UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PATRICIA CAVALLARO and MONIQUE HERMAN, on behalf of themselves and all other employees similarly situated,	
Plaintiffs,	
v.	**Civil Action No. 09-40181-FDS**
UMASS MEMORIAL HEALTH CARE, INC.; UMASS MEMORIAL HOSPITALS, INC.; UMASS MEMORIAL MEDICAL CENTER, INC.; HEALTHALLIANCE, INC.; MARLBOROUGH HOSPITAL; THE CLINTON HOSPITAL ASS'N; WING MEMORIAL HOSPITAL CORP.; JOHN O'BRIEN; and PATRICIA WEBB,	
Defendants.	

MEMORANDUM AND ORDER ON
PLAINTIFFS' MOTION TO REMAND AND DEFENDANTS' MOTION TO DISMISS

SAYLOR, J.

This is an employment dispute about compensation for extra time worked. Plaintiffs Patricia Cavallaro and Monique Herman, on behalf of themselves and all other employees similarly situated, brought suit in state court against various related hospitals and health care providers. They contend that defendants employ a variety of policies to deny plaintiffs compensation for all time worked. Defendants removed the case to federal court. Plaintiffs have now filed a motion to remand and defendants have filed a motion to dismiss. For the reasons that follow, both motions will be granted in part and denied in part.

I. Background

The two named plaintiffs are employed by one or more defendants (the complaint does not indicate) and are paid by the hour. They purport to represent a class of some 13,000 similarly situated individuals.[1] Defendants UMass Memorial Health Care, Inc.; UMass Memorial Hospitals, Inc.; UMass Memorial Medical Center, Inc.; HealthAlliance Hospitals, Inc.; Marlborough Hospital; Clinton Hospital Association; and Wing Memorial Hospital Association are related hospitals and healthcare providers; defendants John O'Brien and Patricia Webb are executive officers of UMass Memorial Health Care. The complaint alleges that defendants have violated various statutory and common-law duties by failing to compensate plaintiffs for all time worked. According to plaintiffs, defendants have engaged in at least three unlawful practices: (1) automatically deducting time from each employee's paycheck for meal breaks, even if the employee does not actually receive such a break; (2) failing to compensate employees for work completed before and after their shifts; and (3) failing to compensate employees for time spent attending training sessions. Plaintiffs and the class members are subject to at least 22 different collective bargaining agreements.

Plaintiffs originally filed their complaint in Massachusetts state court on September 10, 2009.[2] The complaint includes thirteen counts: violation of Massachusetts Weekly Wage Act,

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[1] According to the complaint, the class of hourly employees includes, without limitation, "secretaries, housekeepers, custodians, clerks, porters, food service hosts, registered nurses, licensed practical nurses, nurses aides, administrative assistants, anesthetists, clinicians, medical coders, medical underwriters nurse case managers, nurse interns, nurse practitioners, practice supervisors, professional staff nurses, quality coordinators, resource pool nurses, respiratory therapists, senior research associates, operating room coordinators, surgical specialists, admissions officers, student nurse techs, trainers, transcriptionists, occupational therapists, occupational therapy assistants, physical therapists, physical therapy assistants, radiation therapists, staff therapists, angiotechnologists, x-ray technicians, CAT scan technicians, mammographers, MRI technologists, sleep technologists, surgical technologists, radiographers, phlebotomists, and other health care workers." (Compl. ¶ 89).

[2] One week prior to filing the complaint in Massachusetts state court, plaintiffs filed a parallel action in this court against many of the same parties asserting claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*; the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*; and the

Mass. Gen. L. ch. 149, § 148 (Count 1); failure to pay overtime wages in violation of Mass. Gen. L. ch. 151, § 1A (Count 2); breach of contract (Counts 3 and 4); breach of implied contract (Count 5); money had and received in assumpsit (Count 6); quantum meruit/unjust enrichment (Count 7); fraud (count 8); negligent misrepresentation (Count 9); equitable estoppel (Count 10); promissory estoppel (Count 11); conversion (Count 12); and failure to keep accurate records (Count 13).

Defendants removed the case to federal court. Defendants have moved to dismiss the complaint in its entirety; plaintiffs have moved to remand the case to state court.

II. Plaintiffs' Motion to Remand

A. Legal Standard

Under 28 U.S.C. § 1441(b), "[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties." To determine whether a claim arises under federal law, courts look to the "well-pleaded" allegations of the complaint. *See Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004); *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003). As the Supreme Court has explained,

> whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute[,] . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation or avoidance of defenses which it is thought the defendant may interpose.

