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

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| GWENDOLYN LANE, | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| LOCAL UNION 2-286, | : | |
| Defendant. | : | NO. 04-cv-1763 |

**MEMORANDUM and ORDER**

JULY 19, 2005

PRATTER, DISTRICT JUDGE

I. INTRODUCTION

In this matter, Plaintiff Gwendolyn Lane filed a Complaint, *pro se*, against her former union, PACE 2-286 (the "Union") arising out of her termination from employment with her former employer, Packaging Coordinators, Inc. ("PCI"). Ms. Lane's employment was terminated in September 2002. She filed the instant action against the Union on May 19, 2004 (hereinafter, the "Union Complaint"). As discussed more fully below, Ms. Lane previously filed a complaint against her former employer, PCI (hereinafter, the "PCI Complaint"). See Lane v. Packaging Coordinators, Inc., 2004 WL 569525 (E.D.Pa. Mar. 22, 2004). Defendant Union filed a Motion to Dismiss Ms. Lane's Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6),[1] based on the legal theory

[1] In pertinent part, Fed.R.Civ.P. 12(b)(6) states:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion [ . . .] (6) failure to state a claim upon which relief can be granted . . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to

that Ms. Lane's Complaint fails to state a claim upon which relief can be granted. In other words, the Union is arguing that Ms. Lane's case should be dismissed because, at the time she filed her Union Complaint, the time for filing all of the claims contained therein had expired.

The Union Complaint is not artfully pled, presumably because Ms. Lane did not engage legal representation prior or subsequent to the filing of the Union Complaint, and, after two lengthy attempts, the Clerk of Court was unable to locate counsel willing to assist Ms. Lane with her claims. See Order dated May 19, 2004 (Docket No. 3) and Order dated May 2, 2005 (Docket No. 13). Giving the Union Complaint an indulgent and expansive reading, and assuming in the first instance that Ms. Lane's claim against the Union is one for failing to properly represent her in connection with her employment termination difficulties, the statute of limitations for a claim against one's union is six months. See DelCostello v. Int'l Brotherhood of Teamsters, 462 U.S. 151, 169, 172 (1983). Thus, Ms. Lane's Union Complaint, filed more than 19 months following her termination, is untimely and must be dismissed.

Alternatively, Ms. Lane's Union Complaint includes language alleging unlawful discrimination by the Union on the basis of her age, race, or gender.[2] Nevertheless, Ms. Lane, prior to bringing her discrimination claims in this Court, failed to comply with the applicable administrative prerequisites by first filing a complaint with either the Equal Employment Opportunity Commission (the "EEOC") or the Pennsylvania Human Relations Commission (the

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> state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

[2] In fact, these allegations are not contained within the four corners of the Union Complaint, but, rather, included within Ms. Lane's Motion to Proceed *In Forma Pauperis* (Docket No. 1). Nonetheless, this Court has given all of Ms. Lane's filings an indulgent and expansive reading.

"PHRC"). Ms. Lane admitted that she did not attempt to make such a filing. See Pretrial Conference Transcript, April 28, 2005 at 10 (Docket No. 14) (hereafter, "Transcript").[3] Moreover, the time for filing either complaint has long come and gone.

Finally, even if Ms. Lane's Union Complaint could be construed to be consistent with the requirements of 42 U.S.C. § 1981, Ms. Lane conceded during the lawsuit initiated by the PCI Complaint that she never contested her termination by filing a formal grievance protesting the discharge.[4] See Packaging Coordinators, 2004 WL 569525 at *1 & f.3 ("By her own admission, Lane never filed a grievance, and we must therefore dismiss this action."). The Court takes judicial notice of this fact. In the instant matter, Ms. Lane now alleges that she notified her union representative, however, Ms. Lane never actually filed a grievance. See Transcript at 10-11. As discussed below, Ms. Lane's failure to file a grievance within five (5) days of her termination and her failure to sue the Union within six (6) months must result in the dismissal of Ms. Lane's Union Complaint.

