

No. 24-7004

IN THE
SUPREME COURT OF THE UNITED STATES

GERALD NELSON,
Petitioner,

APRIL 7 2025

-v-

NEW YORK CITY TRANSIT AUTHORITY,
DEPARTMENT OF BUSES,(EAST NEW YORK DEPOT)
TRANSPORTATION WORKERS UNION LOCAL 100,

FILED
APR 07 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Respondents,

On Petition for a writ of Certiorari to the
United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

This Petition presents federal questions based on 301 Labor Management (duty of fair representation) and public employees ,Eleventh Amendment, Seventh Amendment,Wrongful Discharge, and 60 B rule in an action that was Removed to Federal Court, the defendants then claimed lack of subject matter jurisdiction, after the summons and complaint was amended. The District Court dismissed plaintiff's amended complaint based on failure to state a claim, because defendants were a Political Subdivision and Union with immunity.

1. Whether a political subdivision has immunity under 301 labor management (duty of fair representation/public employees) ?
2. Whether 301 labor management warrants a jury trial ?
3. Whether a political subdivision and union waive their immunity based on A wrongful discharge claim, when federal jurisdiction is invoked ?
4. Whether the district court made a mistake under the 60 B rule. when the case was dismissed for failure to state a claim /Rule 12(b)(6) with Prejudice ?

Corporate Disclosure Statement and Related Proceedings

No Petitioner is non-governmental Corporation

Directly Related proceedings

Gerald Nelson v. New York City Transit Authority, Department of Buses

(East New York Depot)

1. Supreme Court , Kings County, 537/2022
2. U.S District Court, Eastern District of New York (Brooklyn)

Civil Docket for Case #: 1:22-cv-06112-RPK-LB , filed 10/12/22

3. 23-7923 United States Court of Appeals for the Second Circuit

Docketed: 12/05/2023

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Appendix F: Amended Complaint (Gerald Nelson) dated November 23,2022, (copy of Amended Complaint).

Appendix G: Copy of Gerald Nelson's Stipulation with NYCTA.

Appendix H: Copy of Gerald Nelson's Grievance to Local 100 with copies of Certificate of Mailing.

Appendix I: Copy of excerpts from NYCTA removal papers.

Appendix J: Copy of excerpts from transcript taken by Magistrate Judge, (District Judge) October 27,2022. Pages 2,3,16,17,23,24,25.

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Gerald Nelson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

Orders Below

The summary order of the U.S. Court of Appeals for the Second Circuit is reproduced in Appendix.

Jurisdictional order of the U.S. District Court for the Eastern District of New York is reproduced in the Appendix.

The order denying rehearing is reproduced in the Appendix.

Jurisdictional Statement

The judgment of the Court of Appeals issued a summary order affirming the judgement of the District Court. A timely filed petition for rehearing was denied on November 6th 2024. Justice Sonia Sotomayor granted an extension of the time to file a petition for a writ of certiorari until April 7, 2025. This Court has jurisdiction pursuant to 28 U.S.C section 1254 (1).

Relevant Statutory & Constitutional Provisions

60 (b) Rule which allows a court to relieve a party from a final judgment.

Section 301 (a) of the labor management relation act of 1947, 61 stat. 156 29 U.S.C 185 provides: suit for of contracts between an employer and a labor

organization representing employees in an industry affecting commerce.

Seventh Amendment : This amendment codified the right to a jury trial in certain civil cases.

Eleventh Amendment: sovereign immunity : established the principle of state sovereign immunity , meaning states are immune from lawsuits in federal courts unless they consent.

Wrongful Termination / Breach of Contract : Termination that violates the terms of an employment contract (written or implied/express contracts/ Appendix G).

Seventh Amendment states: the United States Constitution guarantees the right to a jury trial in federal court for civil cases exceeding a certain dollar amount.it Gerard Nelon's (petitioner) 301 labor management /wrongful discharge stated on the face of the well pleaded complaint, a demand for a jury trial.Jury trial under 301 labor management or not waivable.

28 U.S. Code section 1337 Supplemental Jurisdiction (a) , states : The district courts have original jurisdiction , the district courts shall have supplemental jurisdiction over all other claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that

involve the joiner or intervention of additional parties

28 U.S.C. section 1441 (a) : Except as otherwise expressly provided by congress, any civil action brought in a State Court of which the district courts of United States have original jurisdiction , may be removed by the defendant or defendants , to the district court of the United States for the district and division Embracing the place where such action is pending.