Taylor v. Anderson, 234 U.S. 74, 75-76 (1914). Thus, the existence of a federal defense—including a defense that relies on the preemptive effect of a federal statute—"normally

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Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq. Cavallaro v. UMass Memorial Health Care, Inc.*, Docket No. 09-cv-40152-FDS (filed Sep. 3, 2009). The federal action is based on essentially the same allegations.

does not create statutory 'arising under' jurisdiction, and a defendant may not [generally] remove a case to federal court unless the *plaintiff's* complaint establishes that the case 'arises under' federal law." *Aetna Health*, 542 U.S. at 207 (quotation omitted); *see Beneficial*, 539 U.S. at 6 ("As a general rule, absent diversity jurisdiction, a case will not be removable if the complaint does not affirmatively allege a federal claim.").

There is, however, an exception. "One corollary of the well-pleaded complaint rule developed in the case law . . . is that Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987). In other words, "[w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law. This claim is then removable under 28 U.S.C. § 1441(b)." *Beneficial*, 539 U.S. at 8. The "artful pleading doctrine" thus permits "courts to look beneath the face of the complaint to divine the underlying nature of a claim, to determine whether the plaintiff has sought to defeat removal by asserting a federal claim under state-law colors, and to act accordingly." *BIW Deceived v. Local S6, Indus. Union of Marine & Shipbuilding Workers*, 132 F.3d 824, 831 (1st Cir. 1997).

B. Analysis

Plaintiffs contend that this case should be remanded to state court because the complaint contains only state-law claims between non-diverse parties and that this Court therefore lacks subject matter jurisdiction. Defendants contend that Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, completely preempts Counts 1 (violation of the Massachusetts Weekly Wage Act), 3 (breach of contract), 4 (breach of contract), 5 (breach of

implied contract), 8 (fraud), 9 (negligent misrepresentation), and 11 (promissory estoppel).[3] Defendants therefore argue that the case is removable under 28 U.S.C. § 1441(b). The Court agrees with defendants.

Section 301 of the LMRA grants federal courts jurisdiction to entertain "[s]uits for violation of contracts between an employer and a labor organization representing employees." 29 U.S.C. § 185(a). Although Section 301 is not expressly preemptive, cases interpreting its language have ascribed to it a broad preemptive scope. *See, e.g.*, *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 23 (1983). Indeed, the Supreme Court has held that "Section 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims 'substantially dependent on analysis of a collective-bargaining agreement.'" *Caterpillar*, 482 U.S. at 394 (quoting *Elec. Workers v. Hechler*, 481 U.S. 851, 859 n.3 (1987)). Thus, "where a plaintiff alleges conduct that arguably constitutes a breach of a duty that arises pursuant to a collective bargaining agreement, or if the plaintiff's claims 'arguably hinge[] upon the interpretation' of such an agreement, § 301 preempts." *DiGiantommaso v. Globe Newspaper Co.*, 632 F. Supp. 2d 85, 88 (D. Mass. 2009) (quoting *Flibotte v. Pa. Truck Lines, Inc.*, 131 F.3d 21, 26 (1st Cir. 1997)).

In creating § 301 of the LMRA, "Congress intended that a comprehensive, unified, body of federal law should govern actions concerning the interpretation and enforcement of collective

[3] The Section 301 preemption arguments made by defendants in their motion to dismiss and their opposition to the motion to remand are not coextensive, which somewhat complicates the Court's ability to understand defendants' position. In their opposition to the motion to remand, defendants state that "all of Plaintiffs' claims are completely preempted" by Section 301, but they do not make particularized preemption arguments targeted at all of the claims—including, for example, money had and received in assumpsit, conversion, equitable estoppel, and failure to keep accurate records. In their motion to dismiss, defendants do *not* contend that all thirteen claims are preempted. Rather, they argue that Section 301 preempts only Counts 1, 3, 4, 5, 8, 9, and 11. Accordingly, to ensure plaintiffs have had a meaningful opportunity to respond to defendants' arguments, the Court will treat defendants as having argued that Section 301 only preempts Counts 1, 3, 4, 5, 8, 9, and 11.

bargaining agreements." *Fant v. New. Engl. Power Serv.*, 239 F.3d 8, 14 (1st Cir. 2001). The LMRA therefore serves "not only to promote the creation of a uniform body of federal labor law, but also to ensure that, when developed, the resultant rules would be applied through the grievance procedures agreed upon between unions and management." *Jackson v. Liquid Carbonic Corp.*, 863 F.2d 111, 114 (1st Cir. 1988). These goals are served by allowing removal to federal court when claims purportedly brought pursuant to state law actually require interpretation of a CBA. By contrast, remand to state court would frustrate the LMRA by promoting inconsistent judgments and sanctioning the circumvention of bargained-for grievance procedures.

1. Counts 3, 4, 5, and 11—Breach of Contract and Promissory Estoppel

Defendants first contend that Section 301 of the LMRA preempts plaintiffs' claims for breach of contract and promissory estoppel (Counts 3, 4, 5, and 11). The Court agrees.

DiGiantommaso v. Globe Newspaper Co. is instructive. 632 F. Supp. 2d at 87-89. In that case, the district court concluded that Section 301 preempted claims for breach of an implied contract, breach of the implied covenant of good faith and fair dealing, and promissory estoppel, among others. *Id.* at 88-89. Plaintiffs, who were subject to a CBA, filed suit in state court after their employer, the Globe Newspaper Company, improperly eliminated two 20-minute coffee breaks. *Id.* at 87. The Globe removed the case to federal court, and the district court subsequently denied a motion to remand. The court reasoned that plaintiffs' claims were inextricably intertwined with the provisions of the CBA because, "at the very least, it would be required to interpret the CBA to determine whether it was intended to be the sole agreement between the parties." *Id.* at 89 (quotation omitted). The court therefore concluded that

plaintiffs' claims hinged upon interpretation of the CBA and were preempted by Section 301. *Id.* (citing *Flibotte*, 131 F.3d at 26). In reaching that decision, the court noted that "courts have uniformly come to similar conclusions in just such a situation." *Id.* (citing *Cullen v. E.H. Friedrich Co.*, 910 F. Supp. 815, 825 & n.7 (D. Mass. 1995) (collecting cases)).

The Court is persuaded by the reasoning in *DiGiantommaso* and similar cases. *See Cullen*, 910 F. Supp. at 825 n.7. As in *DiGiantommaso*, the CBAs at issue here contain integration clauses. (*See, e.g.*, Doc. 1, Exs. A, B, & C, Art. XXIII, Scope of Agreement). Despite these clauses, the contract and promissory estoppel counts allege that defendants made individual promises to each plaintiff and class member upon hire. (Compl. ¶¶ 106-12, 117-23; *see also* Doc. 17 at 12 ("[P]laintiffs rely on the individual employment contracts that defendants entered into with each named plaintiff and potential class member upon hire.")). Deciding whether such promises are enforceable requires an examination of the integration clauses, because the Court must decide whether the CBAs were intended to be the sole agreement between the parties. *See Kettner v. Albertsons, Inc.*, 839 F. Supp. 1432, 1435 (D. Or. 1993) (finding breach of contract claim preempted because applicable CBA included a provision prohibiting side agreements that were inconsistent with the CBA); *Ziobro v. Conn. Inst. for the Blind*, 818 F. Supp. 497, 501-02 (D. Conn. 1993) (finding breach of contract and promissory estoppel claims preempted where court would have had to "determine[] whether the collective-bargaining agreement was intended to be the sole agreement between the parties"). And to do that is to interpret the CBAs, the very inquiry that triggers federal question jurisdiction under Section 301 of the LMRA.

In response, plaintiffs contend that the contract and promissory estoppel claims do not require interpretation of the CBAs, because the integration clauses only bind "parties" to the CBAs—that is, the unions and the employers. (Doc. 25 at 4-6). Because individual employees are not subject to the integration clauses, plaintiffs argue, they can maintain claims based upon promises made outside the scope of the CBAs. (*Id.*). But this argument proves too much. The Court cannot ascertain who is bound by the integration clauses of the CBAs without interpreting their terms, and the need to interpret the CBAs is what triggers preemption under Section 301. Plaintiffs' claims for breach of contract and promissory estoppel claims are therefore preempted.

2. Counts 8 and 9—Fraud and Negligent Misrepresentation

Section 301 also preempts plaintiffs' claims for fraud and negligent misrepresentation. *See Hart v. Verizon Comm., Inc.*, No. 03-11811-RWZ, 2004 WL 438786, at *2 (D. Mass. Mar. 9, 2004) (finding Section 301 preemption of fraud and negligent misrepresentation claims that required interpretation of a CBA); *George v. AT&T Corp.*, No. 05-11079-DPW, 2006 WL 1766498, at *8 (D. Mass. June 23, 2006) (same). The complaint alleges, among other things, that defendants fraudulently and negligently misrepresented that plaintiffs would not be paid for time worked during scheduled meal breaks even though defendants knew that this time was compensable. (Compl. ¶ 86). In order to succeed on either claim, plaintiffs must prove that their reliance on defendants' statements was reasonable. *Carroll v. Xerox Corp.*, 294 F.3d 231, 243 (1st Cir. 2002) (fraud claim requires reasonable reliance); *Maffei v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 255 (2007) (negligent misrepresentation claim requires reasonable reliance). In order to decide whether plaintiffs reasonably relied on defendants' alleged statements, the Court will have to examine the content of the CBAs. To take but one example,

the CBA between UMass Memorial Medical Center and the Massachusetts Nurses Association provides that "[b]argaining unit [nurses], who must remain in the patient care area during the designated mealtime, as determined by the Nurse Manager or Nurse Director/off-shift coordinator, will be paid." (Doc. 1, Ex. C, § 6.05, Meal Periods). Such types of provisions will necessarily be part of the reasonable reliance equation when the Court evaluates plaintiffs' fraud and negligent misrepresentation claims. Accordingly, because those claims hinge upon an interpretation of a CBA, they are preempted by Section 301.

3. Count 1—Massachusetts Weekly Wage Act

Finally, Section 301 preempts plaintiffs' claim for violation of the Massachusetts Weekly Wage Act. Mass. Gen. L. ch. 149, § 148 provides: "Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six [or seven, depending on length of the work week] days of the termination of the pay period during which the wages were earned." In order to make out a Weekly Wage Act claim, plaintiffs must prove (1) that they are employees under the Act; (2) that they are owed "wages" as that term is used in the Act; (3) that defendants violated the Act by not paying them their wages in a timely manner; and (4) that the defendants are employers as defined in the Act. *See Stanton v. Lighthouse Fin. Servs., Inc.*, 621 F. Supp. 2d 5, 10 (D. Mass. 2009); *Allen v. Intralearn Software Corp.*, No. 05-WAD-03, 2006 WL 1277813, at *1 (Mass. App. Div. Apr. 24, 2006). As defendants correctly point out, in order to decide whether plaintiffs were owed wages, the Court would have to interpret the CBAs. For example, in order to decide whether covered nurses were owed wages for attending training sessions, the Court would have to examine Section 5.04 of the applicable CBA, which provides:

> The [defendants] and the [Massachusetts Nurses] Association encourage participation in job-related workshops and educational programs. A minimum of sixteen (16) hours' paid time off will be provided to each bargaining unit RN who requests to attend an educational program related to their area of practice. Such requests must be submitted in a timely fashion and will be granted subject to staffing and budgetary considerations.

(Doc. 1, Ex. C, § 5.04(b), Staff Development). Similar provisions deal with overtime wages and payments for work performed during meal breaks. (*See id.* §§ 6.01(a), (h), & 6.05).

Plaintiffs respond that the Weekly Wage Act imposes an independent and non-negotiable duty and that proving a violation of it does not require interpretation of the CBA. *See Allis-Chalmers*, 471 U.S. at 212 ("Clearly, § 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law."); *cf. DiGiantommaso*, 632 F. Supp. 2d at 90 (suggesting that a claim under Mass. Gen. L. ch. 151, § 1A is not preempted because "the statute arguably grants a non-waivable, state law right that exists independently of the CBA"). While plaintiffs are certainly correct that the Court would not need to consult the CBAs to determine if defendants made *timely* payment of wages admittedly owed—a calendar would probably suffice for that—the Court would need to interpret the CBAs to determine whether defendants owed plaintiff wages *at all*. Wages can only be paid late if wages were actually owed.

For this reason, plaintiffs' reliance on *Livadas v. Bradshaw* is misplaced. *See* 512 U.S. 107 (1994). That case involved a California statute requiring employers to pay employees all wages owed upon the employee's discharge. *Id.* at 111 & n.3. For a violation of the rule, the statute imposed a penalty equal to a day's wages for each day the payment was late. *Id.* at 11-12 & n.4. When Livadas was discharged, she demanded payment of all wages due; the defendant refused, citing a company policy of mailing checks from a centralized location. *Id.* at 110-11.

The check, which was for the full amount due, arrived late, and Livadas sued and sought a penalty. *Id.* at 111. The Supreme Court concluded that her claim was not preempted because its resolution did not involve an interpretation of the applicable CBA. *Id.* at 121-26. Rather, a court would look to the CBA only to calculate the penalty, which was based on a wage that was concededly due. *Id.* at 125 ("There is no indication that there was a 'dispute' in this case over the amount of the penalty to which Livadas would be entitled, and [our cases] make[] plain in so many words that when liability is governed by independent state law, the mere need to 'look to' the collective-bargaining agreement for damages computation is no reason to hold the state-law claim defeated by § 301."). That is unlike the situation here, where the question of whether a wage is due at all is very much in dispute. Resolution of that dispute turns at least in part on the meaning of the CBAs. Accordingly, plaintiffs' Weekly Wage Act claim is preempted by Section 301.

4. Conclusion

Accordingly, because Counts 1, 3, 4, 5, 8, 9, and 11 "arguably hinge upon the interpretation" of a collective bargaining agreement, defendants properly removed this case to federal court, and plaintiffs' motion to remand will be denied.[4]

III. Defendants' Motion to Dismiss

A. Legal Standard

On a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court "must assume the truth of all well-plead[ed] facts and give the plaintiff the benefit of all reasonable

[4] Defendants also argue that plaintiffs' claims are preempted by ERISA because they seek recovery of benefits allegedly due under an ERISA plan. (Doc. 21 at 8-9). A fair reading of the complaint, however, reveals that this is not so. By contrast, plaintiffs' federal complaint (*Cavallaro v. UMass Memorial Health Care, Inc.*, Docket No. 09-cv-40152-FDS (filed Sep. 3, 2009)), *does* contain a count under ERISA.

inferences therefrom." *Ruiz v. Bally Total Fitness Holding Corp.*, 496 F.3d 1, 5 (1st Cir. 2007) (citing *Rogan v. Menino*, 175 F.3d 75, 77 (1st Cir. 1999)). To survive a motion to dismiss, the plaintiff must state a claim that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). That is, "[f]actual allegations must be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 555 (citations omitted). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 556). Dismissal is appropriate if plaintiff's well-pleaded facts do not "possess enough heft to show that plaintiff is entitled to relief." *Ruiz Rivera v. Pfizer Pharms., LLC*, 521 F.3d 76, 84 (1st Cir. 2008) (quotations and original alterations omitted).

B. Analysis

1. Counts 1, 3, 4, 5, 8, 9, and 11

Defendants first seek dismissal of those claims that are preempted by Section 301 of the LMRA—that is, Counts 1, 3, 4, 5, 8, 9, and 11. They argue that because these claims are preempted by the LMRA, if plaintiffs wish to maintain these claims under Section 301, they must first exhaust administrative remedies as provided in the CBAs. Having failed to do so, defendants argue that these claims must be dismissed. Although plaintiffs vigorously dispute that their state-law claims are preempted by Section 301 (and therefore subject to the exhaustion requirement), plaintiffs do not dispute that exhaustion is required if their claims are to be treated as arising under Section 301, or that the administrative remedies have not been exhausted.

"[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, or dismissed as pre-empted by federal labor-contract law." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985) (citation omitted). In order to be treated as a Section 301 claim, however, a plaintiff must first exhaust any administrative remedies provided for in the applicable CBAs. As discussed in detail above, Counts 1, 3, 4, 5, 8, 9, and 11 are preempted by Section 301 because they require interpretation of the CBAs. Thus, "[p]laintiffs' [admitted] failure to exhaust available grievance procedures under the CBA precludes this Court from treating those claims as having been brought under § 301, and dismissal [of those claims] is thus required." *DiGiantommaso*, 632 F. Supp. 2d at 90; *see Allis-Chalmers*, 471 U.S. at 220-21.

2. Remaining Counts

What remains are various state law claims for failure to pay overtime wages in violation of Mass. Gen. L. ch. 151, § 1A (Count 2), money had and received in assumpsit (Count 6), unjust enrichment/quantum meruit (Count 7), equitable estoppel (Count 10), conversion (Count 12), and failure to keep accurate records (Count 13). Defendants offer a variety of arguments in support of dismissal of these claims; they do not, however, contend that these claims are preempted by Section 301 or are otherwise subject to federal question jurisdiction. Indeed, defendants affirmatively concede that an overtime claim brought pursuant Mass. Gen. L. ch. 151, § 1, is not preempted by Section 301. It appears, therefore, that these claims are state law claims as to which supplemental jurisdiction applies.

Under 28 U.S.C. § 1367(c)(3), "district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction." Applying that principle here, the Court concludes that the remaining

claims are state law claims that are more appropriately resolved in state court. Accordingly, it will remand Counts 2, 6, 7, 10, 12, and 13 to the Superior Court.

IV. Conclusion

For the foregoing reasons, plaintiffs' motion to remand is DENIED in part and defendants' motion to dismiss is GRANTED in part. Counts 1, 3, 4, 5, 8, 9, and 11, which are preempted by Section 301 of the LMRA, are dismissed for failure to exhaust administrative remedies. Counts 2, 6, 7, 10, 12, and 13, which are state-law claims, are remanded to the Superior Court.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: July 2, 2010