UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20078
Summary Calendar

ROBERT L. WILLIAMS,

Plaintiff-Appellant,

versus

METROPOLITAN TRANSIT AUTHORITY, et al,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

(CA-H-91-3725)

(September 29, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

In this appeal, the appellant, Robert L. Williams, proceeds pro se. Applying the most liberal construction to his brief before us, he only raises issues relating to his claim under section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C.

---

[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

§ 185, pursuant to which he alleged that the defendant, Metropolitan Transit Authority, breached the collective bargaining agreement and that the defendant, Transport Workers Union of America, AFL-CIO, Local 260, breached its duty of fair representation. On appeal, Williams fails to address his claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et. seq., which he raised in the district court below. These claims are therefore considered abandoned. See Brinkmann v. Dallas Counts Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Section 301 of the LMRA, 29 U.S.C. § 185(a), states: "[S]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States." (Emphasis added). The LMRA defines an "employer," for the purposes of § 301, as: "[I]nclud[ing] any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof." 29 U.S.C. § 152(2) (emphasis added).

Although there is no published opinion from this court on point, in an unpublished opinion, we have held that Metro is a "political subdivision" within the meaning of § 152(2); thus, jurisdiction does not attach under § 185. Harmon v. Metropolitan Transit Authority, et al., No. 94-20046 (5th Cir. July 15, 1994) (unpublished) (citing Nobles v. Metropolitan Transit Authority,

92-2931 (5th Cir. Jan. 11, 1994) (unpublished).[1] On this ground, Metro has made the requisite initial showing of entitlement to summary judgment as a matter of law. Williams has shown no other possible basis of federal court subject matter jurisdiction. He has thus failed to shoulder his summary judgment burden; he has not shown that Metro is not entitled to summary judgment as a matter of law.

We therefore affirm the dismissal of Williams's § 301 claim against Metro.

Regarding Williams's claim against the union, the union is not a statutory "labor organization" as defined by the LMRA: "[T]he term 'labor organization' means any organization of any kind . . . dealing with employers." 29 U.S.C. § 152(5) (emphasis added). The definition of a labor organization is tied to the definition of an employer for purposes of a § 301 claim. As previously noted, the district court lacked subject matter jurisdiction over Metro because it is not an "employer" within the meaning of the LMRA. Therefore, federal courts also lack subject matter jurisdiction over the Union regarding Williams's § 301 claim. The LMRA is the only jurisdictional basis Williams alleges regarding his claim against the Union. See Harmon, No. 94-20046, at 2: Felice v. Sever, 985 F.2d 1221, 1227 (3d Cir.), cert. denied, 113 S.Ct. 3338

[1]Copies of Harmon and Nobles are attached hereto. Our unpublished opinions constitute binding precedent. See Local Rule 47.5.

(1993) (holding that the absence of federal jurisdiction over a claim against an employer mandates that no federal subject matter jurisdiction exists over the employee's unfair representation claim). Therefore, the Union has made the requisite initial showing of entitlement to summary judgment as a matter of law. Williams has not met his summary judgment burden because he has failed to show that the Union is not entitled to summary judgment as a matter of law. We therefore affirm the dismissal of Williams's § 301 claim against the Union.

Finally, we have considered the other arguments raised by Williams and find them to be without merit. First, his ineffective assistance of counsel claim is meritless because he has no constitutional right to counsel with respect to any of the claims that are raised. Second, although Williams complains that the district court erred in failing to timely grant his motion to proceed pro se, such error, if any, is harmless because, in any event, summary judgment was proper since we lack subject matter jurisdiction. Finally, although Williams raises the question of the $1,000 sanction levied against him by the district court, he does so in his reply brief. We will not address issues raised for the first time in a reply brief. United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989). Assuming that Williams raised this issue in his reply brief only because Metro argued in its opening brief that Williams was foreclosed from arguing this issue, nevertheless the matter is not properly before

the court because it was raised for the first time on appeal. See Prince, 868 F.2d at 1386.

For the reasons stated herein, the judgment of the district court dismissing the complaint in this case is

A F F I R M E D.[2]

[2]Williams has filed both a motion for reinstatement of his job as a bus operator, and a supplement to that motion. The motion and the supplement are denied.