I Statement of the case/Procedural History

Petitioner Gerald Nelson (hereinafter “Nelson”), Respondent (hereinafter New York City Transit Authority “NYCTA”) and (hereinafter Transportation Workers Union Local 100 “Local 100”).

Nelson was hired/appointed as a Bus operator for a one year probationary period.Nelson probationary periods started on February 28, 2021 and ended on February 28, 2022. Under NYCTA and most city agencies, the probationary period can be extended an additional six months. If you don't terminate the employee during the one year period , the employee becomes automatically permanent.

The reason for the automatic permanency is because , Source: Personnel Rules and Regulations of the City of New York Rule V- Appointments and promotions, section I-Appointments and promotions Generally : Probationary Term -Every

appointment and promotion to a position in the competitive or labor class shall be for a probationary period of one year unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of citywide administrative services. Appointees shall be informed of the applicable probationary period.

5.2.8. Extension of Probationary Period

(a) Notwithstanding the provisions of paragraph 5.2.1, upon the written request of the agency head setting forth the reasons thereof and with written consent of the probationer, the commissioner of citywide administrative services may authorize the extension of the probationary term for one or more additional periods not exceeding in the aggregate six months; provided, however, that the agency head may terminate the employment of the probationer at anytime during such additional periods or periods.

On February 28, 2022 Nelson was presented with a signed stipulation agreement by Superintendent Claude Boston . The last day of Nelson probation.

Nelson protested and was told he would be held out of work until the stipulation agreement was signed by him.

On March 10, 2022 Nelson signed the stipulation agreement with the shop steward Javier Oquedo present, the shop steward also signed on March 10, 2022. Nelson signed the stipulation under duress.

On April 06 , 2022 Nelson mailed a Grievance ,because the Shop steward Javier Oquedo, told Nelson could not file a Grievance.(certificate of mailing in Appendix H)

On June 15, 2022 Nelson was terminated through a letter , with no reason for the termination. Nelson Stipulation clearly stated his six months would be from April 25, 2022 to October 25 , 2022. Nelson point is: if Nelson probation was over on February 28, 2022. And the stipulation states my probation doesn't start until April 25,2022, the date (April 25,2022). Clearly shows Nelson was off probation notwithstanding , Nelson signed the stipulation under duress with the shop steward On March 10, 2022. Nelson was wrongfully terminated as a improper probationary employee.(See stipulation Appendix G)(see Appendix M,Termination papers).

II. Proceedings in Supreme Court for the State of New York , County of Kings , Index No. 537/22.

This action was commenced by summons and complaint under 301 and unlawful discharge. On October 12,2022, NYCTA removed the action to federal court.

Footnote (1) In NYCTA Notice of Removal it stated “ there are no state or common law claims alleged in the verified complaint. To the extent that the

Verified Complaint is interpreted as raising state or common law claims such claims related to Plaintiff's federal claim by subject matter , time period and/or alleged action and therefore, this Court may exercise supplemental jurisdiction over these related state, state constitutional, and common law claims pursuant to 28 U.S.C. section 1337 (a).”.

III. Proceedings in The United States Supreme Court Eastern District of New York.

A conference was held in front of Chief Magistrate Judge Lois Bloom to discuss a proposed motion to dismiss by NTCTA. Minutes were taken at the conference. (Appendix J , excerpts from the transcript)

Nelson was afforded a chance to amend his complaint in light of the allegations of the duty of fair representation by Local 100. On November 23 , the amended complaint was filed.

On December 12, 2022 NYCTA filed for an order pursuant to Federal Rules of Civil Procedure 12 (b)(1) and 12(b)(6) dismissing Nelson's Amended Complaint with Prejudice.

On January 6, 2023 Local 100 filed a motion to dismiss, for lack of subject matter jurisdiction, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12

(b)(6), to dismiss Nelson's Amended Complaint with prejudice.

