

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATIONAL ELEVATOR BARGAINING
ASSOCIATION and KONE, INC.

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Plaintiffs

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v.

Civil Action No. RDB-08-966

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INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS, *et al.*

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Defendants

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MEMORANDUM OPINION

The National Elevator Bargaining Association (“NEBA”) and KONE, Inc. (“KONE”) (collectively “Plaintiffs”) have filed suit in this Court under the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 141 et seq., against the International Union of Elevator Constructors (“IUEC”) and several of its officers and local affiliates. Plaintiffs seek damages and injunctive relief for injuries allegedly sustained by KONE as a result of an alleged unlawful work stoppage on April 16, 2008.

Pending before this Court is the Motion to Dismiss (Paper No. 25) of the International Union of Elevator Constructors, Local 5 (“Local 5”) and Joseph Rapine (“Rapine”) (collectively “Defendants”). Defendants claim that dismissal is proper under Rule 12(b)(2) of the Federal Rules of Civil Procedure because this Court lacks personal jurisdiction over them. The issue has been fully briefed, and a hearing was conducted on October 7, 2008. For the reasons stated below, Defendants’ Motion to Dismiss is DENIED.

BACKGROUND

I. The Parties and the Collective-Bargaining Relationship

The National Elevator Bargaining Association (“NEBA”) is a multi-employer trade association that represents, for collective-bargaining purposes, employer-members engaged in the business of constructing and repairing elevators, escalators and similar devices. (Amend. Compl. ¶ 1.) KONE is an employer-member of NEBA and employs elevator mechanics and apprentices. (*Id.* ¶¶ 2, 3.) The International Union of Elevator Constructors (“IUEC”), headquartered in Columbia, Maryland, is the exclusive collective-bargaining representative of elevator mechanics and apprentices, for and on behalf of its locals, including Local 5, which has its principal place of business in Philadelphia, Pennsylvania. (*Id.* ¶¶ 7, 13.) Rapine, a resident of Pennsylvania, is the Business Manager of Local 5. (Defs.’ Mot. to Dismiss 2.)

For many years prior to 2002, the IUEC entered into a series of collective-bargaining agreements with the National Elevator Industry, Inc. (“NEII”), a multi-employer bargaining group of which KONE was a member. (Amend. Compl. ¶ 18.) In 2002, KONE withdrew from the NEII for purposes of collective bargaining and negotiated its own collective-bargaining agreement with the IUEC, which had a term of July 9, 2002 to July 8, 2007 (“the KONE Agreement”). (*Id.* ¶ 19.) In 2007, NEBA, on behalf of KONE and other employer-members, negotiated a collective-bargaining agreement with the IUEC on behalf of its affiliated local unions, which has a term of July 9, 2007 to July 8, 2012 (“the NEBA Agreement”). (*Id.* ¶ 20.)

II. The Underlying Dispute and Work Stoppage

KONE had an agreement with general contractor Clark Construction Company to install elevators at Park Place II, a high-rise office complex currently under construction in McLean,

Virginia. (*Id.* ¶ 27.) Agents of the IUEC Local 10 (representing Maryland and Virginia) claimed that certain elevator components delivered to Park Place II were pre-assembled in violation of the NEBA Agreement and instructed employees to disassemble and then reassemble the components before installing them. (*Id.* ¶ 30.) After KONE managers instructed employees not to disassemble the parts before installation, agents of Local 10 allegedly directed the employees to refuse such instructions from KONE. (*Id.* ¶¶ 37, 38.) On April 16, 2008, the KONE managers suspended four employees for insubordination and directed them to leave the jobsite and report to the KONE office in Lanham, Maryland. (*Id.* ¶ 39.) Soon thereafter, the IUEC allegedly issued a directive to all elevator constructors working for Local 10 as well as the Local 5 (representing Pennsylvania and southern New Jersey) and the Local 7 (representing Maryland). (*Id.* ¶ 40.) As of 12:00 noon on April 16, 2008, approximately 138 KONE employees throughout the Local 5, 7 and 10 jurisdictions left their jobsites, citing instructions from the International Union of Elevator Constructors headquartered in Columbia, Maryland. (*Id.* ¶ 41.) The work stoppage extended throughout Washington, D.C. and the States of Delaware, Maryland, Virginia, Eastern Pennsylvania and Southern New Jersey. (*Id.*) KONE seeks damages for the allegedly irreparable harm it suffered from the unlawful work stoppage and claims that it will suffer further injury unless injunctive relief is also granted. (*Id.* ¶¶ 50-64.)

STANDARD OF REVIEW

“When a court’s personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance

of the evidence.” *Mylan Laboratories, Inc. v. Akzo, N.V.*, 2 F.3d 56, 59-60 (4th Cir. 1993) (citing *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)). However, “when, as here, the court addresses the question on the basis only of motion papers, supporting legal memoranda and the relevant allegations of a complaint, the burden on the plaintiff is simply to make a prima facie showing of a sufficient jurisdictional basis in order to survive the jurisdictional challenge.” *Combs*, 886 F.2d at 676. Towards this end, all relevant pleading allegations must be construed in the light most favorable to the plaintiffs and most inferences must be drawn in favor of finding jurisdiction. *Id.*

DISCUSSION

In order for a federal court to exercise personal jurisdiction over a nonresident defendant, it must find that the exercise of jurisdiction: (1) is authorized under the state’s long-arm statute; and (2) comports with the due process requirements of the Fourteenth Amendment. *Christian Sci. Bd. of Dirs. of the First Church of Christ v. Nolan*, 259 F.3d 209, 215 (4th Cir. 2001). Since the Maryland courts have consistently held that the state’s long-arm statute is coextensive with the limits of personal jurisdiction established under the Due Process Clause, the statutory and constitutional inquiries are merged. *Carefirst of Md. v. Carefirst Pregnancy Centers*, 334 F.3d 390, 396 (4th Cir. 2003). As a result, the issue is whether this Court has personal jurisdiction over Local 5 and Rapine in accordance with the due process requirements of the Fourteenth Amendment.¹

¹ In their briefs, Plaintiffs argue that personal jurisdiction may also be based upon Section 301(c) of the LMRA due to the representational activities of Defendants within the State of Maryland. (Pls.’ Opp’n. 10-11.) However, the law is clear that § 301 of the LMRA deals with venue and not jurisdiction. *Central Operating Co. v. Utility Workers of America*, 491 F.2d 245, 250 n.6 (4th Cir. 1974). Furthermore, courts have observed that the analyses under 301(c) and traditional due process are functionally equivalent. *See, e.g., Local 670 v. Int’l Union, United*

“A court’s exercise of jurisdiction over a nonresident defendant comports with due process if the defendant has ‘minimum contacts’ with the forum, such that to require the defendant to defend its interests in that state ‘does not offend traditional notions of fair play and substantial justice.’” *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted)). The standard applied in the “minimum contacts” analysis varies depending on whether specific jurisdiction or general jurisdiction is invoked as a basis for personal jurisdiction. If the defendants’ alleged contacts with the forum state also serve as the basis for the suit, they may establish specific jurisdiction. In assessing whether specific jurisdiction exists, courts consider (1) whether the defendants have purposefully availed themselves of the privilege of conducting activities in the state; (2) whether the plaintiffs’ claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally “reasonable.” *Carefirst*, 334 F.3d at 397 (citing *ASL Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711-12 (4th Cir. 2002)). If defendants’ contacts are not the basis for the suit, then plaintiffs must satisfy the more demanding standard of general jurisdiction, which requires a showing that the defendants’ activities in the state have been “continuous and systematic.” *ASL Scan*, 293 F.3d at 712 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

Plaintiffs have argued on the basis of both general and specific jurisdiction. This Court finds that in light of the facts alleged in its Amended Complaint, the Plaintiffs’ argument as to specific jurisdiction is determinative of the issue.

Rubber, Cork, Linoleum & Plastic Workers of Am., 822 F.2d 613, 620-21 (6th Cir. 1987); *Reed v. Int’l Union of United Auto., Aerospace & Agric. Implement Workers of Am.*, 945 F.2d 198 (7th Cir. 1991). The Plaintiffs essentially abandoned this argument at the hearing on October 7, 2008.

The conduct giving rise to the suit was the alleged unlawful work stoppage by members of the Local 5, 7, and 10 that occurred on April 16, 2008. The narrow geographic scope of the work stoppage is significant. While KONE and the IUEC conduct business throughout the United States, the strike only affected parts of several mid-Atlantic states, specifically New Jersey, Delaware, Pennsylvania, Maryland, Virginia and Washington, D.C. (Amend. Compl. ¶ 41.) Plaintiffs claim that the work stoppage was incited by the suspension of four Local 10 elevator constructors and was designed to exert pressure on KONE in Maryland. (*Id.* ¶ 40; Pls.’ Opp’n 13.) In addition, the IUEC and its local chapters conducted their strike in an organized and concerted manner. Members of the Local 5, 7, and 10 simultaneously left their jobsites without permission on April 16, 2008. (Amend. Compl. ¶ 41.) Plaintiffs allege that the IUEC, headquartered in Maryland, issued a directive to members of Local 5, 7, and 10 ordering the strike in response to the suspensions. (*Id.* ¶ 40.)

It is well established that due process does not require that the defendants be physically present in the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (“Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State.”) (emphasis in original). Under the facts alleged, it is clear that Local 5 and Rapine have “purposefully directed” their activities at residents of the forum, by complying with the IUEC’s directive and by striking with the intent to bring about foreseeable injury to KONE in Maryland. Plaintiffs have, therefore, presented a prima facie case that the Defendants’ conduct in the work stoppage on April 16, 2008, proximately caused injury to KONE in Maryland. Defendants’ contacts with the forum state were substantial enough that they “should reasonably

anticipate being haled into court here.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

During a hearing conducted on October 7, 2008, Defendants argued that the Defendants’ conduct during the work stoppage was intended to injure KONE generally and that KONE should instead seek redress against the IUEC’s local chapters and officers in the states where they are located. However, Defendants’ argument cannot be squared with the allegations of a conspiracy between union headquarters and its local officers and affiliates in the mid-Atlantic area, which was allegedly designed to impact KONE in Maryland as a result of the suspension of Local 10 members operating in Maryland and Virginia. *See Calder v. Jones*, 465 U.S. 783, 789-90 (1984) (distinguishing between targeted conduct and “untargeted negligence,” noting that the former invites personal jurisdiction, while the latter does not). Furthermore, Defendants fail to consider that “[a] State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Burger King Corp.*, 471 U.S. at 473 (quoting *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1947)). Indeed, the United States Supreme Court has reasoned that “it may well be unfair to allow [Defendants] to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.” *Burger King Corp.*, 471 U.S. at 474.

Plaintiffs also point to supplementary contacts between Defendants and the State of Maryland in support of personal jurisdiction. Local 5's Secretary-Treasurer, William R. Johnston, Jr. participated in negotiations in Maryland for the KONE Agreement in 2002 and the

NEBA Agreement in 2007. (Pls.’ Opp’n 4.) Rapine allegedly represents IUEC members in Maryland and recently attended a Step One meeting with Otis Elevator Company at the IUEC’s Maryland headquarters. (*Id.* at 4-5.) When asked to refer elevator constructors for work in Philadelphia, Local 5 and Rapine have allegedly referred elevator constructors from Local 7 out of Baltimore, Maryland. (*Id.* at 5.) Finally, Local 5 allegedly sent elevator constructors to work for Thyssen-Krupp at the Naval Academy in Annapolis, Maryland in 2004. (*Id.*) While these alleged contacts may or may not be sufficiently “continuous and systematic” to establish general jurisdiction, they nevertheless reinforce this Court’s finding of specific jurisdiction.²

CONCLUSION

For the reasons stated above, Defendants’ Motion to Dismiss (Paper No. 25) is DENIED.

A separate Order follows.

Dated: October 10, 2008

/s/ _____
Richard D. Bennett
United States District Judge

² This Court’s ruling is *not* reinforced by Plaintiffs’ claim that personal jurisdiction may be granted based upon Local 5 and Rapine’s mere affiliation with the IUEC. The law is clear that international unions and their local affiliates must be considered independently when assessing personal jurisdiction. *See, e.g., United Elec., Radio & Mach. Workers v. NLRB*, 986 F.2d 70, 75 (4th Cir. 1993) (“local union chapters are separate and distinct entities from their international parents.”); *Reed*, 945 F.2d at 202 (“the mere fact that [the local union] is affiliated with the International should not justify jurisdiction; otherwise local unions would be required to defend suits in every state where their international union has a presence.”).

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ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 10th day of October 2008, ORDERED, that:

1. The Motion to Dismiss filed by Defendants International Union of Elevator Constructors Local 5 and Joseph Rapine (Paper No. 25) is DENIED.
2. Defendants shall answer the Complaint within 20 days of the date hereof; and
3. The Clerk of the Court transmit copies of this Order and accompanying Memorandum Opinion to counsel for the parties.

/s/ _____
Richard D. Bennett
United States District Judge