


MAINE HUMAN RIGHTS COMMISSION

Memo

Date: December 6, 2006

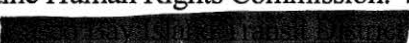

To: Gail Flibbert, Investigator

From: John Gause, Commission Counsel 

Re: 

E06-0520; E06-0520-A

You asked me to review Respondents' request for administrative dismissal of the above-referenced complaints because they fall within the exclusive jurisdiction of the Maine Labor Relations Board. I recommend that we should not dismiss the charges.

Complaint alleges that Respondents retaliated against him for filing a charge of employment discrimination with the Maine Human Rights Commission. Specifically, he alleges that the president of the board of directors of  told him that if he did not drop the Commission case "the union would not get a contract signed in September." Moreover, he alleges that if he did not drop it  was going to sue Complainant.

Respondent argues in its November 22nd letter that the complaints should be dismissed because, based on *San Diego Building Trades v. Garmon*, 359 U.S. 236 (1959), the conduct alleged arguably constitutes an unfair labor practice under the Maine Municipal Public Employees Labor Relations Law (hereafter "Maine Labor Act"), 26 M.R.S.A. § 961 et. seq. As such, the claim lies within the exclusive jurisdiction of the Maine Labor Relations Board, which is charged with enforcing the Maine Labor Act.

Respondent acknowledges that no court has applied *Garmon* to the Maine Labor Act but argues that it should apply because the Law Court has relied on federal case law in interpreting the Maine Labor Act. *Garmon*, however, involved an issue of federal supremacy over state laws and cannot be extended to preempt a law passed by the same governmental body. See *Smith v. National Steel & Shipbuilding Co.*, 125 F.3d 751, 754-756 (9th Cir. 1997). Here, Respondent argues that one state law (the Maine Human Rights Act) should be preempted by another (the Maine Labor Law). *Garmon* does not support that argument. Moreover, there is nothing in the Maine Labor Act itself that suggests that it would preempt other state laws such as the MHRA. See 26 M.R.S.A. § 961 et. seq.

Accordingly, we should DENY Respondents' request for dismissal.

Cc: Patricia E. Ryan, Executive Director