Therefore, for the reasons set out more fully below, Ms. Lane's Union Complaint is dismissed with prejudice. In summary, however, because Ms. Lane's time to file a grievance or for administrative relief expired long ago, and only after requesting such administrative relief can a federal lawsuit ripen, as a matter of law, this Court cannot grant the relief Ms. Lane has requested.

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[3] On July 15, 2005, Ms. Lane filed a Motion in Response to the Defendant's Reply (Docket No. 19) alleging that her "Union Rep [said] that he would file a Grievance and a Complaint to E.E.O.C. Equal Opportunity Commission on her behalf, but failed to do so." Unfortunately, this new allegation does not change the analysis contained herein.

[4] Ms. Lane's failure to file a grievance dooms her entire lawsuit. As discussed below, in order to bring claims arising out of an alleged breach of a collective bargaining agreement, a plaintiff must first exhaust the administrative prerequisites contained in the collective bargaining agreement by utilizing the grievance procedures contained in that agreement.

Furthermore, because the applicable statutes of limitations expired long before Ms. Lane filed either of her complaints, she may not file another complaint with regard to the facts and issues contained within either the PCI Complaint or the Union Complaint.

## II. STATEMENT OF FACTS[5]

Gwendolyn Lane is a former employee of Packaging Coordinators ("PCI"). At the time of Ms. Lane's employment, PCI employees worked under a collective bargaining agreement between PCI and the Union (the "CBA"). (See Ex. C to Def. Motion). Ms. Lane was a member of the Union. (See Union Complaint) (Docket No. 4). In September 2002, PCI terminated Ms. Lane. (Union Complaint). Pursuant to the CBA, Ms. Lane did not file a grievance with the Union protesting her termination. See Transcript at 10; Packaging Coordinators, 2004 WL 569525 at *1. The collective bargaining agreement between PCI and the Union requires that such grievances be filed within five (5) days of the event giving rise to the grievance. (CBA, Def. Ex. C at 17).

Ms. Lane filed a *pro se* complaint against PCI on January 27, 2003 (the "PCI Complaint"). (Def. Ex. A). In response, PCI, through counsel, filed a motion to dismiss, and Ms. Lane filed a response to that motion. On March 22, 2004, Judge Dalzell granted PCI's motion and dismissed the prior complaint in its entirety. This action followed.

By filing the instant Union Complaint, Ms. Lane alleges that after she was terminated by PCI, "Local Union 2-286 failed to protect my rights under the union contract after I paid my union dues

[5] These facts are gleaned from the following: Ms. Lane's Union Complaint; the admissions contained within Ms. Lane's prior PCI Complaint, filed on January 27, 2003, see (Ex. A to Def. Motion); the March 22, 2004 Memorandum and Order issued by the Honorable Stewart Dalzell with regard to Ms. Lane's prior Complaint, Packaging Coordinators, 2004 WL 569525 (Ex. B to Def. Motion); and the relevant portions of the Collective Bargaining Agreement (the "CBA") between the Union and PCI (Ex. C to Def. Motion).

on time each and every month." (Union Complaint) (Docket No. 4).

III. ARGUMENT

**A. Standard of Review**

The Union argues that, pursuant to Fed.R.Civ.P. 12(b)(6), Ms. Lane's Union Complaint should be dismissed for failure to state a claim upon which relief may be granted. In order to dismiss the complaint under Rule 12(b)(6), the Court may only look to the facts alleged in the complaint and whatever documents have been attached to it. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F. 3d 1251, 1261 (3d Cir. 1994). All factual allegations in the complaint must be accepted as true and all reasonable inferences from the complaint must be viewed in a light most favorable to the non-moving party. See General Motors Corp. v. New A Chevrolet, Inc., 263 F.3d 296, 325 (3d Cir. 2001). While a court need not accept as true "unsupported conclusions and unwarranted inferences," it should deem the complaint to have alleged sufficient facts if it adequately provides defendants with notice of the essential elements of the plaintiff's claims. See Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). "The court may dismiss the complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

**B. The Complaint is Untimely.**

In her Union Complaint, Ms. Lane contends that after she was terminated, the Union "failed to protect my rights under the union contract." Lane was terminated in September 2002, and filed this action on April 7, 2004, some 19 months later. In DelCostello v. Int'l Brotherhood of

Teamsters, 462 U.S. 151 (1983), the Supreme Court addressed the question of the statute of limitations and how it is to be applied with regard to a lawsuit brought by an employee against her employer and union, alleging a breach of the collective bargaining agreement by the employer and a breach of the duty of fair representation by the union, resulting from the alleged mishandling of the ensuing grievance and arbitration proceeding. The DelCostello Court recognized that, as a threshold matter, such a lawsuit, as a formal matter, comprises two distinct causes of action. Id. at 164.

> It has long been established that an individual employee may bring suit against his employer for breach of a collective bargaining agreement. Smith v. Evening News Assn., 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962). *Ordinarily*, however, an employee is required to attempt to exhaust any grievance or arbitration remedies provided in the collective bargaining agreement. Republic Steel Corp. v. Maddox, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed.2d 580 (1965); cf. Clayton v. Automobile Workers, 451 U.S. 679, 101 S.Ct. 2088, 68 L.Ed.2d 538 (1981) (exhaustion of intra-union remedies not always required). Subject to very limited judicial review, he will be bound by the result according to the finality provisions of the agreement. See W.R. Grace & Co. v. Local 759, --- U.S. ----, at ----, 103 S.Ct. ----, at ----, 75 L.Ed.2d ----; Steelworkers v. Enterprise Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). In Vaca [v. Sipes, 388 U.S. 171 (1967)] and Hines [v. Anchor Motor Frieght, Inc., 424 U.S. 554 (1976)], however, we recognized that this rule works an unacceptable injustice when the union representing the employee in the grievance/arbitration procedure acts in such a discriminatory, dishonest, arbitrary, or perfunctory fashion as to breach its duty of fair representation. *In such an instance*, an employee may bring suit against both the employer and the union, notwithstanding the outcome or finality of the grievance or arbitration proceeding.

Id. at 163-64 (citations omitted) (emphasis added). The facts here are distinguishable from the Supreme Court's description of the typical scenario. Here, Ms. Lane filed neither a grievance nor a lawsuit within the required limitations period(s).

A lawsuit against one's employer necessarily rests and relies upon Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185 (the "LMRA"). DelCostello, supra, at 164. While the corollary claim against a union is one for breach of the union's duty of fair representation,

nevertheless, "the two claims are inextricably interdependent." Id. Moreover, the DelCostello Court ruled that, to prevail, the plaintiffs in that case "must not only show that their discharge was contrary to the contract, but must also carry the burden of demonstrating a breach of the duty [of fair representation] by the union." Id. at 165 (citations omitted). Thus, DelCostello held that, consistent with the LMRA, such claims must be brought within six (6) months. Id. Likewise, many fair representation claims, such as those alleging discrimination, also would constitute allegations of unfair labor practice under either Section 8(a)(1) or (2) of the National Labor Relations Act (the "NLRA"). Id. at 170. Similarly, other claims brought by union members against their union for alleged unfair or arbitrary treatment also would constitute claims of unfair labor practices. Id. (citation omitted). Thus, claims by employees against employers for violations of the collective bargaining agreement would, consistent with this reasoning, be considered unfair labor practices. Id. (citations omitted). Furthermore, in enacting Section 10(b) of the NLRA, the DelCostello Court found that Congress determined that "the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and the employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system" warranted the establishment of a six months statute of limitations for the filing of unfair labor practice charges. Id. at 171. As a result, the Supreme Court determined, given the similarity between claims of unfair labor practices and breach of duty of fair representation, that it would be both consistent and appropriate to apply a six month statute of limitations to fair representation cases by union members against their union.

Our court of appeals has applied DeCostello on numerous occasions, holding that the six month statute of limitations governs actions such as those alleged by Ms. Lane in her Union

Complaint. For example, in Hackman v. Valley Fair, 932 F.2d 239 (3rd Cir. 1991), a discharged employee brought suit against an employer for wrongful discharge and against the union for breach of its duty of fair representation. In that case, the employee was told either on May 31, or June 1, 1989, that the union would not proceed to arbitration. The employee filed suit on December 4, 1989. Relying on DelCostello, the Court of Appeals for the Third Circuit held that the case was governed by the six month statute of limitations and therefore dismissed Hackman's complaint as untimely. Hackman, supra, at 241. Moreover, our court of appeals held that the six month statute of limitation period commences when the "complainant discovers, or in the exercise of reasonable diligence should have discovered the acts constituting the alleged violation." Id. at 241 (citing Vadino v. A. Valley Engineers, 903 F.2d 253, 260 (3d Cir. 1990)). Similarly, in Bartels v. Sports Arena Employees Local 137, 838 F.2d 101 (3rd Cir. 1988), the plaintiffs alleged that the union breached its duty of fair representation by refusing to take the plaintiffs' grievances to arbitration, and that the union and employer conspired to avoid the collective bargaining agreement in an effort to violate the plaintiffs' rights. The Bartels complaint was filed one year after the events giving rise to the claim, and the dismissal for untimeliness by the lower court was affirmed by the court of appeals. Id. at 103, 105.

It is also well-established that the limitations period commences when the "futility" of relying on the union's assistance "became apparent or should have become apparent" to the employee. Matter v. Bethlehem Steel Corp., 797 F. Supp. 441, 445 (W.D.Pa. 1992) (citing Vadino, 903 F .2d at 260); see also, Scott v. Local 863, International Brotherhood of Teamsters, 725 F .2d 226, 229 (3rd Cir. 1984).

According to the Union Complaint, Ms. Lane was terminated in September 2002. She filed

the PCI Complaint against her former employer on January 23, 2003. In the PCI Complaint, Ms. Lane alleged that: "I am filing a discrimination claim against PCI Services for firing me without a fair hearing. I was also in the Union and the Union failed to stand up and protect my rights." Thus, as of January 27, 2003, the date she filed the complaint against her employer, Ms. Lane certainly realized that the Union had not taken any action to protect her. Thus, the Union Complaint, filed almost 15 months later, clearly is untimely.[6] See DelCostello, 462 U.S. at 172; Hackman, 932 F.2d at 241; Bartels, 838 at 105.

### C. Alleged Discrimination Claims

Ms. Lane's Union Complaint, on its face, does not specifically charge the Union with unlawful discrimination on account of race, gender, or age.[7] Nevertheless, even if the Union Complaint is so construed, it must be dismissed. To proceed in any court with regard to a state civil rights claim filed pursuant to the Pennsylvania Human Relations Act (the "PHRA"), a claimant must first file a complaint of discrimination with the Pennsylvania Human Relations Commission (the "PHRC") within 180 days of the alleged discriminatory act. 43 P.S. §§ 959(a)(h). In addition, because Pennsylvania is a "deferral state," that is, a state that has its own agency to investigate and resolve discrimination claims, a claimant such as Ms. Lane has 300 days from the alleged discriminatory act in which to file a Title VII claim under the Civil Rights Act of 1964, as amended,

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[6] Not only is Ms. Lane's Union Complaint untimely, but, assuming *arguendo* that the Union may have mishandled Lane's grievance, it is without merit. See Wright v. Boeing Vertol Co, 704 F.Supp. 76, 79 (E.D.Pa) (holding that no breach of the duty of fair representation existed, even if the union committed a mistake in its grievance handling), affirmed, 879 F.2d 861 (3d Cir. 1989) (table opinion).

[7] However, in her Motion to Proceed *In Forma Pauperis*, Ms. Lane states, "I Gwendolyn Lane is [sic] seeking $150,000 in this suit against PCI for unlawful termination because I am a woman and a minority."

42 U.S.C. §2000 et seq., with the Equal Employment Opportunity Commission (the "EEOC"). See Brennan v. National Telephone Directory Corp., 850 F.Supp. 331, 337-38 (E.D.Pa.1994) (citations omitted).[8] Ms. Lane admitted to the Court during a pretrial conference held on April 28, 2005, that she never attempted to file a claim with the EEOC or the PHRC. See Transcript at 10.

Under Pennsylvania law, the statute of limitations begins to run "when the cause of action accrues, i.e., when the injury is sustained." Wine v. EMSA Limited Partnership, 167 F.R.D. 34, 37 (E.D.Pa. 1996) (citing Bohus v. Beloff, 950 F.2d 919, 924 (3d Cir. 1991)). Under Title VII, the statute of limitations begins to run on the date plaintiff knows or reasonably should have known the discriminatory act occurred, "not on the date the victim first perceived that a discriminatory motive caused the act." Ochiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1386-87 (3d Cir.1994) (citation omitted). Where it is clear from the face of the complaint that the applicable statute of limitations has expired, a court must dismiss the complaint. Id. at 1384 n.1.

Here, Ms. Lane never filed an EEOC or PHRC charge against the Union based on any alleged discriminatory conduct. The statute of limitations on such charges began to run in September 2002, when Ms. Lane was discharged. Giving Ms. Lane further benefit of the doubt, the latest date on which the statute of limitations began to run was January 27, 2003, the date she filed a discrimination claim against PCI, her former employer. Within that prior complaint and previously adjudicated cause of action, Ms. Lane alleged that "the union failed to stand up and protect [my]

[8] The timely filing of such an administrative charge is a jurisdictional prerequisite, along with receipt of a "Right to Sue" letter, for filing a Title VII lawsuit. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973) (jurisdictional prerequisites to filing a federal claim of employment discrimination are the timely filing of a charge of discrimination with the EEOC and the receipt of a notice of right to sue); Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398 (3d Cir. 1976), cert. denied, 429 U.S. 1041 (1977) ("while preliminary requirements for a Title VII action are to be interpreted in a nontechnical fashion, the aggrieved person is not permitted to bypass the administrative process").

rights." Thus, Ms. Lane had 180 days from January 27, 2003, or until approximately June 27, 2003, to bring a claim against the Union under the PHRA. Ms. Lane also had 300 days from January 27, 2003, or until approximately November 27, 2003, in which to file a Title VII charge with the EEOC. Ms. Lane failed to take either action.

Finally, even if the Union Complaint could be construed as timely alleging a discrimination claim against the Union pursuant to Section 1981, 42 U.S.C. §1981,[9] in the prior proceedings with regard to the PCI Complaint, Ms. Lane conceded that she did not file a grievance protesting her termination from employment. See See Packaging Coordinators, 2004 WL 569525 at *1 & f.3 ("By her own admission, Lane never filed a grievance, and we must therefore dismiss this action."). Ms. Lane also admitted to this Court that she never filed a formal grievance. See Transcript at 10-11. According to the parties' collective bargaining agreement, an aggrieved employee must file a grievance protesting an alleged harm within five (5) days of the date of its occurrence. See CBA, Def. Ex. C at 18.[10] Therefore, as a matter of fact and law, because Ms. Lane failed to file a grievance within the required five day period to protest her termination, it is impossible for the Union to have discriminated against Ms. Lane by refusing to handle her grievance because the necessary basis for such a discrimination claim -- a grievance that was allegedly not properly acted upon -- did not in fact exist.[11]

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[9] In Pennsylvania, the statute of limitations for a Section 1981 claim is two years. See Gordon v. Luken's Steel Co., 482 U.S. 656 (1987) (superceded by statute on other grounds).

[10] Since the collective bargaining agreement is integral to plaintiff's complaint, reliance on that document does not convert the instant Motion to Dismiss into one for summary judgment. See Fed.R.Civ.P.12; In re Burlington Coat Factory, 114 F.3d 1410, 1426 (3d. Cir. 1997); see also, Packaging Coordinators, 2004 WL 569525 at *1 & f.3.

[11] Ms. Lane's failure to file a grievance is fatal to her discrimination claims against the Union, because the grievance procedure is an administrative prerequisite to bringing suit against the Union. See Anjelino v. New York Times, 200 F.3d 73, 99 (3d Cir. 1999); Angst v. Mack Trucks Inc., 969 F.2d 1530, 1538 (3d Cir. 1992); Packaging

**D. Dismissal Pursuant to Rule 12(b)(6)**

Appended to Ms. Lane's complaint is a Notice of Termination dated September 4, 2002. On April 7, 2004, more than 19 months later, and well beyond the six month statute of limitations, see DelCostello, supra, Ms. Lane filed the Union Complaint charging the Union with a failure "to protect [her] rights under the union contract." With regard to a factual challenge to a court's jurisdiction, the court is permitted to look at facts beyond the four corners of the pleading. In the present context, these facts cannot be contested. See Gould Electronics Inc. v. United States, 220 F.3d 169, 176 & f.6 (3d Cir. 2000).

Even if there was some dispute as to whether Ms. Lane was misled into waiting to file a complaint against the Union, by January, 2003, when she brought a complaint against her employer, PCI, Ms. Lane certainly should have recognized that the Union had not taken, and was not planning to take, any action on her behalf. Thus, Ms. Lane's Union Complaint, filed some 15 months later, is untimely. In the alternative, if the Union Complaint is construed to allege civil rights violations against the Union, Ms. Lane has not complied with the administrative prerequisites for bringing such a claim, and the time for initiating such administrative filings has long past. Finally, because she failed to comply with the administrative prerequisites contained within the CBA, Ms. Lane is precluded from bringing any claims against the Union because Ms. Lane conceded that she never filed a grievance with the Union, an administrative preliminary requirement which prevents her from now suing the Union.

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Coordinators, supra.

IV. CONCLUSION

Pursuant to Fed.R.Civ.P. 12(b)(6), Ms. Lane's Union Complaint must be dismissed for failure to state a claim upon which relief may be granted. The factual allegations in the Union Complaint are accepted as true and all reasonable inferences from the Union Complaint have been viewed in a light most favorable to Ms. Lane. See General Motors Corp. v. New A Chevrolet, Inc., 263 F.3d 296, 325 (3d Cir. 2001). Nevertheless, because Ms. Lane failed to file a grievance within five days pursuant to the CBA and, with regard to her allegations against both PCI and the Union, Ms. Lane failed to file for administrative relief with the PHRC or the EEOC or file a federal lawsuit within six months, see DelCostello, supra, all of Ms. Lane's claims must be dismissed. As a matter of law, no relief can be granted to Ms. Lane under any set of facts that could be proved consistent with the allegations. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Therefore, for all of the reasons stated above, the instant Complaint is dismissed with prejudice. Because the statute of limitations has run with regard to the allegations contained within her PCI Complaint and her Union Complaint, Plaintiff Lane is not permitted to file another claim against PCI or the Union with regard to the allegations contained in those complaints.

BY THE COURT:

/S/_____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
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| Defendant. | : | NO. 04-cv-1763 |

**ORDER**

JULY 19, 2005

PRATTER, DISTRICT JUDGE

AND NOW, this 19th day of July, 2005, upon consideration of the Motion to Dismiss filed by Defendant Local Union 2-286 (Docket No. 15), Plaintiff Lane's Response to Defendant's Motion (Docket No. 17), Defendant's Reply (Docket No. 18), and Plaintiff's Motion in Response to the Defendant's Reply (Docket No. 19), IT IS HEREBY ORDERED that:

1. Plaintiff's Complaint (Docket No. 4) is DISMISSED with prejudice;

2. Plaintiff's Motion for Extension of Time (Docket No. 16) is MOOT; and

3. This matter shall be deemed CLOSED by the Clerk of Court.

It is so ORDERED.

BY THE COURT:

/S/_____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE