

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

RENE RUPP and	:	CIVIL ACTION
DAVID SMYTH,	:	
Plaintiffs,	:	
	:	
V.	:	
	:	
COMMUNICATION WORKERS OF	:	
AMERICA, LOCAL 13000,	:	
JOSEPH CLINTON, and	:	
MICHAEL McNALLY,	:	
Defendants	:	NO. 97-6110

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs Rene Rupp and David Smyth claim that defendants Communications Workers of America, Local 13000 ("Local 13000"), Joseph Clinton, and Michael McNally are violating their right to free speech and assembly under Title I of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 411 et seq. Plaintiffs contend that defendants are retaliating against Ms. Rupp by prosecuting her in a union trial scheduled for October 14, 1997. According to plaintiffs, Ms. Rupp is being tried on a trumped-up charge in retaliation for her political opposition to the current officers of Local 13000. Plaintiffs' claim is that such retaliatory prosecutions infringe upon and chill the free speech of the plaintiffs and other union members who may fear similar retaliation for voicing opposition to political incumbents. Plaintiffs seek a preliminary injunction to enjoin the trial from proceeding on October 14, 1997.

Based on the preliminary injunction hearing on October 9, 1997, at which time this Court considered the evidence, the testimony of the witnesses, and the arguments of counsel, this

Court makes the following findings of fact and conclusions of law and accordingly grants plaintiffs' motion.

FINDINGS OF FACT

1. Plaintiff Rene Rupp is a member of Local 13000. Plaintiff is also currently the President of Unit 41 of Local 13000.
2. Defendant Local 13000 is a labor organization within the meaning of the LMRDA which represents communications workers. Defendant Joseph Clinton is currently the President of Local 13000. Defendant Michael McNally is currently the prosecutor appointed by Local 13000 to prosecute Ms. Rupp in relation to the charge filed against her by Debra Baker. Mr. McNally is politically allied with Mr. Clinton.
3. Plaintiff has been and is an active supporter of a slate of candidates, led by Joseph Gallagher, who ran against the current incumbents, led by Mr. Clinton. This election was held in November 1996, and plaintiff actively campaigned for Mr. Gallagher's slate prior to the election. Mr. Gallagher's slate won the election, but the election was overturned and a second election held in which the current incumbents, led by Mr. Clinton, were voted in.¹
4. On October 22, 1996, the month preceding the first election, Debra Baker, a member of Local 13000, filed a charge against

¹ In fact, the two elections are the subject of another suit before this Court, Herman v. Communications Workers of America, Local 13000, No. 97-4619, in which the Secretary of Labor is suing Local 13000 to have the winners of the first election--Mr. Gallagher's slate--installed into office. Suffice it to say that the elections were and are still hotly contested.

plaintiff for violation of Article XIX, Section 1 of the CWA Constitution.

5. According to the current administration, Ms. Baker's charge was deemed to be properly filed under Local 13000 procedures, and Michael McNally was appointed as the prosecutor to investigate and prosecute the charge against plaintiff.

6. Mr. McNally has been a prosecutor in four other trials since 1994. Three of these involved members who were politically opposed to Mr. Clinton. These members were charged under the same constitutional provision under which plaintiff in this case was charged.

7. Article XIX Section 1 of the CWA Constitution, under which plaintiff was charged, provides that members may be fined, suspended, and/or expelled for offenses "which tend to bring the Union or Local thereof into disrepute."

8. The alleged act which purportedly brought the Union or Local into disrepute was the "turning in" of another member. In essence, Ms. Baker charged plaintiff with bringing the Union or the Local into disrepute because plaintiff allegedly reported to a supervisor that Ms. Baker had gone through the supervisor's desk. This is considered to be "turning in" a member.

9. Ms. Baker was never disciplined or written up for any acts that plaintiff allegedly turned her in for.

10. Nevertheless on September 3, 1997, Mr. McNally, as prosecutor of the charge filed by Ms. Baker, specifically found that, after investigation, Ms. Baker's charge had merit and

therefore recommended to President of Local 13000, Joseph Clinton, that a trial be scheduled.

