

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAN SICKMAN, et al. : CIVIL ACTION
: :
v. : :
: :
COMMUNICATIONS WORKERS OF : :
AMERICA, LOCAL 13000, et al. : NO. 99-5582

MEMORANDUM

Padova, J.

November , 2000

Before the Court are Plaintiffs’ Amended Petition for Attorneys’ Fees and Costs and Plaintiffs’ Motion to Voluntarily Dismiss. On November 10, 1999, Plaintiff Dan Sickman (“Sickman”), along with Steve P. Gramiak, Jr. and Edward P. Murray, filed a Complaint and Motion for Injunctive Relief against Defendants Communications Workers of America, Local 13000 (“Local 13000,” “Local,” or “Union”) and the individual members of the Union’s election committee (“Election Committee”) on behalf of himself and the purported class¹ of Union members who signed petitions nominating Sickman as a candidate for Local secretary-treasurer in the Union’s 1999 general officer election pursuant to Title I of the Labor-Management Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. § 411, and section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185. Plaintiffs claimed that Defendants violated their rights under Title I to vote and nominate candidates by refusing to place Sickman’s name on the ballot. Plaintiffs requested entry of an order directing Defendants to list Sickman as a candidate for the office of Local secretary-treasurer on the

¹The Court has not certified any class in this case.

election ballot and enjoining them from taking any action to remove him from the ballot.

On November 12, 1999, the parties entered into a Consent Order based on Plaintiffs' Motion for Injunctive Relief under which Defendants agreed to take the necessary administrative and clerical actions to ensure that the election could proceed in a timely fashion with Sickman listed as a candidate on the ballot. Following a hearing, the Court granted a preliminary injunction by Order dated November 16, 1999, directing Defendants to place Sickman on the ballot. Sickman ultimately lost the election, obtaining only fourteen percent of the overall vote. Defendants subsequently appealed the Court's Order granting Plaintiff's Motion for Injunctive Relief. The case was placed in civil suspense on April 5, 2000, pending issuance of the appellate decision. On August 4, 2000, the United States Court of Appeals for the Third Circuit affirmed the Court's Memorandum and Order of November 16, 1999, in an unreported opinion.

Following affirmance by the appellate court, the Court removed the case from civil suspense. In their Answer to Plaintiffs' Complaint, Defendants asserted a counterclaim alleging that Sickman abridged the Title I rights of his fellow Union members by accepting unlawful employer campaign contributions. On September 19, 2000, the Court granted Plaintiffs' Motion for Judgment on the Pleadings and dismissed Defendants' counterclaim for lack of subject matter jurisdiction.

Shortly after the Court granted preliminary injunctive relief in Plaintiffs' favor, Plaintiffs moved for attorneys' fees in the amount of \$25,890.00, and costs totaling \$3,726.10. Pursuant to the Court's directive, Plaintiffs submitted an Amended Petition for Attorneys' Fees and Costs on October 10, 2000, requesting \$55,319.63 in fees and \$1,362.53 in costs. Defendants have filed

several responses and briefs regarding Plaintiffs' request for attorneys' fees and costs.² The matter is now ripe for decision. For the reasons that follow, the Court will grant the Amended Petition while deferring a decision on the amount of counsel fees to be awarded pending a hearing. Plaintiffs further request dismissal of the claims asserted in their Complaint as moot. The Court agrees and will dismiss Plaintiffs' underlying counts.

I. DISCUSSION

In the absence of a fee-shifting statute, courts generally follow the American rule that each party bear its own costs. Polonski v. Trump Taj Mahal Assoc., 137 F.3d 139, 146 (3d Cir. 1998). Although Title I of the LMRDA does not provide for an award of attorneys' fees, district courts, in limited circumstances, may order payment of a successful plaintiff's attorneys' fees and costs in actions to vindicate Title I rights pursuant to the common benefit doctrine. Hall v. Cole, 412 U.S. 1, 8 (1973); Pawlak v. Greenawalt, 713 F.2d 972, 975 (3d Cir. 1983). The justification for permitting fee-shifting under the LMRDA is two-fold. First, a union member's vindication of his or her Title I rights of participation in union affairs "necessarily render[s] a substantial service to his union as an institution and to all its members." Hall, 412 U.S. at 8; Pawlak, 713 F.2d at 975. Second, directing the union to pay attorneys' fees shifts the cost of the litigation to the class benefitted by the litigation. Pawlak, 713 F.2d at 975.

The common benefit doctrine applies when "the plaintiff's successful litigation confers 'a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over

²Defendants, by letter dated November 9, 2000, have requested that Plaintiffs' Reply to Defendants' Supplemental Memorandum of Law in Opposition to Plaintiffs' Amended Petition for Attorneys' Fees be stricken as untimely. The Court declines to do so. Plaintiffs requested a continuance on the deadline set forth in the Court's Order dated October 19, 2000 that the Court granted.

the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.” Hall, 412 U.S. at 5. Accordingly, a claimant may only recover fees and costs where he is the prevailing party and the lawsuit provided a common benefit to all union members. Ruocchio v. United Transp. Union, Local 60, 181 F.3d 376, 388 (3d Cir. 1999). Defendants dispute both whether Plaintiffs have sufficiently prevailed to justify the award of attorneys’ fees or provided a common benefit to all Union members. For the following reasons, the Court determines that Plaintiffs have satisfied both elements and are entitled to counsel fees.

A. Prevailing Party

A prevailing party is “one who has succeeded on any significant claim affording it some of the relief sought.”³ Texas State Teachers Assoc. v. Garland Indep. Sch. Dist., 489 U.S. 782, 791 (1989). The claimant, therefore, must show that he achieved actual relief that materially altered the legal relationship of the parties and that the lawsuit was a material contributing factor in bringing about the desired relief. Id. at 792-93; Watson v. Southeastern Pa. Transp. Auth., 207 F.3d 207, 224 (3d Cir. 2000); Ruocchio, 181 F.3d at 388. Relief materially alters the legal relationship between the parties when it modifies the defendant’s behavior in a way that directly benefits the plaintiff. Farrar v. Hobby, 506 U.S. 103, 111-12 (1992).

The Court concludes that Plaintiffs achieved the primary relief requested in the original Complaint through issuance of the preliminary injunction. Plaintiffs primarily sought to compel

³The following standard is necessarily gleaned from cases discussing the concept of a “prevailing party” within the context of a variety statutes because caselaw specific to the award of attorneys’ fees under the LMRDA is sparse. A variety of statutes that permit recovery of attorneys’ fees use an identical standard for determining prevailing party status. Cases analyzing the concept in other contexts, therefore, provide valuable guidance in the present case. See Pottgen v. Missouri State High Sch. Activities Assoc., 103 F.3d 720, 723 (8th Cir. 1997).

Defendants to place Sickman's name on the ballot for the election. (Compl. at 17-18.) The Court ordered precisely this relief. See Sickman v. Communications Workers of Am., Local 13000, No. 99-5582, 1999 WL 1045145, at *7 (E.D. Pa. Nov. 16, 1999), aff'd --- F.3d --- (3d Cir. Aug. 4, 2000)(“Defendants are ordered to take any and all administrative and/or clerical actions as necessary to ensure that the name of Dan Sickman is listed for the office of Local Secretary-Treasurer of the Communications Workers of America, Local 13000, on the ballots that are to be distributed on or about November 16, 1999.”) . This relief clearly materially affected the relationship between the parties since it altered the status quo and significantly modified Defendants' treatment of Sickman's candidacy in Plaintiffs' favor.

The Court rejects Defendants' argument that Plaintiffs are not entitled to receive attorneys' fees because the Court did not decide whether Sickman was an eligible candidate. The LMRDA does not permit courts to determine the eligibility of union electoral candidates. See 29 U.S.C. § 483 (1994); Local No. 82 Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers v. Crowley, 467 U.S. 526, 539 (1984). Plaintiffs' failure to win a favorable ruling from the Court on an issue that the Court is statutorily barred from adjudicating cannot be a basis for denying them prevailing party status. Similarly, Defendants' assertion that the Election Committee's subsequent decision that Sickman was ineligible precludes him from being the prevailing party in this suit is misplaced. 'Prevailing party' under the common benefit doctrine necessarily means prevailing with respect to the issues adjudicated in the lawsuit. This Court could neither determine Sickman's eligibility nor review the Election Committee's decision. See 29 U.S.C. § 482 (1994); Crowley, 467 U.S. at 539. Decisions by outside parties made subsequent to the effective resolution of the suit do not alter the actual favorable relief that Plaintiffs achieved through the suit, namely

enabling the Union membership to have the opportunity to vote for a person who timely submitted the requisite number of nominating petitions under the rules established by the Election Committee. To condition the Court's exercise of discretion in the award of attorneys' fees on subsequent decisions that the Court lacks power to review made by persons over whom the Court has no control would effectively preclude the award of fees in any LMRDA Title I case that also implicates a Title IV question. Such an outcome would hamper plaintiffs asserting violation of their Title I rights from litigating their case in court and would subvert the United States Supreme Court's clear intent to permit fee-shifting in Title I cases that convey a substantial common benefit. See Hall, 412 U.S. at 13 ("It is difficult for individual members of labor unions to stand up and fight those who are in charge. The latter have the treasury of the union at their command and the paid union counsel at their beck and call while the member is on his own. . . . An individual union member could not carry such a heavy financial burden. Without counsel fees the grant of federal jurisdiction is but a gesture for few union members could avail themselves of it," quoting Cole v. Hall, 462 F.2d 777, 780-781 (2d Cir. 1972)). The Court, therefore, concludes that Plaintiffs achieved, through the lawsuit, actual relief that materially altered the legal relationship of the parties.

To gain prevailing party status, the claimant need not have achieved relief in the form of a final judgment. See Garland, 489 U.S. at 792. Courts have held that a grant of preliminary injunctive relief made on the merits is sufficient to qualify a plaintiff as a prevailing party when the action becomes moot prior to final adjudication. See e.g., Haley v. Pataki, 106 F.3d 478, 483 (2d Cir. 1997); Bisciglia v. Kenosha Unified Sch. Dist. No. 1, 45 F.3d 223, 230 (7th Cir. 1995)(citation omitted); Dahlem v. Board of Educ., 901 F.2d 1508, 1512 (10th Cir. 1990); Taylor v. City of Fort Lauderdale, 810 F.2d 1551, 1557-8 (11th Cir. 1987); Grano v. Barry, 783 F.2d 1104, 1109 (D.C. Cir.

1986); Hyundai Motor Am. v. J.R. Huerta Hyundai, Inc., 775 F. Supp. 915, 918-19 (E.D. La. 1991); see generally McGrath v. County of Nevada, 67 F.3d 248, 251-52 (9th Cir. 1995); Chu Drua Cha v. Levine, 701 F.2d 750, 751 (8th Cir. 1983); Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 339 (5th Cir. 1981). Such is the case here. The preliminary injunction entered in this case involved an analysis of the merits of Plaintiffs' case, namely whether Sickman had complied with the necessary nomination procedures. See Sickman, 1999 WL 1045145, at *5. The Court specifically found, based on facts in the record, that Plaintiffs would reasonably likely prove that a sufficient number of union members "signed petitions nominating Sickman to the office of Local Secretary-Treasurer and that those petitions were faxed to the union headquarters in a timely fashion in conformity with the rules set out by the election committee." Id.

The Court is barred from revisiting the issues determined in the preliminary injunction by operation of the statutory framework of the LMRDA. The LMRDA contains an exclusivity provision that federal courts interpret as barring Title I relief once an union election is completed. Crowley, 467 U.S. at 541; Sickman, 1999 WL 1045145, at *4. The Local 13000's November 16, 1999, election has been over for nearly one year. This Court, therefore, now lacks subject matter jurisdiction over the Title I claims originally asserted in the Plaintiffs' Complaint.

Furthermore, the original controversy presented by the Complaint, whether Sickman was properly nominated as a candidate in the Union election, is constitutionally moot. Under Article III of the United States Constitution, a federal court may only adjudicate actual, ongoing controversies. Honig v. Doe, 484 U.S. 305, 317 (1988). The plaintiff's claim must be live not only when the case is initially filed, but throughout the entire litigation. Id.; Lusardi v. Xerox Corp., 975 F.2d 964, 974 (3d Cir. 1992). The Constitution requires a legal controversy: (1) that is real and not hypothetical,

(2) that affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and (3) that has sufficiently adverse parties so as to sharpen the issues for judicial resolution.” International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers v. Kelly, 815 F.2d 912, 915 (3d Cir. 1987). The touchstone, therefore, for mootness is the existence of a “real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” Id. The mootness doctrine additionally incorporates prudential considerations, including the availability of effective relief. Id.

Given that the election is over and Sickman failed to win a majority of the membership vote, any reevaluation of the Plaintiffs’ proof of submission of the requisite number of nominating petitions would have no practical impact on the parties with respect to the Union election. See Ruocchio, 181 F.3d at 383 (defining mootness as whether the decision of the dispute continues to be justified by sufficient prospect that it will have impact on the parties). No other live issues, save Plaintiffs’ request for attorneys’ fees, remain in the case. Contrary to Defendants’ assertion, the filing of a petition for attorneys’ fees “is insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim.” Lewis v. Continental Bank Corp., 494 U.S. 472, 480 (1990).⁴ Because of the LMRDA’s exclusivity provision and the resultant lack of a live controversy, the Court may not hold a final adjudication of the merits of Plaintiffs’ claims.⁵

⁴Expiration of the underlying claim, however, does not moot a controversy over incurred attorneys’ fees. Dahlem, 901 F.2d at 1511; Bliss v. Holmes, 867 F.2d 256, 258 (6th Cir. 1988); United States v. Ford, 650 F.2d 1141, 1143-44 (9th Cir.), cert. denied, 455 U.S. 942 (1982). The Court, therefore, will continue to consider Plaintiffs’ Amended Petition for Attorneys’ Fees.

⁵For this reason, the Court grants Plaintiff’s Motion for Voluntary Dismissal.

Since the preliminary injunction obtained actual relief that materially altered the legal relationship between the parties and was granted based upon the merits, and the action is now moot preventing final adjudication of Plaintiffs' claims, the Court concludes that Plaintiffs are the prevailing party in this suit.

B. Common Benefit

The common benefit doctrine requires demonstration that the plaintiff conferred a substantial benefit to members of an ascertainable class. Polonski v. Trump Taj Mahal Assoc., 137 F.3d 139, 145 (3d Cir. 1998). "The mere vindication of a legal right by one class member is not necessarily a substantial benefit that would trigger the application of the doctrine." Polonski, 137 F.3d at 146. Rather, a benefit is substantial where it "not only corrects an abuse prejudicial to an essential right, but also impacts the future conduct of the defendant's affairs." Id. at 147. The court must further ensure that the costs are proportionally spread among the class benefitting from the claimant's suit. Id. Accordingly, in addition to finding a substantial benefit, the court must inquire whether (1) the benefits may be traced with some accuracy; (2) the class of beneficiaries are readily identifiable; and (3) there is a reasonable basis for confidence that the costs may be shifted with some precision to those benefitting. Id. at 145. Under this standard, the Court determines that Plaintiffs have conferred a substantial common benefit sufficient to justify awarding attorneys' fees.

Plaintiffs' suit brought several substantial benefits to the readily identifiable class comprising the members of the Local 13000. On an abstract level, Courts uniformly recognize that litigation that vindicates a free speech right under the LMRDA, "necessarily render[s] a substantial service to [the] Union as an institution and to all of its members." Hall, 412 U.S. at 8; Polonski, 137 F.3d at 147. As indicated in the Court's prior Order, the lawsuit vindicated the Title I rights of the broad

membership to nominate candidates and vote for candidates who were duly nominated. See Sickman, 1999 WL 1045145, at *4 (“The facts of this case clearly implicate the right of union members to nominate candidates, vote for such candidates, and be free from discriminatory disqualification. If Sickman's name is left off the ballot and he did in fact submit over 463 valid signatures to the election committee, then these union members who nominated Sickman would be deprived of their equal right to nominate and vote, rights guaranteed by Title I.”). The Court rejects Defendants’ contention that the litigation has not conferred a substantial, common benefit upon the Local members since the Election Committee nonetheless found that Sickman was not a qualified candidate and he ultimately received only fourteen percent of the votes. Sickman’s ultimate success or lack thereof in the election, as well as any subsequent determinations of his qualification as a candidate, are irrelevant.⁶ The critical benefit that the membership received was the opportunity to vote for or against Sickman, a person who submitted the requisite number of nominating signatures in conformity with the rules established by the Election Committee, and the preservation of the results of that vote in case Sickman was later found to be a qualified candidate either by the Election Committee or the Secretary of Labor in accordance with Title IV. Neither the membership’s nor the Election Committee’s subsequent and independent decisions with respect to voting or Sickman’s qualifications diminish the importance or existence of the above-stated benefits.

Furthermore, as a result of the instant litigation, Defendants have clarified the rules for the submission of nominating petitions applicable to future elections. Clear rules in this respect provide

⁶This is especially true since the LMRDA prevents courts from determining whether candidates are indeed qualified. Crowley, 467 U.S. at 539; 29 U.S.C. § 482(a) (1994).

a substantial benefit to every Union member.⁷ See Polonski, 137 F.3d at 147 (finding a benefit to be substantial where it impacts the future conduct of the defendant's affairs). Sickman's personal motivation and interest in gaining access to the election ballot does not diminish the substantiality of the widespread benefit. See Pawlak, 713 F.2d at 980. The lawsuit, therefore, conferred a substantial benefit upon a readily identifiable class by correcting an abuse prejudicial to the exercise of the essential Title I rights of the Union membership to nominate and vote for candidates, and impacting the future conduct of Union elections. Only by awarding attorneys' fees against the Union does the cost of the litigation shift to those who reaped its benefits. See Pawlak, 713 F.2d at 975. Plaintiffs, therefore, have satisfied the elements of the common benefit doctrine.

II. CONCLUSION

Having determined that Plaintiffs are the prevailing party in the instant suit and the suit provided a common benefit to all union members, the Court concludes that Plaintiffs are entitled to reasonable attorneys' fees. Accordingly, the Court grants Plaintiffs' Amended Petition for Attorneys' Fees but defers ruling on any challenges to the reasonability of the claimed hours pending a hearing to be scheduled in the near future. Plaintiff may also file a supplemental petition with the Court on or before November 27, 2000. The Court further grants Plaintiffs' Motion for Voluntary Dismissal because Plaintiffs' underlying claims are moot. The Court, however, retains jurisdiction to adjudicate Plaintiff's Amended Petition for Attorneys' Fees. An appropriate Order follows.

⁷Defendant suggests that because the new rules will prohibit facsimile submission of nominating petitions, the Union membership is actually hurt by Plaintiffs' suit. The Court disagrees. The new rules will nonetheless prevent the type of discriminatory disqualification resulting from the loose procedures employed in the 1999 election. Every Union member who wishes to properly nominate candidates will benefit from a clarification of the rules, even if the rules are restrictive.

