

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| <b>JOHN J. RILEY,</b>            | ) |                                 |
|                                  | ) |                                 |
| <b>PLAINTIFF</b>                 | ) |                                 |
|                                  | ) |                                 |
| <b>v.</b>                        | ) |                                 |
|                                  | ) | <b>CIVIL No. 2:15-cv-37-DBH</b> |
| <b>PORTLAND MAINE AREA LOCAL</b> | ) |                                 |
| <b>NO. 458 AMERICAN POSTAL</b>   | ) |                                 |
| <b>WORKERS UNION AFL-CIO AND</b> | ) |                                 |
| <b>TIMOTHY DOUGHTY,</b>          | ) |                                 |
|                                  | ) |                                 |
| <b>DEFENDANTS</b>                | ) |                                 |

**DECISION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AND PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

This lawsuit against the local chapter of a labor union and the local's president asserts claims under the Labor-Management Reporting and Disclosure Act, 15 U.S.C. §§ 401-531. The plaintiff has consented to the defendants' motion for summary judgment on Count III, a state law claim. I **DENY** the defendants' motion for summary judgment on the two federal counts. I also **DENY** the plaintiff's motion for partial summary judgment on the defendants' Fourth and Sixth Affirmative Defenses, having to do with exhaustion of union remedies.

I **DENY** the defendants' motion as to Counts I and II because there are genuine issues of material fact as to what the dues rules were for retired union members like the plaintiff, whether the defendants changed them without following proper procedures, and why the defendants treated the plaintiff the

way they did. On the exhaustion issue (relevant to both motions), the First Circuit (like several other Circuits) says that the exhaustion provision of 29 U.S.C. § 411(a)(4) is a discretionary decision for the court. See e.g., Alfego v. Executive Board of Local 143, 747 F.2d 64, 68 (1st Cir. 1984). Given the factual issues as to what actually happened here in the treatment of the plaintiff and his dues obligations, I will not exercise that discretion until I as the factfinder (there is no jury demand) hear the evidence at trial.

Accordingly, the defendants' motion is **GRANTED IN PART AND DENIED IN PART**. The plaintiff's motion is **DENIED**.

**SO ORDERED.**

**DATED THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2016**

/s/D. BROCK HORNBY  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**