THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK
CIVIL ACTION NO.: 3:15-CV-00111-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,

Plaintiff,

vs.

ROGER VELEZ, on behalf of himself and All similarly situated former America West Pilots, and LEONIDAS, LLC,

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EDDIE BOLLMEIER, BILL TRACEY and, SIMON PARROTT,

Plaintiff,

v.

GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, ROBERT FREAR, COURTNEY BORMAN, and JANE DOE BORMAN, RONALD NELSON, PAUL DIORIO PAUL MUSIC, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY, and STEPHEN NATHAN,

Defendants.

TITLE V PLAINTIFFS' REPLY TO SUPPLEMENTAL RESPONSE IN FURTHER SUPPORT OF USAPA DEFENDANTS' MOTION TO VACATE THE ORDER OF MARCH 5, 2015, OR, IN THE ALTERNATIVE, TO DISMISS THE *BOLLMEIER* VERIFIED COMPLAINT AND IN FURTHER OPPOSITION TO THE *BOLLMEIER* PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Title V Plaintiffs EDDIE BOLLMEIER, BILL TRACEY, and SIMON PARROTT, through counsel, submit the following Reply to Defendants' Supplemental Response In Further Support Of USAPA Defendants' Motion To Vacate The Order Of March 5, 2015, Or, In The Alternative, To Dismiss The Bollmeier Verified Complaint And In Further Opposition To The Bollmeier Plaintiffs' Motion For A Temporary Restraining Order Or Preliminary Injunction ("Supplemental Response") (Doc. No. 66).[1] As shown below, Defendants' assertions in their Supplemental Response are wholly without merit.

Argument

In what can only be characterized as a desperate attempt to escape liability for their expenditure of union funds in violation of Title V of the LMRDA, 29 U.S.C. § 501, the LMRDA Defendants have filed a Supplemental Response in Further Support of USAPA Defendants' Motion to Vacate the Order of March 5, 2015, or, in the Alternative, to Dismiss the Bollmeier Verified Complaint and in Further Opposition to the Bollmeier Plaintiffs' Motion For a Temporary Restraining Order or Preliminary Injunction ("Supp. Resp."). The thrust of their submission is that when, on June 29, 2015, the USAPA Merger Committee permanently withdrew from the seniority integration proceedings, USAPA was no longer a labor organization, the LMRDA Defendants were no longer officers of a labor organization and Plaintiffs were no longer members of a labor organization. That circumstance, they argue, means that Plaintiffs cannot prevail in their LMRDA law suit because the LMRDA only protects union members from the malfeasance union officers. As USAPA is no longer a union, Plaintiffs are not union members and Defendants are not union

[1] So as not to burden the Court with an unnecessary repetition of the pertinent facts, Plaintiffs direct the Court to their Motion for Temporary Restraining Order or Preliminary Injunction (Doc. No. 48) at pages 8–13 and their Supplemental Exhibits in support of the Motion (Docs. No. 56 and 57) at pages 1-2 for a recitation of the facts.

officers, Defendants assert there can be no claim against them for the improper use of USAPA's funds.

Defendants' assertion is as breathtaking in its implications as it is wrong on the law. The entire purpose of Title V is to prevent union officers from looting a union's treasury, consisting of dues involuntarily paid by members, in contravention of the union's governing documents and for the officers' own purposes. *See Hood v. Journeymen Barbers, Hairdressers, Cosmetologists and Proprietors Int'l Union of America*, 454 F.2d 1347, 1354 (7th Cir. 1972) (the mischief that Section 501 guards against is "the misuse of union funds and property by union officials in its every manifestation"); *Brink v. DaLesio*, 453 F. Supp. 272, 277 (D. Md. 1978) ("A primary purpose of the Congress in enacting Section 501 was to prevent the looting of union treasuries by powerful and despotic union leaders."). The natural result of Defendants' argument—were it a correct statement of the law—would be that a union officer could steal from his union, be sued by a member and then resign his office and escape liability, thereby depriving the union's members of money to which they are entitled. Or he and his fellow officers could dissolve the union after being sued and escape liability. Given Title V's purpose, no rational interpretation of the statute could lead to that result.

Not surprisingly, then, the decided cases do not support Defendants' contention. *See Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Schimmel*, 128 F.3d 689, 691–93 (8th Cir. 1997) (affirming Title V liability for defendant union officials even though the union was decertified and no longer had representative authority over any bargaining unit employees at the time the Title V suit was commenced); *Int'l Union of Electronic, Electrical, Salaried, Machine, & Furniture Workers, AFL-CIO v. Statham*, 97 F.3d 1416, 1417 (11th Cir. 1996) (permitting a Title V suit by a union against its former officials); *Council 49, AFSCME Union AFL-CIO v. Reach*,

843 F.2d 1343, 1345–46 (11th Cir. 1988) (affirming Title V liability of former union officials who breached their fiduciary duties while holding union office, resulting in the union being placed into administratorship); *Erkins v. Bryan*, 663 F.2d 1048, 1048–52 (11th Cir. 1981) (holding that members of a decertified union had Title V standing to sue the union's former officials).

In this regard, the LMRDA is no different than countless other statutes that create a cause of action on behalf of a plaintiff against a defendant that survives either or both parties' subsequent change in status. For instance, an ERISA plan fiduciary may be held liable for her breach of fiduciary duty while serving in that capacity even if the lawsuit is commenced after she no longer owes a fiduciary duty to the plan. *See United Teamster Fund v. MagnaCare Admin. Servs., LLC*, 39 F. Supp. 3d 461, 466 (S.D.N.Y. 2014) (under 29 U.S.C. § 1109, the applicable analysis for fiduciary liability is whether the person was acting as a fiduciary at the time of the breach, not at the time of the lawsuit). Likewise, a police officer may be subject to liability under 42 U.S.C. § 1983 even if he has retired from the police force subsequent to the alleged misconduct. *See Andrew v. Clark*, 561 F.3d 261 (4th Cir. 2009) (former police commissioner could be held liable under § 1983 for action taken while he held the status of commissioner and was thus acting under color of state law); *see also Summers v. Altarum Inst. Corp.*, 740 F.3d 325, 332 (4th Cir. 2014) (permitting a temporarily disabled plaintiff to bring a claim under the ADA even though plaintiff's disability had ceased at the time the suit commenced); *Tarlov v. Paine Webber Cashfund, Inc.*, 559 F. Supp. 429, 441 (D. Conn. 1983) (refusing to dismiss claim against former investment advisors for liability under the Investment Company Act when the alleged misconduct occurred while the defendants held the status of investment advisors and owed a fiduciary duty to plaintiff).

Not surprisingly, then, none of the cases relied on by Defendants support their position. In each of them, the issue was whether the putative union was *ever* a labor organization within the

meaning of the LMRDA. In some it was, *see Donovan v. Nat'l Transient Div., Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers*, 542 F. Supp. 957 (D. Kan. 1982) *aff'd in part, rev'd in part*, 736 F.2d 618 (10th Cir. 1984); *Brennan v. United Mine Workers of Am.*, 475 F.2d 1293, 1296 (D.C. Cir. 1973); *Cross v. United Mine Workers of Am.*, 353 F. Supp. 504 (S.D. Ill. 1973); *Monborne v. United Mine Workers of Am.*, 342 F. Supp. 718 (W.D. Pa. 1972); and in others it was not, *see Kanawha Valley Labor Council, AFL-CIO v. Am. Fed'n of Labor & Cong. of Indus. Organizations*, 667 F.2d 436, 439 (4th Cir. 1981); *Williams v. Int'l Typographical Union, AFL-CIO*, 423 F.2d 1295 (10th Cir. 1970). But that is not an issue here, as all parties agree that USAPA was, for at least some lengthy period of time, a "labor organization" as defined by the Act.[2]

In addition to ringing hollow as a matter of law, the LMRDA Defendants' assertion that USAPA was no longer a labor organization after its decertification in September 2014 is likewise undermined by its own actions since then. In addition to those actions already outlined by the Plaintiff in their Motion for Temporary Restraining Order or Preliminary Injunction, *see* Doc. 48 at pp. 9–10, USAPA's continued status as a labor organization is further evinced in its June 29, 2015, Department of Labor Form LM-2, which covers USAPA's activities between April 1, 2014,

[2] As Plaintiffs demonstrated in their Combined Memorandum of Law (1) in Opposition to Defendants' Motion to Vacate the Court's Order Dated March 5, 2015, or in the Alternative, to Dismiss the Verified Complaint, and (2) in Reply to Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction (Doc. No. 36) at pp. 13-15, USAPA's status as a labor organization did not end with its decertification in September 2014, as it continued to act at least as an employee representation committee for the purposes of dealing with American Airlines over seniority list integration. *See also* 29 USC § 402 (i) (the LMRDA's definition of the term "labor organization"). The LMRDA Defendants do not seriously contest that proposition but argue only that since USAPA's withdrawal from the seniority integration process on June 29, 2015, USAPA is no longer a labor organization. But as we show in text, since USAPA was a labor organization at all times that Defendants authorized the expenditure of funds challenged in this case, what USAPA's status is after June 29 is of no moment.

and March 31, 2015, and is attached hereto as Exhibit 1. By its plain terms, a Form LM-2 is the annual report of a *labor organization*. Indeed, in signing USAPA's June 29, 2015, Form LM-2, Defendant Stephen Bradford attested that he is a "duly authorized officer[] of the above labor organization," namely USAPA. Ex. 1 at 1. Notably, despite having the option to do so, USAPA did not designate the June 29 Form LM-2 as a "terminal report" for the labor organization, *id*., *and to date has not filed one*.

Conclusion

For the above reasons, as well as those set out on Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction, the Court should deny Defendants' Motion to Vacate the Court's Order Of March 5, 2015, and the Motion to Dismiss Plaintiffs' Complaint and should grant Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction.

Respectfully submitted this 30th day of July, 2015,

/s/ Kelly J. Flood

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Title V Plaintiffs' Reply To Supplemental Response In Further Support Of USAPA Defendants' Motion To Vacate The Order Of March 5, 2015, Or, In The Alternative, To Dismiss The Bollmeier Verified Complaint And In Further Opposition To The Bollmeier Plaintiffs' Motion For A Temporary Restraining Order Or Preliminary Injunction with the Clerk of the court using the CM/ECF system and that notification will be sent via the system to:

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This the 30th day of July, 2015.

/s/ Kelly J. Flood

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