On August 7, 2023 Chief Magistrate Judge Bloom filed a Report and Recommendation granting local 100 motion to dismiss Nelson's 301 and and wrongful discharge/duty of fair representation claim, for failure to state a claim and denying NYCTA and Local 100 motion to dismiss for lack of subject matter jurisdiction. (see Appendix D)(see excerpts from transcript Appendix J)

On September 29, 2023, Justice Rachel P. Kovner filed an order adopting the Report and Recommendation of Chief Magistrate Judge Bloom .Nelson filed a timely objection but was overruled and the R&r was adopted in full. (appendix E)

On October 7, 2023, Nelson filed a 60 (b) motion stating the removal was improper and the district court lacked jurisdiction to hear the case. Nelson 60 (b) motion was denied by Justice Rachel Kovner. (see Appendix E, order dated 11/01/2023, copy of order)

IV. Proceedings in the United States Court of Appeals for the Second Circuit, after Oral Argument on September 20, 2024.

On September 30, 2024 Second Circuit issued a Summary Order. Second Circuit stated Nelson did not raise a challenge in his brief to the district court's determination that he could not state a hybrid section 301/duty of fair representation claim because he is a public employee. And stated Nelson

Abandoned the issue, because it was not raised in his brief. However, in a footnote at the bottom of page 5, Second Circuit stated” If we reach the the question, we would reach substantially the same conclusion as the district court and magistrate judge. In particular, we agree that Nelson could not , as a public employee, pursue his hybrid claim under the National Labor Relation Act (“NLRA”) as amended by the Labor Management Relations Act (“LMRA”). Employees of political subdivisions of a state are not covered by the NLRA, as amended by the (“LMRA”). Second Circuit went on to say “ Instead, Nelson challenges the district courts jurisdiction, for instance he argues that his complaint was fraudulently removed to federal court.”

And at the end of Second Circuit Summary Order it states “Nelson’s complaint explicitly relied on section 301-a federal Statute. That gave the federal court jurisdiction and made removal proper. The fact that he can’t actually state a hybrid claim under section 301 relates to the merits of his claim, not the district court’s jurisdiction to decide it . Green, 16 F.4th at 1076. Thus his complaint was removable even before he amended it.”

REASON FOR GRANTING THE WRIT

I. When the District Court ruled failure to state a claim , the supplemental-jurisdiction statute section 1367, a post-removal

amendment to a complaint that eliminates any basis for federal-question jurisdiction also divest a federal court of supplemental jurisdiction over remaining state-law claim. Nelson's 301 claim was dismissed/waived in error. Nelson should have been given a seventh amendment trial.

In *Chauffeurs Local 391 v. Terry* 494 U.S. 558 (1990) states Employees Action against union for breach of duty of fair representation encompassed equitable and legal issues in equipoise as to whether employees were entitled to jury trial; claim for breach of fair representation was analogous to a common law right , and whether the relief sought is typical of an action at law. A sufficient basis For the Court's holding is provided by the evolution of the duty to scrutinize any proposed curtailment of the right to a jury trial with the utmost care, and the fact that a duty of fair action resembles a common law attorney malpractice action more closely than it does any other action. Action against union for breach of duty of fair representation encompassed equitable and legal issues in equipoise as to whether employees were entitled to jury trial; claim for breach of fair representation was analogous to claim against trustee for breach of fiduciary duty, however, employees also required to show employer's breach of collective bargaining agreement; and that issue was comparable to

a breach of contract.

Nelson Amended complaint on the face of it , clearly stated 301 labor management (duty of fair representation), wrongful discharge and demand for jury trial. (see Appendix F, amended complaint) .

NYCTA and Local 100 breached Nelson stipulation and breached the collective bargaining contract / duty of fair representation . Because Local 100 totally ignored Nelson' meritorious grievance. Nelson filed a Rule 60 B Motion , relief from a Judgment or Order, the district Judge denied it. Wrongful discharge claims can be based on violations of state laws, including anti-discrimination laws, breach of contract, or violation of public policy, in addition to federal law.

Under the text of section 1367 , Subsection (a) states that “in any civil action of which the district courts have original jurisdiction, the district courts have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.”

These above statements are contrary to Second Circuit's last sentence in Nelson's summary order, page 6 (Appendix A , summary Order).

The statement repeated again ,one more time: “Thus , his complaint was removable even before he amended the complaint”.

Nelson Amended complaint November 23, 2022. States clearly on the face of the Amended Complaint: “ #1. (Demand for Jury Trial), Plaintiff brings this action under , 301 (a),(b) Labor RelationsAct (29 U.S.C.A. 185, Fed R. Civ. P, 8 (a) referred to as the Act , to recover damages for plaintiff’s Labor Management action under , 301 (a),(b) Labor RelationsAct (29 U.S.C.A. 185, Fed R. Civ. P, 8 (a) referred to as the Act , to recover damages for plaintiff’s f the Labor Management wrongful discharge, by defendants New York City Transit Authority , Department of Buses, East New York Depot (defendants company) plaintiff’s employer , and for breach by defendant Transport Workers Union of America, AFL-CIO, Local 100 (Defendant Union) of its duty of fair representation owing to plaintiff, and for reinstatement by plaintiff’s employer”.

Nelson Amended Complaint Clearly stated more than Federal claims, contrary to the District judge adopting the R&R stating Nelson only cites federal law. (see Page 3, paragraph 2, R&R Appendix E).Nelson’s Amended Complaint states a wrongful discharge in addition to the 301 labor management act.

Nelson’s point is , on January 15, 2025 this United States Supreme Court unanimously held that an Amended Complaint can Deprive Federal Courts of Jurisdiction. Royal Canin U.S.A., Inc. v. Wullschleger 75 F. 4th 918, held: When

a plaintiff amends her complaint to delete the federal-to law claims that enabled removal to federal court leaving only state-law claims behind, the federal court loses supplemental jurisdiction over the state claims, and the case must be remanded to state court. Royal Canin v Wullschleger first paragraph of this Court opinion States: “ If a complaint filed in state court asserts federal-law claims, the defendant may remove the case to federal court. See 28 U.S.C. section 1441 (a). And if the complaint also asserts state-law claims arising out of the same facts, the federal court may adjudicate those claims too, in the exercise of what is called supplemental jurisdiction”.

Additionally, the landmark Supreme Court case establishing that a wrongful claim can be a separate state claim independent of a Section 301 labor management case, Lingle v. Norge Div., Magic Chef, Inc, 486 U.S. 399,411 (1988). States: “Today’s decision should make clear that interpretation of the collective bargaining agreements remain firmly in the arbitral realm; judges can determine question of state law involving labor management relations only if such questions do not require construing collective bargaining agreements. Nelson’s wrongful discharge Requires a plaintiff to show that (1) he was discharged or threatened with discharge

And , (2) the employer's motive in discharging or threatening to discharge him was to deter him from exercising his rights under the Act or to interfere with his exercise of those rights Lingle, 486 U.S. at 407, see also Horton v. Miller Chem. Co. 776 F.2d 1351,1356 (7 Cir. 1985). None of these elements had anything to do with the collective bargaining contract against NYCTA and Local 100, there was no complete preemption of the wrongful discharge claim. The court lacked subject matter jurisdiction without the 301 labor management claim, when the district court dismissed the case for failure to state a claim.

II. Other Court of Appeals that agree with this Court/conflict.

Crosby v. Cooper B-line Inc. 725 F.3d 795 (7th Cir. 2013), Seventh circuit rejected the argument of subject matter jurisdiction existing based on a wrongfuL Seventh Circuit stated : And the general rule that a federal defense does not suffice to support federal subject-matter jurisdiction, e.g, Rivet v. Regions Bank of La ., 522 U.S. 470, 475, (1998), retains its force, even when complete preemption is at issue Caterpillar Inc. v. Williams 482 U.S 386 ,389-99,(1987) “ It is true that when a defense to a state claim is based on the terms of a collective-bargaining agreement, the state court will have to interpret that agreement to decide whether the state claim survives. But the presence of a federal question , even a

Section 301 labor question in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule—that the plaintiff is master of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court. When a plaintiff invokes a right created by a collective bargaining agreement, the plaintiff has chosen to plead what we have held must be regarded as a federal claim, and removal is at the defendant's option. But a defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated.” Nelson should have been given a trial based on the 301 labor claim (duty of fair representation), the wrongful discharge claim should have been heard under supplemental jurisdiction.

III. Political SubDivision and Unions are not exempt from wrongful discharge claims. They have a statutory duty to fairly represent all union employees. The union cannot ignore a Meritorious Grievance, this statement is in accordance with Vaca v Sipes 386 U.S. 171 (1967)

In Vaca v Sipe clearly stated a union cannot ignore a grievance or process it in a perfunctory manner. The Vaca court 386 U.S 189 also stated : We accordingly rule rule this point adversely to defendants (cite omitted) Quite obviously, the question

which the Missouri Supreme Court thought dispositive of the issue of liability was whether the evidence supported Owens' assertion that he had been wrongfully discharged by swift , regardless of the Union's good faith in reaching a contrary conclusion. (see Grievance Appendix H, with certificate of mailing)

Nelson's point is the lower court was supplied with NYCTA and Local 100 rules , a grievance , termination papers, transcripts ,removal papers , stipulation, collective bargaining agreement that showed his employment was terminated illegally, but Nelson was never given a trial or hearing on these issues.

