IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MAYTAG CORPORATION, a subsidiary of WHIRLPOOL CORPORATION; and WHIRLPOOL CORPORATION, Plaintiffs, vs. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; UNITED AUTOMOBILE WORKERS LOCAL 997; and HENRY VANDERHEIDEN, JR., DANIEL STOCK, LYLE ETTELSON, JR., LOUIS MODLIN, PATRICK TEED, MAX TIPTON, and LONNIE WHITE, Individually and as Representatives of a Defendant Class of Retirees, and Their Dependents and Surviving Spouses, Defendants.	**No. 4:08-cv-00291-JEG** **O R D E R**

This matter comes before the Court on pre-answer motions by Defendants International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), and United Automobile Workers Local 997 (Local 997) (collectively, the Union), to Dismiss or, in the alternative, to Transfer Plaintiff's Complaint and Amended Complaint. The Court held a hearing on the Motions on December 11, 2008. Robert Seltzer and Mark Hedberg represented the Union; Douglas Darch and Gene La Suer represented Plaintiffs Maytag Corporation (Maytag) and Whirlpool Corporation (Whirlpool) (collectively, the Company). The individual defendants have not appeared. The matter is now fully submitted and ready for disposition.

I. BACKGROUND[1]

Maytag operated a manufacturing complex in Newton, Iowa (the Newton plants). The Union represented the production and maintenance employees at the Newton plants for purposes of collective bargaining; consequently, Maytag and the Union entered into a series of collective bargaining agreements (CBA) governing the terms and conditions of the Newton plants employees' employment. Each of the CBAs consisted of a main agreement, supplemental agreements (covering health insurance and other insurance-based benefits for employees and retirees), and various memoranda of agreement, letters of agreement, and human resources policies and documents, including the Employee Welfare Benefit Summary Plan Description (SPD).

On March 31, 2006, Whirlpool acquired Maytag, assumed the CBAs at the Newton plants, and began providing retiree medical benefits to Maytag's retirees who retired from the Newton plants based on the benefit schedule referenced in the CBAs. Whirlpool currently provides retiree health benefits to approximately 3,314 Newton retirees (including spouses, dependents, and surviving spouses) (collectively, the Newton Retirees). Of the Newton retirees, 94 percent live in Iowa, an additional 2.6 percent live in other states in the Eighth Circuit, and one retiree lives in Michigan.

At the time of the merger, the CBA between the Company and the Union was set to expire on July 31, 2008, and would automatically renew unless one of the parties gave notice of its intent to change the terms. It is undisputed that the Company gave timely notice of its intent to change the terms of the CBA and bargain for new terms. On or about July 1, 2008, during a collective bargaining negotiation session in Newton, Whirlpool proposed modifying the medical benefit schedule provided to the Newton Retirees. Whirlpool proposed to terminate the Maytag Group Health Plan and enroll the Newton Retirees in the Whirlpool Corporation Group Benefit

[1] For purposes of the current motions, the Court assumes the truth of allegations in the Complaint. See Section II(A), infra at 4.

Plan (the Whirlpool Plan). The Union refused to bargain over the proposed modifications and took the position that Whirlpool could not modify the retiree benefit schedules.

On July 24, 2008, the Company filed this declaratory judgment action (the Iowa lawsuit) in anticipation of its modification to the retiree medical benefits schedule for former Maytag employees, which the Company stated would become effective on January 1, 2009.[2] The Company seeks a class-action declaratory judgment concerning its rights to modify the terms of the CBA. On August 8, 2008, two weeks after the Company filed the Iowa lawsuit, five plaintiffs filed a mirror-image class-action lawsuit against Whirlpool and the Whirlpool Plan in the U.S. District Court for the Western District of Michigan (the Michigan lawsuit), seeking to represent the Newton retirees as well as other plaintiffs.[3] Ginter v. Whirlpool Corp., No. 1:08-cv-750 (W.D. Mich. Oct. 2, 2008). The plaintiffs in the Michigan lawsuit claim that the Company's plan to modify the retiree medical benefit schedule violates the CBA. Id. On October 2, 2008, the Ginter court denied the Company's motion to transfer the Michigan lawsuit to the Southern District of Iowa pursuant to 28 U.S.C. § 1414(a) but granted the Company leave to renew its motion based on the first-to-file rule, if appropriate, following a decision by this Court on the application of that rule. Id.

The Union now moves to dismiss or, in the alternative, to transfer the Iowa lawsuit, arguing (1) the Company lacks standing to bring a declaratory judgment, (2) the lawsuit lacks subject matter jurisdiction, and (3) the action fails to state a claim under the Employee Retirement Income Security Act of 1974 (ERISA). 29 U.S.C. § 1054 *et seq*. If the motion to dismiss

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[2] As disclosed during oral argument on the current motions, the Company appears to have followed the schedule of providing notice and making plan changes effective January 1, 2009. However, apparently in light of the continuing challenge to the validity of this action, the parties have not argued this action essentially alters the posture of the litigation.

[3] While the Michigan lawsuit is a mirror image of the Iowa lawsuit, it also contains two plaintiffs who seek to represent former employees or survivors of employees who worked at a Whirlpool plant in Mt. Sterling, Kentucky, that closed in 1991.

is denied, the Union maintains that venue should be transferred to the U.S. District Court for the Western District of Michigan, where the Michigan lawsuit is pending. The Company resists, arguing that it has standing, subject matter jurisdiction, and has alleged a proper claim. Additionally, the Company claims that venue is proper in this Court due, in large part, to the fact that this lawsuit was filed before the Union filed the mirror-image Michigan lawsuit.

II. DISCUSSION

A. Motion to Dismiss

The Union moves to dismiss the Company's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Rule 12(b)(1) provides that a party may move to dismiss a complaint for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). A court lacks subject matter jurisdiction over a claim if the plaintiff lacks standing. See Faibisch v. Univ. of Minn., 304 F.3d 797, 801 (8th Cir. 2002). Here, the Union challenges the Company's pleading on its face, and therefore the non-moving party receives the same protections as it would under Rule 12(b)(6). See Osborn v. United States, 918 F.2d 724, 729 n.6 (8th Cir. 1990).

Under the Rule 12(b)(6) standard, a court assumes all facts in the complaint to be true and construes all reasonable inferences from those facts in the light most favorable to the complainant. Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007). Although a complaint need not contain "detailed factual allegations," it must contain facts with enough specificity "to raise a right to relief above the speculative level." Id. at 1964-65. This standard "calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the claim]." Id. at 1965; see Saunders v. Farmers Ins. Exch., 537 F.3d 961, 964-65 (8th Cir. 2008) (citing Twombly, 127 S. Ct. at 1965-66).

1. Standing

Article III of the U.S. Constitution limits the subject matter jurisdiction of federal courts to actual cases or controversies. U.S. Const. art. III, § 2. Over a century ago, the Supreme Court articulated the elementary requirement that a federal court have jurisdiction over a cause of action before proceeding. See Ex Parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868). There, the Court ruled that if jurisdiction is found lacking, "the only function remaining to the court is that of announcing the fact and dismissing the case." Id. Consequently, the first question this Court must always address is whether subject matter jurisdiction exists for each of the Company's claims.

As the party urging the Court to exercise jurisdiction, the Company bears the burden of proving by a preponderance of the evidence that it has standing. Young Am. Corp. v. Affiliated Computer Servs. (ACS). Inc., 424 F.3d 840, 843 (8th Cir. 2005) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992)). A plaintiff bringing a suit under the Declaratory Judgment Act must "demonstrate that he has suffered an injury in fact, that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." County of Mille Lacs v. Benjamin, 361 F.3d 460, 463 (8th Cir. 2004) (quoting Bennett v. Spear, 520 U.S. 154, 162 (1997)). The Union brings its standing challenge on the first two elements, claiming (1) the Company lacks standing because it has not suffered an injury-in-fact, and (2) even if the Company did suffer an injury in fact, the injury is not traceable to the Union's actions.

a. Injury in Fact

The Union argues that the Company has not alleged a sufficient injury in fact to give rise to a declaratory judgment action. "The essential distinction between a declaratory judgment action and an action seeking other relief is that in the former no actual wrong need have been

committed or loss have occurred in order to sustain the action." Id. at 464.[4] In the absence of an alleged actual injury, a plaintiff seeking a declaratory judgment must show that "it is in immediate danger of sustaining threatened injury traceable to an action of [the defendant]." Id. Where, as here, the potential injury is litigation, "[t]he declaratory judgment plaintiff must be able to show that the feared lawsuit from the other party is immediate and real, rather than merely speculative." Hyatt Int'l Corp. v. Coco, 302 F.3d 707, 712 (7th Cir. 2002) (citing Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 506-07 (1972)). When the action involves a business, the declaratory judgment plaintiff must show that the alleged controversy "had reached such a concrete point that [the plaintiff] legitimately needed a declaration of its rights and other legal relations in order to go forward with the project in question." Id. (alluding to "declaratory judgment suits in which the declaration of rights is a *bona fide* necessity for the natural defendant/declaratory judgment plaintiff to carry on with its business").

The Company claims that reasonable uncertainty existed as to whether the Company could move forward with its project to modify the retiree medical benefit plan without being sued by the numerous affected parties. As evidence of its contention, the Company points to the Union's refusal to bargain and adoption of an adverse position, combined with evidence that in several similar circumstances UAW proceeded to file lawsuits to enjoin or prohibit benefit plan modifications. The Union counters that it was under no obligation to bargain with the Company, that its adverse position only showed that it disagreed with the Company, and that Local 997 has never filed any litigation related to benefit plan modifications.

[4] In its response to the Union's motion to dismiss, the Company claims that it has already been injured when the Union violated the CBA by refusing to bargain concerning proposed changes to the retiree medical benefit plan. Consequently, the Company claims that it may file a direct action on that count. However, while the Company alleges in its complaint that the Union failed to bargain, nowhere does it allege that in doing so the Union violated the CBA. Therefore, this issue has not been properly brought before the Court.

While retiree medical benefits are not a mandatory bargaining subject, see Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 175 (1971), they can become mandatory if the parties so agree, see c.f. IBEW, Local Union No. 545 v. Hope Elec. Corp., 380 F.3d 1084, 1089 n.3 (8th Cir. 2004) (finding that interest arbitration clauses, a non-mandatory bargaining subject, can become mandatory upon agreement of the parties). In its complaint, however, the Company does not claim that the CBA provided for bargaining over the terms of the agreement – which included retiree benefits – to occur every negotiating cycle. If the Company wished to contend otherwise, it did not so state in its Complaint.

Although the Company did not plead sufficient facts to support its first allegation regarding the Union's failure to bargain, the Court finds the last two allegations – the Union's adverse position and UAW's frequent litigation in cases with identical facts – are sufficient to make the Company's fear of litigation reasonable. A controversy by definition existed from the moment the Union notified the Company that the Union took a different, adverse position on the Company's ability to modify the retiree medical benefit plan. Though its Local 997 had no prior history of litigation, UAW itself had an extensive history of filing cases concerning attempted modifications to retiree medical plans, one established enough to cause the Company its alleged uncertainty.[5] Therefore, the Court finds that the Company suffered an injury in fact sufficient to meet its burden on the first element of standing.

b. Fairly Traceable Injury

The Union next claims that if the Company did suffer an injury in the form of threatening litigation, that injury is not fairly traceable to the actions of the Union but rather to the proposed class members from whom the lawsuits will derive. More specifically, the Union states that it

[5] While standing is determined according to "the facts as they exist when the complaint is filed," Lujan, 504 U.S. at 570 n.4, the Court notes that the Michigan lawsuit was filed a mere two weeks after the Iowa lawsuit, and though it cannot be considered proof that a controversy existed, it is some confirmation thereof.

does not have legal standing to file a lawsuit against the Company under either ERISA or the Labor Management Relations Act (LMRA), 29 U.S.C. § 141 *et seq*., and therefore any threat of litigation cannot come from the Union.

Federal courts have jurisdiction over actions for declaratory judgment in cases where they would have jurisdiction over that same case if it were in the form of a coercive action brought by the declaratory judgment defendant. See 28 U.S.C. § 2201; see also Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 19 (1983). Consequently, if the Union would have standing to bring coercive suits against the Company under LMRA and ERISA, then the Company's injury of threatened litigation would be fairly traceable to the Union.

The Company alleges that the Union would be able to bring an LMRA action because the Union has standing to enforce the terms of the CBA. In a recent case, the Eighth Circuit has held that unions do have standing to enforce the terms of CBAs that they negotiated. See IBEW v. GKN Aero. N. Am., Inc., 431 F.3d 624, 627 (8th Cir. 2005). This decision comports with accepted contract principles that parties who enter into a contract on behalf of a third party have a legitimate interest in protecting the rights of that third party. See, e.g., USW v. Canron, Inc., 580 F.2d 77, 81 (3d Cir. 1978) ("[U]nder accepted contract principles the union has a legitimate interest in protecting the rights of the retirees and is entitled to seek enforcement of the applicable contract provisions."); IBEW v. Citizens Telecomms. Co. of Cal., Inc., No. Civ. S-06-0677, 2006 WL 1377102, at *4 (E.D. Cal. May 18, 2006) (finding that "accepted principles of contract law provide further support for [union] standing" to enforce a retirement benefits provision); Textile Workers of Am., AFL CIO, Local 129 v. Columbia Mills, Inc., 471 F. Supp. 527, 531 (N.D.N.Y. 1978) (finding that a union had standing to enforce retiree benefits that it negotiated). It is undisputed that the Company and the Union negotiated the CBAs in question. Therefore, in light of the Union's actions, since the Union has standing to bring suit under the LMRA and ERISA to enforce the terms of the CBAs, the Company's reasonable apprehension of

an imminent lawsuit is fairly traceable to the Union. That determination alone supports a determination of injury fairly traceable to the Union.

Additionally, the Union's claims that it is unable to represent the retirees are severely affected by its inconsistent stance on this issue in other litigation. In Rachilla, et al. & UAW v. Mack Trucks, Inc, et al., No. 08-14771 (E.D. Mich. Nov. 12, 2008), UAW has filed a nearly identical case asserting claims under LMRA and ERISA on its own behalf and on behalf of retirees based on its status as their former collective bargaining representative. When combined with the other strong arguments in favor of recognizing the Union's ability to bring a coercive action, this apparently inconsistent behavior further supports the Court's finding that the Union does have standing to assert claims under both LMRA and ERISA against the Company. Therefore, the Company's injury in fact discussed in the previous section is fairly traceable to the Union, satisfying the second element of standing.

Consequently, this Court finds that the Company has demonstrated standing sufficient to survive the Union's motion to dismiss for lack of standing.

2. Failure to State a Claim

The Union argues that the Company's suit under ERISA fails to state a claim upon which relief can be granted, as it is not an attempt to "enforce" a plan under ERISA.[6] ERISA permits a plan participant, beneficiary, or fiduciary to bring a civil action to recover benefits or enforce his rights under the plan. 29 U.S.C. § 1132(a)(3) As previously stated, federal courts have jurisdiction over all declaratory judgment claims that the declaratory judgment defendant could have filed as a coercive action. See 28 U.S.C. § 2201; see also Franchise, 463 U.S. at 19. Therefore, the Union's arguments that the Company's lawsuit is not one to "enforce" the plan and that the

[6] In its reply brief in support of its motion to dismiss the amended complaint, the Union states that its motion for failure to state a claim under Rule 12(b)(6) applies only to the ERISA claim and not to the LMRA claim. Pl.'s Reply to MTD Am. Compl. 1.

Company is not a fiduciary capable of bringing an enforcement action are inapposite. In the declaratory action brought by the Company, it is the *declaratory judgment defendants*, that is, the Union and the proposed class that consists of the beneficiaries and their agents, who seek to enforce the plan. See Prudential Ins. Co. of Am. v. Doe, 140 F.3d 785, 790 (8th Cir. 1998); see also Rexam, Inc. v. USW., Civ. No. 03-2998 ADM/AJB, 2003 U.S. Dist. LEXIS 19495, at *7 (D. Minn. Oct. 30, 2003).

Neither side contests that the retirees, as plan beneficiaries, may bring an ERISA action against the Company to enforce the medical benefit plan. The Union does, however, contest the Company's assertions that the Union may bring a similar ERISA action against the Company in its capacity as the retirees' agent. The Company argues that the Union would be able to bring actions under both LMRA and ERISA because the class members gave implied and express authorization to the Union to represent them as their agent regarding their retiree medical benefits under the CBA and employee benefit plans. The allegations in the complaint, which are taken as true, are sufficient to defeat a motion to dismiss. See In re Operation of the Mo. River Sys. Litig., 418 F.3d 915, 917 (8th Cir. 2005). As the employee's agent, the Union would be able to bring an ERISA action against the Company in its own right. Therefore, this Court finds that the Company has stated a claim upon which relief can be granted and must deny the Union's motion to dismiss for failure to state a claim.

B. Motion to Transfer

Having denied the Union's motions to dismiss, the Court now directs its attention to the Union's alternative motion to transfer. In determining a motion to transfer venue, courts accept all well-pleaded allegations in the complaint as true. Connor Pension Corp. Defined Benefit Plan v. Goodnight Cattle Co. LLC., No. C08-0010, 2008 U.S. Dist. LEXIS 48888, at *24 (N.D. Iowa June 25, 2008).

1. First-Filed Rule

The Union claims that although the Company filed this lawsuit before the Michigan lawsuit, this Court should nevertheless transfer venue because of compelling circumstances. "In cases of concurrent jurisdiction, the first court in which jurisdiction attaches has priority to consider the case as a matter of federal comity." Keymer v. Mgmt. Recruiters Int'l, Inc., 169 F.3d 501, 503 n.2 (8th Cir. 1999) (citing Nw. Airlines, Inc. v. Am. Airlines, Inc., 989 F.2d 1002, 1004-05 (8th Cir. 1993). "The first-filed rule gives priority, when parallel litigation has been instituted in separate courts, to the party who first establishes jurisdiction in order to conserve judicial resources and avoid conflicting rulings." Id. (citing Nw. Airlines, 989 F.2d at 1006). Because this Court was the first court in which jurisdiction attached, it has priority to consider this question as a matter of comity, a fact duly recognized by the court in Ginter. See Ginter v. Whirlpool Corp., No. 1:08-cv-750, at 2 (W.D. Mich. Oct. 2, 2008) (order denying transfer).

The first-filed rule is not intended to be rigid, mechanical, or inflexible, but it is to be applied in a manner best serving the interests of justice. The prevailing standard is that the first-filed rule should apply in the absence of compelling circumstances. See RK Dixon Co. v. Dealer Mktg. Servs., Inc., 284 F. Supp. 2d 1204, 1213-14 (S.D. Iowa 2003). No firm list of what factors constitute compelling circumstances exists, but in Northwest Airlines, Inc. v. American Airlines, Inc., the Eighth Circuit identified two "red flags" that can potentially signal the presence of compelling circumstances: (1) when the plaintiff filing the first case had notice of an imminent lawsuit and (2) when the first-filed action seeks declaratory judgment. See Nw. Airlines, 989 F.2d at 1007. Compelling circumstances are generally those that tend to show that the first-filing party either "acted in bad faith [or] raced to the courthouse to preempt a suit by [the other party]." Id.

The Union claims that both red flags noted in Northwest Airlines are present in this case. First, it claims that the Company had notice of an imminent lawsuit. Courts in the Eighth Circuit

have found that compelling circumstances sufficient to overcome the first-filed rule exist when the first-filing plaintiff did so after being given notice that the second-filing plaintiff was on the verge of filing a lawsuit. See, e.g., Anheuser-Busch, Inc. v. Supreme Int'l Corp., 167 F.3d 417, 419 (8th Cir. 1999) (finding compelling circumstances where the defendant's letter gave the plaintiff five days to respond to avoid a lawsuit but instead of responding to the letter the plaintiff filed suit); ACF Indus. LLC. v. Chapman, No. 4:03CV1765 HEA, 2004 U.S. Dist. LEXIS 27245, at *6 (E.D. Mo. Aug. 26, 2004) (finding compelling circumstances where the plaintiff filed suit the day after the defendant informed it that he would "file in federal court" against the plaintiff).

When discussing whether the Company had notice of an imminent lawsuit, the inquiry is different from the inquiry as to whether there was a bona fide dispute between the parties sufficient to constitute an injury in fact and grant standing as discussed in Part II.A. Despite a court's finding that a plaintiff had "a reasonable apprehension that a controversy existed sufficient to satisfy the constitutional requirements for a declaratory judgment action, [such a finding] is not equivalent to an imminent threat of litigation." Manuel v. Convergys Corp., 430 F.3d 1132, 1137 (11th Cir. 2005). If such were not the case, "'each time a party sought declaratory judgment in one forum, a defendant filing a second suit in a forum more favorable to [the] defendant could always prevail under the anticipatory filing exception [to the first-filed rule].'" Id. (quoting 800-Flowers, Inc. v. Intercont'l Florist, 860 F. Supp. 128, 132 (S.D.N.Y. 1994)).

On July 1, 2008, when the Company first raised the issue of modifying the retiree medical benefit plan, the Union refused to bargain and sent the Company a letter stating that it believed the Company's attempt to modify would violate the CBA. While this gave the Company notice of a *controversy* between the parties and was the basis for the Company's reasonable apprehension of an impending lawsuit, it did not give the Company notice of an *imminent lawsuit*. The Union's communication with the Company was a refusal to bargain and notification that the

Union disagreed with the Company's position. The Union in this case made no mention of immediate plans to file a lawsuit, nor did it make verbal or written threats to file a lawsuit if the Company continued unilaterally on its course of action.

The Court finds that the Union's behavior did not provide the Company with notice of an imminent lawsuit, a conclusion further bolstered by the fact that the Company waited twenty-four days after being rebuffed by the Union before filing its lawsuit. The Court does not find the circumstances in this record sufficiently indicative of a race to the courthouse to be concerned about this potential "red flag."

The Union's second argument for compelling circumstances points to the presence of the other warning mentioned by the Northwest Airlines court: the first-filed action was one for declaratory judgment. The mere fact that a first-filed action is one for declaratory relief is not sufficient; declaratory judgments present compelling circumstances only if they are "more indicative of a preemptive strike than a suit for damages or equitable relief." Nw. Airlines, 989 F.2d at 1007. In other words, "declaratory judgments are not to be used defensively to deny a prospective plaintiff's choice of forums." Prudential, 140 F.3d at 790.

One indication that a plaintiff is using the declaratory judgment statute for its proper purpose is whether the plaintiff encountered circumstances indicating the need for a declaratory judgment. See, e.g., Prudential, 140 F.3d at 790 ("Insurers commonly use declaratory judgment actions to determine coverage questions, while simultaneously avoiding exposure to substantial bad faith damages."); Nw. Airlines, 989 F.2d at 1007 (finding a declaratory judgment action was necessary because the defendant's intimation that the plaintiff was violating the law chilled the plaintiff's recruiting efforts); Nw. Airlines, Inc. v. Filipas, Civ. No. 07-4803 (JNE/JJG), 2008 U.S. Dist. LEXIS 31084, at *12 (D. Minn. Apr. 15, 2008) (noting that since the plaintiff's "obligations under [a] new [benefit] plan were to begin immediately . . . it was neither unseemly

nor unreasonable for [the plaintiff] to seek to resolve the lawfulness of the new retirement plan in the district where the plan was negotiated and will be implemented").

The Company encountered such circumstances in this case. The first post-merger CBA was set to expire on July 31, 2008, and the Company desired to complete the merger of Whirlpool and Maytag by unifying the two corporations' retiree benefit plans. Under the circumstances, the Union's refusal to bargain and its contention that the Company's intended action was illegal made the Company uncertain about its ability to unilaterally and effectively modify the benefit plan under the CBA. As in Filipas, it is "neither unseemly nor unreasonable" for the Company to "seek to resolve the lawfulness of the new retirement plan in the district where the plan was negotiated and will be implemented." Filipas, 2008 U.S. Dist. LEXIS 31084, at *12.

Having considered the circumstances under which the Company brought its suit, this Court finds that there are no compelling circumstances justifying departure from the first-filed rule. Therefore, the Court denies the Union's motion to transfer the case based on the exceptions to the first-filed rule.

2. Transfer Under § 1404(a)

In the alternative, the Union argues that the case should be transferred under the authority of 28 U.S.C. § 1404(a). The federal transfer statute provides that, "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). This statute is "intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988) (quoting Van Dusen v. Barrack, 376 U.S. 612, 622 (1964)).

The moving party has the burden of proving a transfer is warranted. Terra Int'l Inc. v. Miss. Chem. Corp., 119 F.3d 688, 695 (8th Cir. 1997). "'In order to show that transfer is proper, the defendant must establish that (1) venue is proper in the transferor court; (2) venue is proper in the transferee court; and (3) the transfer is for the convenience of the parties and witnesses and promotes the interests of justice.'" Intercoast Capital Co. v. Wailuku River Hydroelectric L.P., No. 4:04-cv-40304, 2005 U.S. Dist. LEXIS 828, at *29 (S.D. Iowa Jan. 19, 2005) (quoting Black & Decker Corp. v. Amirra, Inc., 909 F. Supp. 633, 635 (W.D. Ark. 1995)); see also Caleshu v. Wangelin, 549 F.2d 93, 96 n.4 (8th Cir. 1977) (reasoning that § 1404(a) does not dispense with the requirement that "venue must be proper in the transferee district").

District courts are not limited to the factors enumerated in the statute but may consider all relevant factors. Terra Int'l, 119 F.3d at 691. In determining whether transfer is appropriate, relevant convenience factors include "(1) the convenience of the parties, (2) the convenience of the witnesses – including the willingness of witnesses to appear, the ability to subpoena witnesses, and the adequacy of deposition testimony, (3) the accessibility to records and documents, and (4) the location where the conduct complained of occurred." Id. at 696. Relevant, and somewhat overlapping, factors implicating the interest of justice include "(1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law." Id.

a. Whether Venue is Proper in the Western District of Michigan

The threshold question is whether venue is proper in the proposed recipient district. See Caleshu, 549 F.2d at 96 n.4. The Company argues that, were this case to be transferred, the Western District of Michigan would not have personal jurisdiction over Local 997 (which is headquartered in Newton, Iowa), and therefore this case may not be transferred. See Schechter v. Tauck Tours, Inc., 17 F. Supp. 2d 255, 258 (S.D.N.Y. 1998) (determining whether the action

might have been brought in the proposed recipient court includes a consideration of whether the court could obtain personal jurisdiction over the parties).

"Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . when authorized by a federal statute." Fed. R. Civ. P. 4(k). The Union argues that the Western District of Michigan would have personal jurisdiction over Local 997 by virtue of ERISA. ERISA states that "process may be served in any . . . district where a defendant resides or may be found." See 29 U.S.C. § 1132(e)(2). This Court has upheld the constitutionality of ERISA's nationwide service-of-process provision, finding that it is constitutional as to defendants with sufficient contacts to the United States. See Wellmark, Inc. v. Deguara, No. 4:02-cv-40534, 2003 U.S. Dist. LEXIS 9163, at *8 (S.D. Iowa May 28, 2003); accord Admin. Comm. of Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan v. Soles, 204 F. Supp. 2d 1184, 1185-86 (W.D. Ark. 2002). Since Local 997 is headquartered in Newton, Iowa, it can be served with process in the Southern District of Iowa. Consequently, the Western District of Michigan may properly exercise jurisdiction over it under ERISA, and therefore venue is proper in that court.[7]

b. Convenience

The Union claims that the "convenience of the parties" consideration weighs in favor of transfer.[8] The normal presumption is in favor of the plaintiff's choice of forum. See Graff v.

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[7] Local 997 also stipulates that it will submit to personal jurisdiction in Michigan. In light of the Court's determination that personal jurisdiction exists under ERISA it is unnecessary to address whether such a stipulation, standing alone, would be effective to give the proposed recipient court jurisdiction for purposes of ascertaining venue under § 1040(a).

[8] The Union points to Judge Quist's opinion in the Michigan lawsuit denying the Company's motion to transfer as evidence that Michigan is more convenient for the parties. See Ginter, No. 1:08-cv-750 at 1 (W.D. Mich. Oct. 2, 2008). However, in that motion to dismiss, the Company had the burden of proof and failed to meet it. Here, the Union is now a party and as the proponent of the motion bears the burden of proof.

Qwest Commc'ns Corp., 33 F. Supp. 2d 1117, 1121 (D. Minn. 1999).[9] The Company's choice of forum is given further, heightened deference because it brings its claim, in part, under the special venue considerations given to ERISA plaintiffs. See 29 U.S.C. § 1132(e)(2) (allowing ERISA actions to be brought in "the district where the plan is administered, where the breach took place, or where a defendant resides or may be found"); see also Int'l Painters & Allied Trades Indus. Pension Fund v. Painting Co., No. 07-1070, 2008 WL 2977627, at *3 (D.D.C. Aug. 5, 2008). Here, the Company's choice of forum falls under two of the three possible fora: the benefit plan is allegedly administered in Des Moines and both Local 997 and many of the proposed class members reside or may be found in the Southern District of Iowa.

As to whether the Company's choice is convenient for the parties, Iowa is convenient for some parties and not for others. While both UAW and the Company are headquartered in Michigan, both Local 997 and ninety-four percent of the proposed class members are located in Iowa. Therefore, this Court finds that the first factor, the convenience of the parties, favors keeping venue in Iowa.

The Union argues that the second factor, convenience of the witnesses, weighs in favor of transfer to Michigan. Relevant considerations concerning this factor include the number of essential non-party witnesses, their location, and courts' preference for live testimony as opposed to depositions. See Graff, 33 F. Supp. 2d at 1121. The Union first argues that since this case

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[9] Since this action is one for declaratory judgment the Union argues that the Court should realign the parties and grant the "natural plaintiff's choice of forum" controlling weight. See BASF Corp. v. Symington, 50 F.3d 555, 558 (8th Cir. 1995). However, BASF involved a motion to dismiss under the doctrine of *forum non conviens* and not a motion to transfer under § 1404(a) and consequently is neither controlling nor persuasive. This is, in part, due to considerations of judicial economy. When the case will merely be transferred rather than being dismissed — as was the case under *forum non conviens* — the court to initially consider the matter has already invested time and resources in becoming familiar with the case. All other considerations being equal, it would be redundant to require a second court to engage in the same activities; therefore this Court holds that under § 1404(a) the normal presumption should be in favor of the plaintiff's choice of forum even in cases involving declaratory judgment.

will not involve extrinsic evidence, the convenience of the witnesses factor should be given little, if any, weight. It cites Judge Quist's order in the Michigan lawsuit, which states that since "this case appears to present a question solely of law based upon the language contained in relevant documents," it is unlikely that witness testimony will be necessary. See Ginter, No. 1:08-cv-750 at *2 (W.D. Mich. Oct. 2, 2008) (order denying transfer). The Court agrees in principle and finds that this factor has little, if any, bearing on a case of this nature.

The third factor, accessibility of records and documents, weighs in favor of keeping the lawsuit in Iowa. The Company alleges that the pertinent documents were created and maintained in Iowa, and therefore they will be more accessible here than in Michigan. Judge Quist's remarks in the Michigan lawsuit on this matter, however, are well taken – this factor is not as relevant in times where documents are easily placed in electronic formats and become readily accessible from anywhere – and this factor consequently commands less attention. See id.

The final convenience factor deals with the location where the events giving rise to the transaction took place. The historical events underpinning this case, including the parties' 2004 negotiations, occurred in Iowa, where the parties entered into the CBA. Consequently, this factor weighs in favor of retaining venue in Iowa. Taken collectively, therefore, the convenience factors weigh in the Company's favor.

c. Interests of Justice

In addition to examining the convenience of one forum versus another, when considering a motion under § 1404(a), courts must also look to the interests of justice. 28 U.S.C. § 1404(a). Factors implicating the interest of justice include "(1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law." Sparks v. Goalie Entm't,

Inc., No. 4:06-cv-00602-JEG, 2007 U.S. Dist. LEXIS 24476, at *7 (S.D. Iowa Mar. 30, 2007) (quoting Terra Int'l, 119 F.3d at 696).

At this stage in the litigation, it is unclear whether judicial economy would be better served by allowing the case to proceed in Iowa or Michigan, as the courts have become equally familiar with the matter. The Newton Retirees have moved for summary judgment in the Michigan lawsuit; however, the Company has delayed filing its resistance pending the outcome of this motion, and therefore the matter has not become ripe and presumably that court has yet to devote significant additional judicial resources to dealing with the motion. The Company has presented statistical evidence that the Western District of Michigan operates with a heavier docket than the Southern District of Iowa. Recognizing these numbers do not encompass all of the factors impacting a court's workload or ability to address pending cases, it is difficult for this Court to discern the import of this argument.[10] Therefore, the Court finds that the factor of judicial economy is in equipoise, or its effect on the analysis is minor and the Court affords it little weight.

The Plaintiff's choice of forum, as previously mentioned, weighs in favor of denying transfer. The fifth factor pertains to what obstacles to a fair trial are presented by either allowing or denying transfer. The Union points out that, while the named representatives of the proposed class have yet to appear in this case, the proposed class representatives have both appeared and obtained counsel in the Michigan lawsuit. Therefore, the Union claims that proceeding in Iowa will violate the due process rights of the unnamed, proposed class members. The Court finds that the Union has adequately protected the legal interests of the class so far and is likely to continue to do so. In any event, the argument addressing the sufficiency of the proposed class'

[10] The Court notes Judge Quist has been on no doubt well-deserved Senior Status for three years, and the District wide statistics may or may not reflect any limitation on his ability to process the current matter.

legal counsel will be addressed at a later date in conjunction with this Court's decision on the Company's pending motion for class certification.

One final factor relevant to the interests of justice, similar to the seventh factor dealing with the advantages of having a local court determine questions of local law, is the advantages of having the courtroom proceedings accessible to affected parties. The Company argues that not only did the significant events in this lawsuit occur in Iowa, the people of the State of Iowa are keenly interested in the outcome of this litigation. Over three thousand Iowans will be affected by the decision. It is more likely that potential class members who are interested in attending the hearings and following the case will be able to do so if the proceedings are held in Iowa.

For those who would want to attend the hearings, traveling to a location within the state will be more convenient than traveling to Michigan. For those who wish to follow the case through the media, keeping the case in Iowa provides the best prospects for media coverage. Since it affects thousands of Iowans, this case will be (and has already been) monitored closely by the local news media. This factor weighs heavily in favor of denying transfer and keeping the proceedings in Iowa.[11]

Weighing all the above factors, both those of convenience and those pertaining to the interests of justice, the Court finds that the Union has failed to meet its heavy burden of showing that the balance of the factors supports transferring this action to the Western District of Michigan. See, e.g., Pressdough of Bismarck, LLC v. A&W Rests., Inc., No. 1:08-cv-062, 2008 U.S. Dist. LEXIS 96076, at *14 (D.N.D. Nov. 24, 2008) ("The moving party bears the 'heavy burden' of showing that the balance of factors weighs in favor of a transfer.") (citation omitted); Ward v. Cisco Sys., Civ. No. 08-4022, 2008 U.S. Dist. LEXIS 82310, at *3-*4 (W.D. Ark. Sept.

[11] The Court recognizes representatives of the retirees have a strategic preference for the Michigan venue. In weighing the convenience, however, the Court views the matter objectively and not in furtherance of the strategic preference for either party.

30, 2008); CSI Tech., Inc. v. Commtest Instruments Ltd., Civ. No. 08-450 (RHK/JJK), 2008 U.S. Dist. LEXIS 69337, at *14 (D. Minn. Aug. 26, 2008). Therefore, the Court will retain venue of this action and deny the Union's motion to transfer under § 1404(a).

III. CONCLUSION

For the reasons stated above, Defendants' Motions to Dismiss, or in the Alternative, to Transfer (Clerk's Nos. 22 and 30) must be **denied**.

IT IS SO ORDERED.

Dated this 11th day of February, 2009.

JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT