have a duty to communicate accurately about member's contractual dues obligation). This duty to communicate with members arises from federal law and is ensconced in the collective bargaining agreement. "Any duty a union owes its members is a duty arising out of the collective-bargaining agreement and its express and implied obligations." *Clark v. Newport News Shipbuilding & Dry Dock Co.*, 937 F.2d 934, 938 (4th Cir. 1991) (internal citations omitted). Since the actions Plaintiffs attribute to CWA are part of the services covered by the union's role as employee representative, and

since that role is described in the contract, a claim that the union provided those services without due care must be brought as a breach of contract claim. *See Filak v. George*, 267 Va. 612 (2004). In *Filak*, the plaintiffs argued that they relied to their detriment on defendant's bad advice and misrepresentations regarding coverage provided by an insurance policy. This Court held that, because the advice and representations were provided pursuant to an oral contract, the matter sounded in contract, not in tort. *Id.* at 618-19. Similarly, here, the Plaintiffs argue that they detrimentally relied on the union's statements about their risk of layoff and the benefits they would get under future layoffs. Both of these—risk of layoff and benefits under a future layoff—are contractual subjects, covered by the GA and MOA. Furthermore, under the contract, the union was the Plaintiffs' representative. If the Plaintiffs think the union gave them bad advice or inaccurate information about contractual benefits while fulfilling its contractual role as their representative, they must bring that as a contract claim, not a tort. Since Plaintiffs have no tort claim under Virginia law, they cannot overcome Section 301 preemption.

VII. THE GENERAL AGREEMENT AND MOA ARE SECTION 301 CONTRACTS

The Plaintiffs' arguments suffer from a basic flaw: they seem to believe that Section 301 only applies to the General Agreement between

CWA and Verizon—what they call "the CBA." This is not so. "[A] 'contract' for purposes of § 301 jurisdiction encompasses any 'agreement between employers and labor organizations significant to the maintenance of labor peace between them.'" *United Mine Workers of America v. Stonega Mining and Processing Co*., No. 2:03 CV 00154, 2005 WL 2010165 (W.D. Va. 2005) citing *Retail Clerk Int'l Ass'n v. Lion Dry Goods*, 369 U.S. 17 (1962). Such contracts can bear a variety of names, "collective bargaining agreement," "memorandum of understanding," "memorandum of agreement," "letter agreement," or, simply, "contract."[10] The MOA at issue here was negotiated mid-term, i.e., during the term of the General Agreement.[11] J.A. at 136. Whether the MOA is incorporated into the General Agreement or is a separate, standalone contract is irrelevant to the application of Section 301. "Section 301 'must be broadly construed to encompass any agreement, written or unwritten, formal or informal, which functions to preserve harmonious relations between labor and management.'" *International Brotherhood of Boilermakers v. Transue &*

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[10] An example of this variety is found on page 145 of the General Agreement. *See Anthony* record at 93-439, Ex. A to Motion Craving Oyer.

[11] The GA's term was August 2, 2008 through August 6, 2011. The MOA was executed in April 2010. Article 2, Section 2 of the GA permits mid-term negotiations to modify existing terms via a mutually signed agreement. See *Anthony* record at 93-439, Ex. A to Motion Craving Oyer.

Williams Corp., 879 F.2d 1388, 1392 (6th Cir. 1989), citing *Smith v. Kerrville Bus Co., Inc.*, 709 F.2d 914, 920 (5th Cir. 1983). Therefore, insofar as this dispute is inextricably entwined with the GA & MOA (which we submit it is), it is preempted by Section 301.

VIII. CONCLUSION

This lawsuit was properly dismissed by the Circuit Court as preempted under federal law. That decision may be affirmed for any one of at least three reasons. First, the dispute is really about Verizon's right to declare a surplus, which is governed by a collective bargaining agreement. Second, resolution of any state law claim requires interpretation of the applicable labor agreements' terms. Third, with respect to CWA, the claims are all about performance of contractual duties, which is not actionable as a tort in Virginia. For any one of these reasons, this suit must be preempted by Section 301 and the lower court's decision affirmed.

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IX. CERTICIATE

Pursuant to Rule 5:26(h) of the Rules of the Supreme Court of Virginia Supreme Court of Virginia, I hereby certify the following:

1) Fifteen copies of the foregoing Brief of Appellee, Communications Workers of America, AFL-CIO, District 2, with one electronic copy on CD, were hand-filed with the Clerk of the Supreme Court of Virginia this 18th day of February, 2014. On this same day, three copies of the foregoing brief, with one electronic copy on CD, were served, via UPS Ground Transportation to the following counsel:

D. Brook Hundley
(VSB No. 44184)
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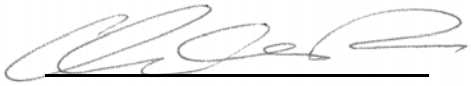

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