11. By the admission of both Mr. McNally and Mr. Clinton, the "turning in" of one member by another member to management for wrongful acts constitutes a chargeable offense under Article XIX Section 1 of the CWA Constitution. This Court takes "turning in" to mean that one union member is being disloyal to another or to the union itself. According to Mr. McNally, even if a union member turns another member in for stealing from his employer, the second member can turn around and institute a union charge against the first member for bringing the union into disrepute.

12. The only trials in which members have been prosecuted pursuant to this constitutional provision have been those involving members who were or are politically opposed to Mr. Clinton and his slate.

13. Dan Sickman, a member of Local 13000 who was openly critical of the Clinton administration, was twice tried under this provision. He was found guilty both times and expelled from the union.

14. Charles Heald, a member of Local 13000 and also a critic of the Clinton administration, was also tried under this provision. He was found guilty and lost his position as a Unit Representative.

15. Plaintiff's trial has been scheduled for October 14, 1997. The trial chairman will be Mr. Clinton. Under union bylaws he may take part in the deliberations of the jury though he may not

vote.

16. Upon learning that charges had been filed against her, plaintiff felt she was vulnerable to "elimination." She instituted the present action on September 29, 1997 seeking injunctive relief.

DISCUSSION²

Initially, defendants argue that this Court should not exercise jurisdiction over this case because plaintiff failed to exhaust her internal union remedies pursuant to § 411(a)(4) of the LMRDA. It is well established that whether or not a plaintiff is required to exhaust her internal remedies under this section is within the discretion of the trial court. Semancik v. United Mine Workers of America, 466 F.2d 144, 150 (3d. Cir. 1972). In particular, when the internal structure of the union appears to be controlled by those whom the plaintiff opposes, exhaustion has been deemed to be futile and contrary to the purposes of the LMRDA. Id. at 151. This Court is satisfied that to send plaintiff back to the union's internal appeals process would not only be futile, but would result in irreparable harm to plaintiff and to other union members whose speech may be chilled in the meantime. Thus we come to the issue of the preliminary injunction.

A preliminary injunction is properly issued when, on balance, the following factors weigh in favor of the movant:

² To the extent any statement in this section constitutes a finding of fact, it is adopted as such.

(1) the likelihood of success that the plaintiff will prevail on the merits at the final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is issued; and (4) the public interest.

New Jersey Hosp. Ass'n v. Waldman, 73 F.3d 509, 512 (3d Cir.

1995). After reviewing the evidence submitted in this case, this Court concludes that plaintiffs have demonstrated that a preliminary injunction is warranted.

To begin, the plaintiffs have demonstrated to the satisfaction of this Court a likelihood of success on the merits because the constitutional provision under which Ms. Rupp is being prosecuted, though in and of itself not prohibitive of speech, is nevertheless a restraint on free speech as applied. The LMRDA contains a bill of rights, so to speak. It states, in pertinent part,

(2) Freedom of speech and assembly

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § 411(a)(2).

The CWA constitutional provision under which plaintiff is being prosecuted allows a charge to be lodged against a member

who brings the union into "disrepute." In and of itself this Court finds nothing wrongful about this provision, and in fact it would appear that this provision fits into the above statutory proviso allowing unions to adopt and enforce rules regarding the responsibility of its members toward the union. However, upon hearing testimony in open court, this Court finds that this provision, as applied, wrongfully infringes upon the free speech rights of plaintiff and others. Defendants McNally and Clinton have openly admitted to this Court that this particular provision is used to charge members who "turn other members in." In the opinion of this Court, such an application is blatantly contrary to public policy. But more significantly, the exclusive application of this provision to union members who are politically critical or opposed to the current incumbents smacks of retaliatory motive. Although this constitutional provision is not being used directly to control or restrain speeches or assemblies by union members, the suspiciously limited circumstances and the generally suspicious circumstances in which it is applied leads to the same result. In effect, this provision is being used to bring political dissidents to trial, and though the charge lodged against these persons is not speech-related, the effect of such retaliatory prosecution may well chill free speech. Members who are thus charged and tried may lose their office and even be expelled from the union, as in the case of Dan Sickman. Such a practice could well chill the speech of the persons so charged as well as the speech of other members

who may fear similar retaliation for voicing opposition to the incumbents.

This Court notes that in plaintiff's case a fellow member, not an officer, brought the charge, and that the charge pertained to workplace conduct, not campaign conduct. However, the Court also notes that discretion to proceed with trial was vested in Mr. McNally and Mr. Clinton, men whom plaintiff was politically aligned against. Although this Court does not reach the merits of the union charge pending against plaintiff, all the circumstances surrounding it, and comparisons to other similar cases, draw this Court's suspicion and ultimate conclusion that the decision to bring plaintiff to trial was politically motivated. As such, the internal trial process appears to be used and manipulated to retaliate against political dissidents. As this Court is persuaded at this juncture that these union trials based on Article XIX Section 1 of the CWA Constitution are selectively allowed against political opponents of the incumbents and that such trials may chill the free expression of political dissent, this Court concludes that plaintiffs have a good probability of success on the merits.

Next, the Court finds that plaintiffs will be irreparably harmed if this Court does not enjoin the upcoming trial. The loss of free speech rights, even for a minimal amount of time, constitutes irreparable injury. Elrod v. Burns, 427 U.S. 347, 373 (1976). Defendants, however, argue that plaintiff will not suffer irreparable harm if her trial is permitted to

proceed because she may win at the trial and because the possibility of any harm to plaintiff is only speculative at this point. However, in Mallick v. International Brotherhood of Electrical Workers, 644 F.2d 228, 235 (3d Cir. 1981), the Third Circuit found that the "right to speak one's views freely is so fundamental that the spectre of punishment . . . is injurious as well." The Court went on to quote the United States Supreme Court in Dombrowski v. Pfister, 380 U.S. 479, 487 (1965), stating that "the chilling effect upon the existence of First Amendment rights may derive from the fact of prosecution, unaffected by the prospects of its success or failure." Mallick, 644 F.2d at 235-36. Because this Court finds that union prosecutions under Article XIX Section 1 of the CWA Constitution are brought only against political dissidents, this Court concludes that plaintiff will be irreparably harmed if her trial is allowed to proceed in that her dissident speech will be chilled.

On the other hand, defendants will not be subjected to any irreparable harm, as far as this Court can foresee, if the preliminary injunction is granted. Though defendants argue that they will be harmed to the extent that the union's internal procedures will be frustrated, this Court finds that in the balance of injuries, injury to plaintiff's rights outweighs whatever frustration the union may suffer as a result of holding off on plaintiff's trial. Additionally, the Court notes that only a preliminary injunction has issued and that a final hearing on the merits of the case will be scheduled shortly to provide

the parties and the Court with an opportunity to more fully consider the issues at stake in this case.

Finally, in the opinion of this Court, the granting of the preliminary injunction is in the public interest because the public is harmed by politically motivated prosecutions selectively brought against union members who are opposed to incumbent union leaders, the effect of which is to chill the free expression of views and arguments regarding union leaders and elections.

CONCLUSIONS OF LAW

1. In its discretion this Court finds that plaintiff need not exhaust her internal remedies as the politically-charged atmosphere of Local 13000 would render such exercise futile.

2. This Court finds that plaintiff has shown a likelihood of success on the merits.

3. This Court finds that plaintiff will be irreparably harmed if the trial scheduled for October 14, 1997 is not enjoined in that her rights as well as the rights of other union members to free speech and assembly will be chilled.

4. This Court finds that enjoining the same trial will not harm defendants.

5. Finally, this Court finds that the public interest supports the enjoining of prosecutions that are motivated by political reasons and whose effect would be to chill the free speech rights of political dissidents in labor unions.

Based on the foregoing, the Court grants plaintiff's motion for a preliminary injunction. An appropriate Order follows.

Clarence C. Newcomer, J.