

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STEEL WORKERS
LOCAL 12-369, STEPHANIE B.
GREEN, DAVID ROBERTS,

Plaintiff,

v.

UNITED STEEL WORKERS
INTERNATIONAL,

Defendant.

NO. CV-07-5053-RHW

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER; MOTION FOR
PRELIMINARY INJUNCTION**

Before the Court are Plaintiffs' Motion for *Ex-Parte* Temporary Restraining Order (Ct. Rec. 2); Plaintiffs' Motion for Preliminary Injunction (Ct. Rec. 3); Plaintiffs' Motion to Expedite (Ct. Rec. 6); and Plaintiffs' Motion for Leave to File Excess Pages (Ct. Rec. 7).

A telephonic hearing was held on the motions on September 4, 2007. Plaintiff was represented by Janet Taylor. Defendant was represented by Jay Smith, Joshua F. Young, Joseph L. Paller, Jr., and Steven Crumb.

At the hearing, the Court heard oral argument from the parties, considered the briefings submitted by the parties, and ruled from the bench. This order is intended to supplement the Court's oral ruling.

FACTS

On August 13, 2007, Defendant issued a letter to Plaintiffs that immediately suspended all of the Local's officers and established an administratorship over the

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1 Local's property and affairs. Defendant supported the establishment of the
2 administratorship on grounds that "it is necessary to ensure the performance of the
3 collective bargaining agreement and other duties of a bargaining representative
4 and to otherwise carry out legitimate objects of the International Union and the
5 Local Union to restore democratic procedures." Defendant notified Plaintiffs that
6 a hearing and investigation would be conducted by an International Commission at
7 a later date.

8 Plaintiff filed motions for a temporary restraining order and a preliminary
9 injunction asking the Court to abolish the Administratorship, restore the elected
10 officers to their positions and prevent Defendant from suspending the Officers,
11 restore all Local property to the control of the elected officers, order that only duly
12 elected officers have signature authority over the Local's bank accounts and funds,
13 and prevent Defendant from taking control of Local property.

14 DISCUSSION

15 To obtain a preliminary injunction in federal court, Plaintiff is required to
16 demonstrate: "(1) a strong likelihood of success on the merits, (2) the possibility of
17 irreparable injury to plaintiff[s] if preliminary relief is not granted, (3) a balance of
18 hardships favoring the plaintiff[s], and (4) advancement of the public interest (in
19 certain cases)." *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430
20 (9th Cir. 1995) (citation and internal quotation marks omitted). These factors have
21 been incorporated into two inquiries under which the moving party may meet its
22 burden by demonstrating either (1) a combination of probable success on the
23 merits and the possibility of irreparable injury, or (2) that serious questions are
24 raised and the balance of hardships tips sharply in its favor, and at least a fair
25 chance of success on the merits. *Owner Operator Indep. Drivers Ass'n, Inc. v.*
26 *Swift Transp. Co.*, 367 F.3d 1108, 1111 (9th Cir. 2004). "These two formulations
27 represent two points on a sliding scale in which the required degree of irreparable
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1 harm increases as the probability of success decreases.” *Id.* Or put another way,
2 “the greater the hardship to the party seeking the preliminary injunction, the less
3 probability of success must be established by the party.” *Harris v. Board of*
4 *Supervisors*, 366 F.3d 754, 759 (2004).

5 According to Defendant’s constitution, there are two instances where it may
6 institute an Administratorship. First, it may institute proceedings in which the
7 Local Union would be afforded a full and fair hearing. Second, it may suspend
8 officers and establish an administratorship prior to a hearing in the case of an
9 emergency. The emergency, according to the Court, must be so emergent that
10 there is not enough time to have a hearing before the institution of the
11 Administratorship.

12 At the hearing, counsel for Defendant conceded that there were no instances
13 that had occurred within the past month that would qualify as an emergency.
14 Defendant attempted to create an emergency by relying on the cumulative effects
15 of the in-fighting between union members and concern about the negotiating
16 ability of the Local. The record establishes, however, that Defendants were aware
17 of these concerns for at least six months. The cumulative effects do not justify the
18 Administratorship based on the emergency clause in Defendant’s constitution.

19 Defendant also argues that it met its Constitutional due process
20 requirements because a prior hearing was held in February 2007. The report of the
21 hearing was not issued until August, contemporaneous with the unilateral
22 imposition of the Administratorship. The hearing concerned allegations against
23 the local union and its officers that were found by the hearing officer to be
24 groundless. The hearing resulted in an exoneration of the persons being
25 investigated. The Hearing Officer’s report, which was issued some six months
26 after the hearing, justifies the Administratorship by general reference to events that
27 occurred after the hearing and for which no hearing has occurred. None of these
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1 allegations rise to the level of an emergency justifying the failure to provide a
2 hearing in accordance with the union constitution. Upon inquiry of counsel who
3 represents the union on a regular basis, it was revealed that it was the standard
4 practice of Defendant to use the emergency provision of Defendant's constitution
5 to avoid a hearing before taking action to impose an Administratorship.
6 Defendant takes this action to avoid the possibility that the Local union would
7 make off with the treasury before a hearing could be conducted.

8 The Court refuses to condone Defendant's actions, given that it is in direct
9 conflict with its constitution. Under federal law, an Administratorship or
10 trusteeship shall be established only in accordance with the constitutional and
11 bylaws of the organization which has assumed trusteeship over the subordinate
12 body. *See* 29 U.S.C. § 462. The Union constitution was not followed in this case.

13 The Court finds that Plaintiff has a high likelihood of success on the merits
14 and the balance of hardships tips in its favor; therefore, Plaintiff's request for a
15 preliminary injunction is granted.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. Plaintiffs' Motion for *Ex-Parte* Temporary Restraining Order (Ct. Rec.
18 2) is **GRANTED**.

19 2. Plaintiffs' Motion for Preliminary Injunction (Ct. Rec. 3) is
20 **GRANTED**.

21 3. Defendant is **ORDERED** to abolish the Administratorship, restore the
22 elected officers to their positions, refrain from suspending the Officers, restore all
23 Local property to the control of the elected officers, order that only the duly
24 elected officers have signature authority over the Local's bank accounts and funds,
25 and refrain from taking control of Local property.

26 4. Plaintiffs' Motion to Expedite (Ct. Rec. 6) is **GRANTED**.

27 5. Plaintiffs' Motion for Leave to File Excess Pages (Ct. Rec. 7) is
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1 **GRANTED.**

2 6. Defendant's Ex Parte Motion for Relief from Local Rule 7.1(f) (Ct. Rec.
3 20) is **GRANTED.**

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter
5 this Order and forward copies to counsel.

6 **DATED** this 5th day of September, 2007.

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10 **ROBERT H. WHALEY**
11 Chief United States District Judge
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