Under Vacs v Sipe this court determined whether political subdivision and Unions are immune from wrongful discharges and duty of fair representation cases. Nelson stated clearly in the amended complaint, that the claims were for wrongful discharge and duty of fair representation. A political subdivision and a Union waive their Eleventh Amendment immunity when they join together on a case that is removed from state court to federal court. This Court has established the General principle that a State (Political SubDivision) voluntary appearance in federal court amounts to waiver of its Eleventh Amendment immunity, Clark v. Bernard , 108 U.S. 436,447; Garner v. New Jersey, 329 U.S. 565,574; Gunter v. Atlantic Coast Line R. Co., 200 U.S. 273,284, and has often cited with approval the cases embodying that principle see,e.g., College Savings Bank v. Florida

Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666,681, n. 3.

The Collective Bargaining agreement between NYCTA and Local 100, Article

II. Transit -Authority-General, Section 2.1 (2) -Grievance and Arbitration

Procedures. States : “ A Disciplinary Grievance is hereby defined to be a complaint on the part of any covered employe’s contractual rights with respect to a disciplinary action of warning,reprimand,fine,suspension,demotion, and and/or dismissal except that a “disciplinary grievance” shall not include the removal or other discipline of a probationary ,provisional,part-time, or temporary employee. This provision shall not be construed to deprive a provisional employee of his/her Right to use this procedure prior to suspension or termination from his/her permanent title. (see Appendix K, Collective bargaining Agreement)

Nelson filed a Grievance by mail with the union and was totally ignored and told by the Shop Steward that I could not file a Grievance. The Doctrine of Vaca v Sipe did not base its ruling on whether a public employee was covered by the LMRA or NLRA. But the Vaca case was based on the wrongful discharge and the grievance , which the test was a duty of fair representation. Suits against the employer for wrongfully discharging an employee who can prove that the union as a bargaining agent breached its duty of fair representation in handling of employee’s grievance remains a suit to enforce collective bargaining agreements

and jurisdiction of the court is free to determine whether an employee is barred by action of his union representative , and, if not, proceed with a case which is not substantially changed if the employee joins the union.

IV. The lower court never acknowledge the Rule 60 (b),

Relief from a judgment or Order.

Nelson argument in the court of appeal was lack of subject matter jurisdiction , and fraudulent removal of the 301 labor Management claim and the wrongful discharge claim. The seventh Amendment is being raised for the first time ,because based on a 301 claim a jury trial is not waivable. The court of Appeals said the case could be removed based on the original complaint. This court has established that once the case was removed based on a federal claim. The federal (district court) shall decide both the federal claim and the state claim, based on the Amended complaint. But this is not what happened in Nelsonis case.

Nelson's claim was dismissed for failure to state a claim, which Nelson states was/is a mistake . Kemp v United States 142 S.Ct 1856 (2022), states a Judge's error of law is a mistake, within meaning of federal civil procedure allowing relief from final judgment on grounds of mistake, inadvertence, surprise, or excusable neglect, even if the error is not an obvious legal mistake. What led to the above mistakes, was NYCTA and Local 100 removed the case form state court

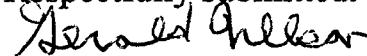
to federal court and then immediately stated the district court lacked subject matter jurisdiction. NYCTA and Local 100 self-incriminated themselves from the beginning, but it was never acknowledged by the District Court, or the Court of Appeals. NYCTA and Local 100 , Immunity defense was insubstantial and in bad faith.(Fraudulent Removal,Fraud upon the court).Nelson was put into no man's land by the action of NYCTA and Local 100 attorneys. Hopefully ,Nelson doesn't have to stay in no man's land.This case is of National Importance Because Wrongful Termination or on the rise in the United States of America in 2025 and people that want to work are the engine of America.Having a Job is serious business.

Conclusion

For the foregoing reasons, Nelson respectfully requests that this Honorable Court grant this petition. In the alternative, this court could remand and instruct the Court of Appeals to address the 301 labor management claim,seventh amendment ,Eleventh amendment and the wrongful discharge. This Court could call for a response to Nelson's Amendment Complaint ,something NYCTA and Local 100 have repeatedly refused to do.

Dated April 6, 2025

Respectfully submitted.



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