IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 611, and UNITED FOOD AND COMMERCIAL WORKERS, AFL-CIO, LOCAL 1564, Plaintiffs, vs. BOARD OF COUNTY COMMISSIONERS OF SANDOVAL COUNTY, Defendant.	Case No: 18-CV-263-NF-KHR

ORDER ON PLAINTIFFS' MOTION TO REMAND

This matter is before the Court on Plaintiffs' Motion to Remand. Plaintiffs assert there is no federal question and the Court lacks jurisdiction over their claims. The Court has reviewed the motion, Defendant's response and Plaintiffs' reply and is fully informed in the premises. The Court FINDS and ORDERS as follows.

BACKGROUND

Plaintiffs International Brotherhood of Electrical Workers, AFL-CIO Local 611 and United Food and Commercial Workers, AFL-CIO, Local 1564 ("Plaintiffs") claim the Board of County Commissioners of Sandoval County (the "Board") improperly enacted Ordinance Number 01-18-18.9C ("Ordinance") that prohibits requiring an employee covered by the National Labor Relations Act ("NLRA") to join or pay dues or

fees to a union as condition of his or her employment within the County. Plaintiffs claim the New Mexico Legislature has not expressly granted the Board the authority to approve the Ordinance and that the Ordinance is therefore invalid. Plaintiffs claim the Ordinance is also invalid because it purports to be effective within the limits of an incorporated municipality in violation of New Mexico law. The Board removed this matter to federal court asserting substantial issues of federal law involved in Plaintiffs' claim. The Board claims that before the Court can address the validity of the Ordinance as a matter of state law, the Court must determine whether the Ordinance is preempted by federal labor law and must determine whether Plaintiffs have standing.

DISCUSSION

Under 28 U.S.C. § 1441(a), a "civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). "Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). "Absent diversity of citizenship, federal-question jurisdiction is required." *Id.* "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Id.* (citing *Gully v. First National Bank*, 299 U.S. 109 (1936)). "The rule makes the plaintiff

the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392.

The question before the Court is whether Plaintiffs' Complaint, "although stating state law claims, could have been founded in federal court under federal question jurisdiction." *Garley v. Sandia Corp.*, 236 F.3d 1200, 1207 (10th Cir. 2001) (citation omitted). The Court finds the face of Plaintiffs' Complaint only raises state law issues and does not raise federal law claims. This case involves issues of the Board's authority to enact ordinances under New Mexico's Constitution and Statutes.

While Defendant claims Plaintiffs' standing relies on collective bargaining agreements, which give rise to federal jurisdiction, this is not sufficient to find Plaintiffs' Complaint involves a federal question. As previously noted, the Court only looks at the face of Plaintiffs' Complaint in determining whether there is federal jurisdiction. The lack of standing is generally a defense and does not appear on the face of the Complaint. See *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987) ("Federal pre-emption is ordinarily a federal defense to the plaintiffs suit. As a defense, it does not appear on the face of a well-pleaded complaint, and, therefore, does not authorize removal to federal court."). The fact that a defense to the state action may raise issues of federal law is not enough to support removal. *Id*.

Defendants also argued the validity of the Ordinance must be analyzed against the NLRA and the Labor Management Relations Act (LMRA) to determine whether it complies with the restrictions of federal labor law. However, that issue is not raised in Plaintiffs' Complaint. Rather, the Complaint is narrowly tailored to question the Board's

authority to enact the Ordinance under New Mexico's Constitution and Statutes related to municipal and county authority. While Plaintiffs could have alleged that the Ordinance violated federal labor law, Plaintiffs, who are the masters of their complaint, chose not to bring these claims. See *Firstenberg v. City of Santa Fe*, NM, 696 F.3d 1018, 1023 (10th Cir. 2012) ("The plaintiff can select the forum – state or federal – based on how he drafts his complaint.").

Finally Defendants point to the general preemption found in § 301(a) of the LMRA, that provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

However, this provision does not apply in this case. As the Supreme Court has explained, "an application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a collective-bargaining agreement." *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 413 (1988). Plaintiffs' Complaint does not require the interpretation of the collective-bargaining agreement. Rather, the Complaint questions the Board's authority under New Mexico's Constitution and statutes to enact and enforce this ordinance.

The burden is on the Board to show jurisdiction by a preponderance of the evidence. *Karnes v. Boeing Co.*, 335 F.3d 1189, 1194 (10th Cir. 2003) (citations omitted). "Since federal courts are courts of limited jurisdiction, we presume no

jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction." *Id*. (citations omitted). As pled, Plaintiffs' Complaint challenges the Board's action solely on the basis of state law. This does not raise a federal question. For all of these reasons, the Court finds this case should be remanded.

Finally, within Plaintiffs' motion to remand, Plaintiffs seek an award of costs and attorney's fees pursuant to 28 U.S.C. § 1447(c). Section 1447(c) provides, "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). However, an award of costs and attorney's fees are discretionary with the Court. Therefore, based on the facts in this case, the Court finds an award of costs and attorney's fees are not warranted.

CONCLUSION

For the reasons stated above, the Court finds it lacks subject matter jurisdiction over this case and, as such, this case is remanded back to New Mexico state court. Additionally, the Court finds Plaintiffs are not entitled to costs and attorney's fees.

IT IS ORDERED that Plaintiffs' Motion to Remand is GRANTED.

IT IS FURTHER ORDERED that this case is REMANDED back to state court.

Dated this 6th day of June, 2018.

Nancy D Freudenthal

NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE