

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DANIEL S. O'SHEA

Plaintiff,

v.

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL UNION NO.
639 et al.,**

Defendants.

Civil Action No. 1:04-CV-00207

MOTION TO TRANSFER

Defendant United Parcel Service, Inc. ("UPS"), by its undersigned counsel and pursuant to 28 U.S.C. § 1404(a), moves this Court to transfer this civil action to the United States District Court for the District of Maryland. Defendant Teamsters Local Union No. 639, affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Union"), has advised that it wishes to join in this Motion. In support thereof, UPS states as follows:

1. Plaintiff brings this action pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, against UPS, his former employer, and the Union, Plaintiff's former bargaining representative. Plaintiff also asserts a claim against UPS under Maryland common law. Plaintiff seeks injunctive relief, back and front pay, and compensatory and punitive damages allegedly resulting from his discharge by UPS, which was thereafter upheld by an arbitration panel under the Collective Bargaining Agreement between UPS and the Union.

2. Plaintiff is a resident of Maryland. He was employed by UPS exclusively in Maryland. UPS conducts business throughout the United States, including Maryland, and this action arises solely from a UPS facility in Laurel, Maryland. All of the events that form the basis

of this suit occurred in Maryland, including Plaintiff's alleged unlawful discharge. At least 16 witnesses, as well as Plaintiff's Union representatives, and all of the relevant documents are located in Maryland. Finally, counsel for Plaintiff and for UPS are located in Maryland. The District of Columbia simply has no contacts whatsoever with this action.

3. UPS requests that this case be transferred to the United States District Court for the District of Maryland. Maryland would serve as a more convenient forum to the parties and witnesses than the District of Columbia, and the interests of justice militate in favor of transferring this case to Maryland. UPS is authorized to represent to this Court that the Union joins in this Motion.

4. UPS files herewith, and incorporates herein by reference, its Memorandum in Support of this Motion.

WHEREFORE, UPS, on behalf of itself and the Union, respectfully requests that this Court transfer this case to the United States District Court for the District of Maryland.

Respectfully submitted,

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LOCAL CIVIL RULE 7(m) STATEMENT

Pursuant to LCvR 7(m), the undersigned and counsel for Plaintiff have spoken in good faith prior to the filing of this Motion. The undersigned is authorized to represent to the Court that Plaintiff opposes this Motion.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DANIEL S. O'SHEA,

Plaintiff,

v.

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL UNION NO.
639 et al.,**

Defendants.

Civil Action No. 1:04-CV-00207

**MEMORANDUM IN SUPPORT OF
MOTION TO TRANSFER**

Defendant, United Parcel Service, Inc. ("UPS"), by its undersigned counsel, submits the following Memorandum in Support of its Motion to Transfer.

INTRODUCTION

Daniel S. O'Shea ("Plaintiff") brings this suit against UPS, his former employer, and Teamsters Local Union No. 639, affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Union"), Plaintiff's former bargaining representative. The suit seeks injunctive relief, back and front pay, and compensatory and punitive damages allegedly resulting from Plaintiff's discharge by UPS and a subsequent ruling by an arbitration panel upholding that discharge. Plaintiff also asserts a wrongful discharge claim against UPS under Maryland common law. Plaintiff has filed suit in this Court, despite the fact the District of Columbia has no contacts whatsoever with this case. At all relevant times Plaintiff worked solely in Maryland; he resides in Maryland; the relevant parties, witnesses, and documents are located in Maryland; counsel for both Plaintiff and UPS are located in Maryland; and all of the underlying events,

including the alleged unlawful discharge, occurred exclusively in Maryland. For the convenience of the parties and witnesses, and in the interests of justice, UPS respectfully requests that this case be transferred to the United States District Court for the District of Maryland.

FACTS JUSTIFYING TRANSFER

UPS is engaged in the delivery of parcels, letters, and packages throughout the United States, including Maryland, and abroad. Aaron Aff. ¶ 2, attached as Exhibit 1. Plaintiff resides in Baltimore, Maryland and resided there at all relevant times. Aaron Aff. ¶ 3.¹ Plaintiff was employed by UPS as a Package Car Driver based in its Laurel, Maryland facility. Compl. ¶ 3; Aaron Aff. ¶ 3. As a UPS driver, Plaintiff delivered parcels within a designated area, which was located entirely within Maryland. Aaron Aff. ¶ 3. Plaintiff's personnel records are located at the Laurel, Maryland facility, as are his timecards and delivery records. Aaron Aff. ¶ 3.

On May 15, 2003, at the Laurel, Maryland facility, UPS issued Plaintiff a discharge notice for failure to follow proper Company methods, procedures, and instructions; for dishonesty; insubordination; and his overall unacceptable work record. Compl. ¶¶ 18, 20; Aaron Aff. ¶ 4. Specifically, on May 12, 2003, Plaintiff failed to complete his Maryland delivery route, leaving 57 packages undelivered; he failed to communicate with management at the Laurel, Maryland facility until late in the day to apprise them of the service failures; and he later falsely informed management at the facility that he had processed the undelivered packages in accordance with UPS policy. Aaron Aff. ¶ 4. During his subsequent meetings with management at the Laurel, Maryland facility, Plaintiff secreted a tape recorder and recorded his conversations

¹ Absent from the Complaint is any averment concerning Plaintiff's current residence.

without the prior knowledge or consent of any of the particular management employees involved in the meeting that day. Compl. ¶ 16; Aaron Aff. ¶ 5. This secret recording was in violation of Maryland law. *See* MD. CODE ANN., CTS & JUD. PROC. § 10-402. At his meeting with management, Plaintiff was represented by Union representatives who also work at the Laurel, Maryland facility. Aaron Aff. ¶ 5. When Plaintiff subsequently left the Laurel, Maryland facility, he deliberately violated UPS security policy against theft by refusing the request of a security guard to check one of the duffel bags he was carrying out of the facility. Aaron Aff. ¶ 5.

The decision to issue Plaintiff the discharge notice was made by management employees from the Laurel, Maryland facility, and the discharge notice itself was prepared by LaVerne Thornton, a UPS employee also located in the Laurel, Maryland facility. Aaron Aff. ¶ 5.

Contesting the discharge notice, Plaintiff's Union filed a grievance on his behalf. Compl. ¶ 21.² The grievance ultimately was heard by the Atlantic Area Parcel Grievance Committee ("AAPGC"), a bipartite committee established by UPS and the Union in their Collective Bargaining Agreement to render final and binding decisions on grievances. Compl. ¶ 31; Aaron Aff. ¶ 6. In this case, the AAPGC included as a seventh member an impartial, independent outside arbitrator, David Vaughn. Aaron Aff. ¶ 6.³ The arbitration took place in Williamsburg, Virginia. Aaron Aff. ¶ 6. The AAPGC and Arbitrator Vaughn found that there was just cause for Plaintiff's discharge and thereby denied Plaintiff reinstatement. Compl. ¶ 32; Aaron Aff. ¶ 6.

² The Union's Business Agent at the time, John Catlett, resides in Riverton, Maryland, and he performed his responsibilities in UPS's Laurel, Maryland facility. Aaron Aff. ¶ 7. His jurisdiction includes four other UPS buildings in Maryland and three in Virginia. Aaron Aff. ¶ 7. **UPS maintains no facility within the District of Columbia.** Aaron Aff. ¶ 7.

³ Arbitrator Vaughn lists his residence as Clarksville, Maryland.

The events leading to Plaintiff's discharge, all of which occurred in Maryland, as well as the events before the AAPGC panel, which occurred in Virginia, are critical issues in this case. None of these events occurred in the District of Columbia. Moreover, in addition to Plaintiff, the following 16 individuals are witnesses UPS has identified to these events, including management personnel, a security guard, and Union officials – all of whom work in Laurel, Maryland, and reside in Maryland:

<u>Name</u>	<u>Title</u>	<u>Residence</u>
Lawrence Young	Center Supervisor	Baltimore, MD
John Pinnock	Center Manager	Silver Springs, MD
Ruben Porras	Center Supervisor	Laurel, MD
Steve Harloff	Supervisor	Columbia, MD
Brian Kirchoff	Center Manager	Severna Park, MD
John Morris	Center Manager	Linthicum, MD
Ogunlola O. Olajide	Security Guard	Baltimore, MD
Frank Gribbin	Division Manager	Mount Airy, MD
Troy Ladson	Center Supervisor	Randallstown, MD
Judy Huntley	Office Mgmt Specialist	Laurel, MD
Wendy Franks	Office Mgmt Specialist	Shadyside, MD
Kathleen Krintz	Office Mgmt Specialist	Columbia, MD
Mark Aaron	Labor Manager	Bel Air, MD
Don Smith	Package Car Driver/ Union Shop Steward	Baltimore, MD
Tom Conard	Training/Dev Mgr	Mt. Airy , MD
Eric Maura	District Security Mgr	Ellicott City, MD

Aaron Aff. ¶ 7. Additionally, John Catlett, the Union's Business Agent at the time, resides in Riverdale, Maryland, and his responsibilities included the Laurel, Maryland facility. Aaron Aff.

¶ 7. Finally, both counsel for Plaintiff and for UPS are located in Maryland.

ARGUMENT

Title 28 U.S.C. § 1404(a) provides:

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.

This case should be transferred to the United States District Court for the District of Maryland, because, as explained below, venue is proper in that court, and the location of the parties, counsel, witnesses, documents, and underlying events demonstrate that Maryland is a more convenient and proper forum.

A. Venue Is Proper In Maryland.

As stated in Section 1404(a), as a threshold matter, this Court must determine whether venue is proper in the transferee forum, Maryland. *See Kafack v. Primerica Life Ins. Co.*, 934 F. Supp. 3, 5 (D.D.C. 1996). This action is brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Compl. (Introduction). That statute contains a venue provision, which provides:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . 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.

Id. § 185(a) (emphasis added). This provision grants venue to federal courts in cases in which the court may exercise personal jurisdiction over the parties. *See Stevens v. Employer-Teamsters Jt. Council No. 84 Pension Fund*, 979 F.2d 444, 459 (6th Cir. 1992); *White Motor Corp. v. International Union*, 491 F.2d 189, 191 (2d Cir. 1974); *Bordiga v. Directors Guild of Am.*, 159 F.R.D. 457, 460 (S.D.N.Y. 1995). Additionally, Section 185(c) states that with regard to actions against labor organizations, “district courts shall be deemed to have jurisdiction of a labor

organization (1) in the district in which such organization maintains its principal office or (2) *in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.*” (Emphasis added).

As set forth above, there is no dispute that the U.S. District Court for the District of Maryland has personal jurisdiction over the parties, and venue is thus proper in that court. Plaintiff is a resident of Maryland, UPS and the Union regularly conduct business in Maryland, and all of the underlying facts occurred in Maryland, including all events involving the Union and its Business Agent in this matter. *See* MD. CODE ANN., CTS & JUD. PROC. § 6-103 (Maryland long-arm statute).⁴

B. Proceeding In Maryland Would Be More Convenient And Serve The Interests Of Justice.

Having established that this case could have been filed in the U.S. District Court for the District of Maryland, the next question is to determine whether Maryland provides a more convenient forum, or whether other factors militate in favor of transfer to Maryland. Section 1404(a) places “discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.” *Liban v. Churchey Group II, L.L.C.*, ___ F. Supp. 2d ___, 2004 WL 360285, *2 (D.D.C. Feb. 26, 2004), attached as Exhibit 2. A court must balance a number of factors, including the plaintiff’s privilege of choosing the forum; whether the claim arose outside of the chosen forum; the convenience of the parties, counsel, the ease of access to sources of proof (i.e., witnesses and the location of

⁴ Further, given that Plaintiff has asserted a tort claim under Maryland law against UPS, it is appropriate for this Court to consider where the alleged tort occurred – Maryland. Clearly, venue against UPS for that alleged tort would properly lie in Maryland. *See* MD. CODE ANN., CTS & JUD. PROC. § 6-201(a).

records); and the interests of justice. *Id.*; see also *Hawksbill Sea Turtle v. Federal Emergency Mgm't Agency*, 939 F. Supp. 1, 3 (D.D.C. 1996).⁵

As to the first factor, although a plaintiff's choice of forum is ordinarily accorded some deference, "this deference is weakened when the plaintiff is not a resident of the chosen forum." *Liban*, 2004 WL 360285, *4. See also *Martin-Trigona v. Meister*, 668 F. Supp. 1, 2 (D.D.C. 1987) (holding that deference "is a much less significant factor where the plaintiff is a foreigner in that forum."). Plaintiff is a Maryland resident and thus a foreigner to this forum. Aaron Aff. ¶ 3. Additionally, any deference afforded the choice of forum "is further mitigated if a plaintiff's choice . . . has 'no meaningful ties to the controversy and no particular interest in the parties or subject matter.'" *Liban*, 2004 WL 360285, *4. See also *Nichols v. U.S. Bureau of Prisons*, 895 F. Supp. 6, 8 (D.D.C. 1995) (no deference afforded where facts of case "have little, if any, connection with the chosen forum"). There are no factual ties between this lawsuit and the District of Columbia, as the facts that form the basis of this suit all occurred in Maryland. Plaintiff was based in UPS's Laurel, Maryland facility and worked exclusively within Maryland. Aaron Aff. ¶ 3. Plaintiff's discharge notice arose from incidents occurring solely in Maryland. Aaron Aff. ¶¶ 4, 5. The decision to issue the notice was made, and the notice was issued, in Maryland. Aaron Aff. ¶ 4. As such, Plaintiff's choice of forum should be given no weight.⁶

⁵ As discussed below, this Court also considers "public-interest factors," such as the transferee's familiarity with the governing laws; the relative congestion of the transferor and transferee courts; and a court's interest in deciding local controversies at home. *Liban*, 2004 WL 360285, *5.

⁶ The only possible connection between this suit and the District of Columbia is the fact that the Union maintains an office there. That fact, however, does not outweigh the other factors militating in favor of transfer, including that all of the Union officials involved in this matter live and work in Maryland. Here, the Union's business agent's jurisdiction regarding UPS does not include the District of Columbia, as UPS maintains no facility there. Aaron Aff. ¶ 7. Moreover, the Union joins in this Motion.

The convenience of the parties, witnesses, and counsel weighs strongly in favor of a transfer to Maryland. Because Plaintiff resides in Maryland, this action would be more convenient to him in Maryland. Moreover, as set forth above, the UPS managers and employees who were involved in, or witnessed the underlying, events surrounding Plaintiff's discharge and the processing of his grievance through the arbitration panel all worked and now reside in Maryland. Aaron Aff. ¶¶ 5, 7. Finally, both counsel for Plaintiff and for UPS maintain their offices in Maryland.⁷

Documentary evidence in this case is likewise located in Maryland. For example, Plaintiff's personnel records are located in UPS's Laurel, Maryland facility. Aaron Aff. ¶ 3. Plaintiff's timecards and delivery records related to the events of May 12, 2003, are also located in Laurel, Maryland. Aaron Aff. ¶ 3.

Finally, the interests of justice are further served by transferring this case to Maryland, as states have an interest in resolving disputes occurring within their borders. *See King*, 709 F. Supp. at 262 (holding that "the interests of justice support the transfer of this suit to the Eastern District of Virginia because this suit is 'so inextricably linked to the state of Virginia'"); *Cox v. Staples, Inc.*, No. 97-318TAF, 1997 WL 723305, *1 (D.D.C. 1997) (acknowledging the "local interest in deciding local controversies at home"), attached as Exhibit 3. Here, in addition to resolving a discharge dispute that occurred solely in Maryland, this case also involves acts of illegal tape recording of individuals in Maryland without their prior knowledge and consent, which necessarily may require the interpretation and application of Maryland's Wiretapping and Electronic Surveillance Act, MD. CODE ANN., CTS & JUD. PROC. § 10-401 *et seq.* Additionally,

⁷ And while counsel for the Union is located in the District of Columbia, they have authorized counsel for UPS to inform the Court of their consent to the transfer of this matter to Maryland.

Plaintiff brings a claim for wrongful discharge under “Maryland common law,” Compl. (Introduction), in connection with his filing for workers’ compensation under Maryland’s Workers’ Compensation Act, , MD. CODE ANN., LAB. & EMPL. § 9-101 *et seq.* Compl. ¶¶ 41-44.⁸

In short, this case should be transferred, because the parties, witnesses, documents, and relevant facts are all overwhelmingly linked to Maryland, the issues raised and that may be raised, in addition to the federal claim, involve Maryland law, and there are simply no ties to the District of Columbia. *See Trout Unlimited v. U.S. Dep’t of Agriculture*, 944 F. Supp. 13, 17-18 (D.D.C. 1996) (case transferred where most parties, witnesses, documents, and pertinent facts were located in transferee state, and the District of Columbia had “no meaningful ties or interest in this suit”); *Nichols*, 895 F. Supp. at 8-9 (case transferred where plaintiff, witnesses, and records were located, and “the District of Columbia has virtually no connection to the events giving rise to this action”); *King v. Navistar Int’l Transp. Corp.*, 709 F. Supp. 261, 262-63 (D.D.C. 1989) (case transferred to Virginia where plaintiff was employed and facts occurred); *Meyer v. Federal Bureau of Prisons*, 929 F. Supp. 10, 14 (D.D.C. 1996) (case transferred where plaintiff was closer to Missouri than District of Columbia, defendant and witnesses resided in Missouri, and “[t]here is no factual connection between the plaintiff’s claim and Washington, D.C.”).

⁸ UPS recognizes that the relative congestion of the transferor and transferee courts is not significant here, as this Court recently concluded that it had “no reason to believe that [the U.S. District Court of Maryland] is more or less congested” *Liban*, 2004 WL 360285, *5. And while this Court also pointed out that either it or Maryland is appropriate to apply federal law (in this case, Section 301 of the Labor Management Relations Act), *id.*, it would nonetheless be more appropriate for the U.S. District Court of Maryland to apply Maryland state law with regard to the wiretapping and workers’ compensation issues in this case.

The fact that the transferor and transferee forums, the District of Columbia and Maryland, are in close proximity to each other should not prevent transfer. This Court has not hesitated to transfer cases to Maryland, even to the Southern Division thereof, where the factors weighed in favor of transfer. *See, e.g., Liban*, 2004 WL 360285, *6 (transferring case to Maryland, where the matter was of local concern, the events giving rise to the lawsuit occurred there, the plaintiff was a Maryland resident and the defendants resided or were incorporated in Maryland, and documentary evidence related to the claim was located in Maryland); *Elezovic v. England*, No. 03-131JDB, 2003 WL 22383583, *2 (D.D.C. Oct. 20, 2003) (transferring case to Maryland, where unlawful employment practices occurred in Maryland, and the defendant was located in Maryland), attached as Exhibit 4; *Kafack*, 934 F. Supp. 3 (relevant facts occurred in Maryland, and most witnesses and records were located in Maryland); *Cox*, 1997 WL 723305, *1 (key events occurred in Maryland and witnesses were Maryland residents); *Signet Bank, N.A. v. Jacobsen*, No. 92-2201LFO, 1993 WL 30819 (D.D.C. 1993) (defendants were located in Maryland, and transactions at issue occurred in Maryland), attached as Exhibit 5; *Goodman v. U.S. Dep't of Housing and Urban Development*, No. 91-661, 1991 WL 125987 (D.D.C. 1991) (most defendants were located in Maryland and underlying facts occurred in Maryland), attached as Exhibit 6.

Finally, no delay will result, and no parties will be prejudiced by the transfer, because this case is in its initial stages—neither the Union nor UPS has filed a responsive pleading, and no scheduling order has been issued. *See Kafack*, 934 F. Supp. at 9 (“Since this case is in its earliest stages, there would be no delay associated with the Maryland district court’s having to familiarize itself with this case.”).

CONCLUSION

For the foregoing reasons, this case should be transferred to the United States District Court for the District of Maryland.

Respectfully submitted,

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