

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 7336	DATE	December 3, 2009
CASE TITLE	<i>Converso, et al., v. United American Nurses</i>		

DOCKET ENTRY TEXT

For the reasons stated herein, the motions by the majority of the UANEC and the CNA/NNOC to intervene as of right [15-1, 34-1] are granted, the UANEC majority's motion to change venue [29-1] is denied, and the plaintiffs' motion for a temporary restraining order [6-1] is denied.

■ [For further details see text below.]

00:00

STATEMENT

Plaintiffs Ann Converso, individually and as president of the United American Nurses, Joan Craft, individually and as Vice-President of the United American Nurses, and the Illinois Nurse's Association, have brought suit against United American Nurses ("UAN"), a labor organization representing registered nurses throughout the United States. The plaintiffs seek emergency relief to prevent the UAN from proceeding with the proposed merger/affiliation described below.

The majority of the UAN's Executive Council ("the UANEC majority") has moved to appear as a real party in interest or to intervene in the instant case. In addition, the California Nurses Association/National Nurses Organizing Committee ("CNA/NNOC") have also moved for leave to intervene as of right. Both of these parties have also filed oppositions to the plaintiffs' motion for a temporary restraining order.

The plaintiffs seek a temporary restraining order and have provided notice to the Union, who appeared for argument along with the majority of the UANEC. *See* Fed. R. Civ. P. 65(b); *see generally Chicago United Industries, Ltd. v. City of Chicago*, 445 F.3d 940, 496 (7th Cir. 2006). Thus, currently before the court are: (1) the UANEC majority's motion to appear as a real party in interest or, in the alternative, for leave to intervene, (2) the CNA/NNOC's motion for leave to intervene as of right, (3) the UANEC majority's motion to transfer venue, and (4) the plaintiffs' motion for a temporary restraining order. For the reasons stated herein, the motions by the majority of the UANEC and the CNA/NNOC to intervene as of right are granted, the motion to change venue is denied, and the motion for a temporary restraining order is denied.

A. Facts

Briefly, the facts as alleged are as follows. In July 2009, discussions were had among the California Nurses Association/National Nurses Organizing Committee ("CNA/NNOC"), the Massachusetts Nursing Association ("MNA") and the UAN to create a nationwide "super-union" of registered nurses. In July 2009,

STATEMENT

representatives of these organizations drafted an “Agreement of Consolidation and Affiliation” among the organizations (“Merger Agreement”) to create National Nurses United (“NNU”). On July 31, 2009, the UAN Executive Council voted 5-2 (Converso and Craft were the dissenting votes) to approve the draft of the Merger Agreement.

The UAN staff and its general counsel characterized the proposed transaction as an “affiliation.” Plaintiffs Converso and Craft believe that the proposed merger is more than just an “affiliation” and, instead, is actually a dissolution of the UAN which must comply with certain dissolution provisions in the UAN Constitution. The founding convention for NNU is set for December 7, 2009. Converso and Craft have brought the instant action seeking temporary and permanent injunctive relief, among other things, enjoining the UAN from proceeding with the proposed merger/affiliation into the NNU.

In addition to the instant action, there is also a related action pending in the United States District Court for the District of Maryland entitled *Ross et al. v. Converso et al.*, 8:09-CV-3100. In the Maryland action, filed on November 19, 2009, four members of the UAN Executive Council filed a three-count complaint against Converso, Craft and a third Executive Council member Kathleen Gettys, based on their alleged failure to participate in and their alleged efforts to actively interfere with certain events relating to the planned merger. The first count of the Maryland complaint seeks a declaratory judgment that the defendants, by their refusal to call meetings in response to a request from a majority of the Executive Council and their refusal to attend meetings, cannot prevent the Executive Council from meeting, making binding decisions and otherwise performing its obligations under the UAN Constitution. The second count alleges that the defendants breached the UAN Constitution by not participating in the Executive Council’s proceedings and by willfully failing to attend Executive Council meetings. Finally, the third count in the Maryland suit alleges that the defendants breached the UAN Constitution by willfully organizing an effort to deny a quorum at a recent special meeting of the UAN’s National Labor Assembly and by preventing the NLA from voting by interfering with a mail ballot seeking ratification of the proposed merger/affiliation.

B. Analysis

Motions to Intervene. The UANEC majority seeks leave to appear as a real party in interest or to intervene as of right in the instant action. In addition, the CNA/NNOC has filed a motion for leave to intervene as of right. Under Fed. R. Civ. P. 24 (a)(2), a party may intervene as of right when that party:

...
(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Here, both the majority of the UANEC and the CNA/NNOC seek leave to intervene on the ground that they have an interest in the transaction (*i.e.*, the merger/affiliation) that is the subject of this action. In addition, existing parties do not adequately protect their interests as the UAN’s general counsel acknowledges that it has a conflict of interest and has stated that it cannot take a position in the instant litigation absent direction from the UAN Executive Council. Given the current rift that has developed between the members of the UAN Executive Council, no such direction has been provided, so counsel for the UAN declined to take a position on the current proceedings. *See* Dkt. #24. This means that the UAN – a defendant in this proceeding – essentially lacks counsel at this point in time. It thus cannot represent its interests or the interests of the majority of UANEC or the CNA/NNOC. Accordingly, the court finds that the majority of the UANEC and the CNA/NNOC have an interest in the transaction that is the subject of this lawsuit and existing parties do not adequately represent their interests. Accordingly, the court grants their

STATEMENT

motions to intervene.

Motion to Transfer. The UANEC majority has also filed a motion to transfer venue to Maryland. However, the UANEC majority's motion does not provide a sufficient evidentiary basis upon which the court can determine if venue is more appropriate in Maryland versus Illinois. The UANEC majority did not attempt to enlarge the record during the hearing held on December 1, 2009. Accordingly, the motion to transfer is denied without prejudice.

Motion for Temporary Restraining Order. To obtain a temporary restraining order, the movant must show that: (1) it is reasonably likely to succeed on the merits; (2) no adequate remedy at law exists; (3) it will suffer irreparable harm which, absent injunctive relief, outweighs the irreparable harm the respondent will suffer if the injunction is granted; and (4) the injunction will not harm the public interest. *Joelner v. Vill. of Washington Park, Illinois*, 378 F.3d 613, 619 (7th Cir. 2004) (setting forth preliminary injunction standard); *Long v. Bd of Educ., Dist. 128*, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001) (noting that the standard for issuing a temporary restraining order is identical to the standard used for preliminary injunctions). Furthermore, "[t]he movant has the burden of proof to make a clear showing that it is entitled to the relief it seeks." *International Profit Associates, Inc. v. Paisola*, 461 F. Supp. 2d 672, 675-76 (N.D. Ill. 2006).

Norris LaGuardia Act

Before considering the merits of the plaintiffs' request for a temporary restraining order, the court considers a threshold issue raised by the UANEC majority: whether the Norris-LaGuardia Act, 29 U.S.C. § 104, divests the court of the power to issue injunctive relief because the intra-union dispute presently before the court is a labor dispute covered by the Act.

The Act provides that:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such a dispute . . . from doing . . . any of the following acts: . . . (b) Becoming or remaining a member of any labor organization or of any employer organization . . . (f) assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute . . . [and] (i) advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified.

29 U.S.C. § 104; *AT & T Broadband, LLC v. Int'l Bhd. of Elec. Workers*, 317 F.3d 758, 760 (7th Cir. 2003) (the Act is "designed . . . to shout 'We really mean it!' for the activities at the core of union operations").

The Act defines the term "labor dispute" as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 113(c). In turn, the Act provides that a case involves or grows out of a labor dispute when it "involves persons who are . . . members of the same or an affiliated organization of employers or employees; whether such dispute is . . . (3) between one or more employees or associations of employees and one or more employees or associations of employees . . ." 29 U.S.C. § 113(a)(3).

The plain language of the Act appears to be dispositive, as the request for a TRO flows from a disagreement about the association of persons relating to terms and conditions of employment. Accordingly,

STATEMENT

this matter appears to involve a labor dispute. *See Amalgamated Transit Union AFL-CIO-CLC v. International Broth. of Teamsters*, No. 05 C 6262, 2006 WL 211812, at *2 (N.D. Ill. Jan 24, 2006) (finding that the court lacked jurisdiction to enjoin union elections because the disagreement over the elections constituted a “labor dispute”).

The cases cited by the plaintiff are not germane as they do not address the issue before the court. In *Hansen v. Guyette*, 814 F.2d 547 (8th Cir. 1987), the court focused on the Landrum-Griffin Act, and held that “the literal provisions of the Norris-LaGuardia Act must be accommodated to the subsequently enacted trusteeship provisions of the Landrum-Griffin Act.” Similarly, in *National Ass’n of Letter Carriers, AFL-CIO v. Sombrotto*, 449 F.2d 915, 919 (2d Cir. 1971), also highlighted by the plaintiffs, the court grappled with the interaction of the Norris-LaGuardia Act and the trusteeship provisions in the Landrum-Griffin Act. These cases are not germane to the Norris-LaGuardia Act issues before this court. Moreover, the Ninth Circuit’s statement that “[g]enerally speaking, Norris-La Guardia Act provisions have no place in suits implicating internal union affairs,” *Aguirre v. Automotive Teamsters*, 633 F.2d 168, 172 (9th Cir. 1980), is inapposite as that case did not involve the merger/affiliation of two unions. Finally, the plaintiffs point to a decision by a court in this district, *Gee v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union*, 99 C 3577, 2000 WL 336559, at *7 (N.D. Ill Mar. 28, 2000), in support of their contention that the anti-injunction provision of the Norris LaGuardia Act does not apply here. However, as noted by the majority of the UANEC’s counsel at oral argument, the applicability of the anti-injunction provision of the Norris LaGuardia Act was not raised in that case and thus the court did not address it.

Perhaps due to the timing of the request for emergency injunctive relief, the parties did not delve deeply into the Norris-LaGuardia Act issue. During oral argument, the plaintiffs’ counsel mostly focused on the *Gee* case, which as noted above is inapposite, while the UANEC majority elected to present a very short summary of their position regarding the availability of injunctive relief. The court will not discuss the Norris-LaGuardia Act further as regardless of its applicability, the plaintiffs’ request for a TRO fails on the merits.

Executive Council’s Interpretation of the Constitution

For the following reasons, setting aside the anti-injunction provisions in the Norris LaGuardia Act, the court concludes that the plaintiffs have not shown a likelihood of success on the merits so their request for a TRO must be denied.

Article V.B.2 of the UAN Constitution gives the Executive Council the authority to “interpret the Constitution and UAN policy.” Pursuant to this article, on July 31, 2009, the Executive Council, including plaintiff Converso, unanimously voted that the Merger Agreement and the consolidation of the UAN with the CNA/NNOC and the MNA would not constitute a dissolution. Plaintiff Craft abstained from voting. Converso and Craft now argue that their own prior position was unreasonable and that the proposed merger/affiliation is actually a dissolution, which, under the UAN Constitution, requires 75% approval by the delegates of the National Labor Assembly.

As stated by the Seventh Circuit, “a union's interpretation of its own constitution, by-laws, and other promulgations is entitled to judicial deference; we must be able to call the interpretation unreasonable, perhaps even ‘patently unreasonable,’ before we can set it aside.” *Fulk v. United Transp. Union*, 160 F.3d 405, 407-08 (7th Cir. 1998)(citation omitted). As an initial matter, the court finds that plaintiff Converso’s initial vote that the merger did not constitute a dissolution weakens her current claim that such an interpretation is patently unreasonable.

STATEMENT

Moreover, the Executive Council's interpretation that the merger/affiliation is not a dissolution is supported by the language of the UAN Constitution, which characterizes a dissolution as a liquidation of the union. Specifically, Article X.B.2 states that "[i]n the event of such dissolution, the Executive Council shall act as agent for the members and dispose of all physical assets of the UAN by public auction, private sales or otherwise" The Constitution further states that "[a]fter the payment of all outstanding debts and expenses, the remaining liquid assets shall then be prorated to the members of record in good standing." *Id.*

The plaintiffs contend that emergency relief is necessary because otherwise, if the merger/affiliation proceeds, "[a]ll of UAN's assets will be immediately transferred to and co-mingled with the assets of NNU." Plaintiffs' Memorandum in Support of Motion for Temporary Restraining Order, Dkt. #7 at 14. Thus, even according to the plaintiffs, the assets of the UAN will not be disposed of, as would occur in a dissolution, but rather will be transferred to the NNU. In addition, the court notes that the plaintiffs' argument that the Executive Council did not abide by the dissolution procedures and therefore, their interpretation is not entitled to deference, *see* Plaintiff's Memorandum, Dkt. #8 at 11, is conclusory and circular. Accordingly, the court finds that the Executive Council's interpretation that the Merger Agreement does not constitute a dissolution is not unreasonable.

As an aside, the court notes that even in *Gee*, one of the primary cases relied upon by the plaintiffs, Judge Pallmeyer concluded that the plaintiffs had not demonstrated a likelihood of success on the merits regarding their claim that, in the context of voting on a proposed merger, the union had violated its own constitution when it held a Special Convention that did not follow the procedures for convening a General Convention. *Gee*, 99 C 3577, 2000 WL 336559, at *7. In so concluding, Judge Pallmeyer noted that "a union's interpretation of its own constitution is entitled to judicial deference" and further that "the Union Constitution does not explicitly prohibit Special Conventions, and it may be reasonable to presume from the language of the Union Constitution that the Executive Board maintained some power to convene meetings during the five long years between mandated General Conventions." *Id.* (citation omitted).

The plaintiffs next assert that the Executive Council's position that the merger is an affiliation "defies logic." They contend that the adoption of the Merger Agreement "in fact amends and repeals every provision of the UAN Constitution," *see* Plaintiffs' Memorandum, Dkt. #8 at 13, which requires a two-thirds vote of the NLA delegates with 90 days' advance notice. UAN Constitution, Art. I. However, the Merger Agreement states that the new organization, the NNU, shall be governed by the terms and conditions of the Merger Agreement as well as the Founding Constitution of National Nurses United. Merger Agreement, I.A., attached as Exh. B to Complaint. Thus, the Merger Agreement does not contemplate an "amendment" to the UAN Constitution but rather the adoption of an entirely new constitution.

Moreover, as noted by the majority of the UANEC, the UAN Constitution contains a provision entitled "Affiliations," which "empowers" the Executive Council to enter into "affiliation agreements" that are "subject to expeditious ratification by the National Labor Assembly. . . ." UAN Constitution, Art I.D. Here, the Executive Council concluded that the actions contemplated by the Merger Agreement constitute an affiliation rather than a dissolution under the UAN Constitution and the plaintiffs have failed to demonstrate a likelihood that such an interpretation would be deemed patently unreasonable.

To sum up, even assuming that the anti-injunction provisions of the Norris LaGuardia Act are inapplicable, the plaintiffs have failed to show a likelihood of success on the merits. Their motion for a temporary restraining order is, therefore, denied. In light of this disposition, the court need not address the arguments raised by the CNA/NNOC.