STATE OF MICHIGAN

COURT OF APPEALS

KATERINA HARRIS,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 8, 2005

No. 250983
Oakland Circuit Court
LC No. 2001-036624-CK

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this employment discrimination action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action under the Civil Rights Act alleging that she was denied a promotion to the position of Power Service Operator at defendant's Wixom plant based on her gender and her race. Plaintiff alleged that defendant changed the prerequisites for the job to include eight years' experience or a journeyman's card to disqualify her for the position. The trial court granted defendant's motion for summary disposition, finding that plaintiff failed to make a prima facie case of discrimination and her claims were preempted by § 301 of the Labor Management Relations Act, 29 USC 185(a).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

The trial court properly found that plaintiff's claim was preempted by § 301 of the LMRA. Whether a state law claim is preempted by a federal statute is a question of federal law. *Allis-Chalmers Corp v Lueck*, 471 US 202, 214; 105 S Ct 1904; 85 L Ed 2d 206 (1985). Section 301 of the LMRA provides that the substantive law to be used to determine violations of collective bargaining agreements is federal labor law. *Textile Workers v Lincoln Mills*, 353 US 448, 456; 77 S Ct 912; 1 L Ed 2d 972 (1957). However, the preemptive effect of the LMRA extends beyond contract disputes, and includes situations where the application of state law

requires the interpretation of a collective bargaining agreement. *Lingle v Norge Div of Magic Chef, Inc*, 486 US 399, 413; 108 S Ct 1877; 100 L Ed 2d 410 (1988). Here, interpretation of the collective bargaining agreement is necessary to determine the merits of plaintiff's Civil Rights Act claims. The collective bargaining agreement governs whether defendant could add additional qualifications to the position, such as the experience requirement. Plaintiff alleged that defendant's actions violated the national and local collective bargaining agreements. Thus, it was necessary to interpret the provisions of the contract to determine whether defendant's actions were proper. The trial court properly found that plaintiff's claim was preempted.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper