IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Communications Workers of America,

Plaintiff, Case No. 1:20-cv-911-MLB

v.

AT&T Mobility LLC,

Defendant.

_____/

OPINION & ORDER

Plaintiff Communications Workers of America sued Defendant AT&T Mobility LLC for refusing to arbitrate a dispute in violation of the parties' collective bargaining agreement. Defendant moves to dismiss for lack of subject matter jurisdiction or, alternatively, for failure to state a claim. (Dkt. 6.) The Court denies Defendant's motion.[1]

[1] Defendant also moves for leave to file a supplemental authority in support of its motion to dismiss. (Dkt. 25.) Plaintiff filed no response, "indicat[ing] that there is no opposition to the motion." LR 7.1(B), NDGa. Defendant's unopposed motion is granted.

I. Background

In February 2018, the parties signed a contract ("Agreement") under which Defendant agreed to recognize Plaintiff as "the sole collective bargaining agent" for a subset of Defendant's employees (identified by their job titles) in the Southeastern region of the United States. (Dkts. 1 ¶ 2; 1-1 at 4.)[2] Article 2 of the Agreement specifically excludes "Outside Premise Sale Representatives" from Plaintiff's representation. (Dkt. 1-1 at 4.) It also requires Defendant to notify Plaintiff of "any newly created [job] titles" and to work with Plaintiff to establish wage rate for those titles. (*Id.*) Article 17 requires Defendant to "notify [Plaintiff] when new employees enter the Bargaining Unit" and requires the parties to "apply the terms of this Agreement fairly in accord with its intent and meaning and consistent with [Plaintiff's] status as exclusive bargaining representative of all employees in the Bargaining Unit." (*Id.* at 28.)

[2] Defendant has introduced evidence about similar collective bargaining agreements between the parties governing other regions of the United States. (*See* Dkt. 6-2; *see also* Dkt. 17-1.) This evidence is immaterial to our case, which turns entirely on the Southeastern Agreement.

Article 7 of the Agreement establishes a "grievance procedure" for resolving any "complaint by [Plaintiff] . . . [a]lleging violation of the provisions or application of the provisions of th[e] Agreement." (*Id.* at 10.) Under this procedure, Plaintiff must submit the grievance to Defendant, the parties must discuss it, and Defendant must then decide what to do about it. (*Id.* at 10–12.) If the grievance "involve[s] true intent and meaning" of the Agreement, it counts as an "Executive Level Grievance" and must be handled "at the District level." (*Id.* at 12.) Article 9 of the Agreement says either party may compel the other to arbitrate an Executive Level Grievance if the grievance procedure does not result in a resolution. (*Id.* at 15.)[3]

In July 2019, Plaintiff initiated an Executive Level Grievance claiming Defendant violated Articles 2 and 17 by "1) diverting bargaining unit work outside of the bargaining unit and coverage of the Agreement; 2) violating the true intent and meaning of the 'Outside Premise Sales Representative' exclusion of Article 2, Section 1; and 3) failing to comply

[3] Article 9 says: "If at any time a controversy should arise regarding the true intent and meaning of any provisions of this Agreement, . . . which the parties are unable to resolve by use of the grievance procedure, the matter may be arbitrated upon written request of either party to this Agreement." (Dkt. 1-1 at 15.)

with the Article 2, Section 2 process regarding [four specific] newly created job classifications." (Dkt. 1-2 at 3.) The parties discussed the grievance at a telephonic hearing in August 2019. (Dkt. 1-3.) Later that month, Defendant denied Plaintiff's grievance, claiming the new job titles count as "Outside Premise Sale Representatives" that are excluded from the Bargaining Unit under Article 2 of the Agreement. (*Id.*)

In September 2019, Plaintiff sent Defendant a written request to arbitrate the grievance. (Dkt. 1-4.) After some back and forth, Defendant told Plaintiff it objected to arbitration because "the grievance appears to raise a representational issue that is within the jurisdiction of the NLRB," meaning "an arbitrator . . . lacks jurisdiction to resolve the underlying dispute." (Dkt. 1-9.) Defendant refuses to participate in any arbitration of the grievance. (Dkt. 1 ¶ 21.)

Plaintiff filed this lawsuit in February 2020, claiming Defendant "is in breach of the parties' [Agreement] by failing and refusing to arbitrate [the] Grievance." (Dkt. 1 ¶ 23.) Defendant now moves to dismiss for lack of subject matter jurisdiction or, alternatively, for failure to state a claim.

II. Motion to Dismiss for Lack of Subject Matter Jurisdiction

Defendant claims the Court lacks subject matter jurisdiction over this case because it involves "representational" issues reserved to the National Labor Relations Board ("NLRB") under the National Labor Relations Act ("NLRA"). Plaintiff says this case involves "contractual" issues over which the Court has jurisdiction under the Labor Management Relations Act ("LMRA"). The Court agrees with Plaintiff.

A. Legal Standard

"[A] motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) can be based upon either a facial or factual challenge to the complaint." *McElmurray v. Consol. Gov't of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). "A facial attack on the complaint requires the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Id.* "Factual attacks, on the other hand, challenge the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered." *Id.* Defendant lodges a factual attack here. (*See* Dkts. 6-2;

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