

**Charter Communications, Inc. v Local Union No. 3,
Intl. Bhd. of Elec. Workers**

2017 NY Slip Op 32715(U)

December 21, 2017

Supreme Court, New York County

Docket Number: 159036/2017

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART 2

Justice

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CHARTER COMMUNICATIONS, INC.,
Plaintiff,

INDEX NO. 159036/2017

MOTION DATE

- v -

MOTION SEQ. NO. 001

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LANCE VAN ARSDALE, in his capacity as Assistant Business Manager, Maintenance Division of Local No. 3, DEREK JORDAN, in his capacity as Business Representative of Local No. 3, SEAN FITZPATRICK, in his capacity as Business Representative of Local No. 3, and "JOHN DOES" (names being fictitious, all of whom are unknown to plaintiff, all of persons being members of or acting in concert with IBEW Local No. 3),

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 22, 24, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 62, 64, 65, 81, 82, 84

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

Upon the foregoing documents, and after a hearing, the application is denied.

In this action by plaintiff Charter Communications, Inc. ("Charter") sounding, inter alia, in nuisance, assault, and trespass, and seeking damages against defendants Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO ("Local 3"), Lance Van Arsdale, in his capacity as Assistant Business Manager, Maintenance Division of Local No. 3, Derek Jordan, in his capacity as Business Representative of Local No. 3, Sean Fitzpatrick, in his capacity as Business Representative of Local No. 3, and "John Does" (names being fictitious, all of whom are unknown to plaintiff, all of persons being members of or acting in concert with IBEW Local No. 3) plaintiff moves, by order to show cause ("OSC"), pursuant to CPLR 6313 and Labor Law §

807, for a temporary restraining order (“TRO”) and preliminary injunction. Defendants oppose the motion. After an evidentiary hearing, and after a review of the parties’ pre- and post-hearing submissions, as well as the parties’ arguments and the relevant statutes and case law, the application is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

Charter, formerly Time Warner Cable, is a corporation which provides cable television, internet and voice services to residential, commercial and governmental subscribers. Doc. 25, at par. 5.¹ In the New York area, Charter provides such services under the brand name Spectrum. *Id.* The company employs approximately 1,700 cable technicians in a bargaining unit represented by defendant Local 3, a labor union. Doc. 25, at par. 8. On or about February 6, 2017, Charter and Local 3 began collective bargaining negotiations. *Id.*, at par. 13. On March 28, 2017, Local 3 commenced a strike, and certain employees of Charter began a work stoppage. *Id.*, at par. 16. Charter alleged that, since the strike began, its equipment has been “sabotage[d]” on numerous occasions and that Local 3 and its leadership have encouraged and condoned such acts. *Id.*, at pars. 19-48. It further alleged that two Local 3 members have been arrested in connection with these acts. *Id.*, at pars. 37-40, 47.

Charter commenced this action against defendants Local 3, Lance Van Arsdale, in his capacity as Assistant Business Manager, Maintenance Division of Local 3, Derek Jordan, in his capacity as Business Representative of Local 3, Sean Fitzpatrick, in his capacity as Business Representative of Local 3, and certain “John Does” who allegedly were members of or acted in concert with Local 3, by filing a summons and verified complaint on October 10, 2017. Doc. 1. In

¹ Unless otherwise noted, all references are to the documents filed with NYSCEF in connection with the captioned action.

its amended verified complaint Charter alleged, inter alia, that it was entitled to injunctive relief due to Local 3's "unlawful and destructive campaign of sabotage against Charter's equipment." Doc. 25, at par. 1. Charter's amended complaint set forth details regarding the alleged incidents of vandalism and sabotage. It also alleged, inter alia, that Local 3 pickets:

engaged in unlawful acts against Charter and its property and employees – including but not limited to blockading and preventing ingress to and egress from Charter facilities; interfering with and preventing the free movement of Charter vehicles on the public streets; threats of physical violence against Charter employees and their families, deliberate damage to Charter vehicles; and interfering with and threatening contractors hired by Charter . . .

Id., at par. 58.

Charter asserted causes of action against defendants sounding in private nuisance, public nuisance, assault, and trespass to chattels. Doc. 25. Charter also alleged a separate cause of action against defendants seeking a permanent injunction against them pursuant to Labor Law § 807. Doc. 25.

On October 11, 2017, Charter brought the instant OSC, pursuant to CPLR 6313 and Labor Law § 807, seeking a TRO and preliminary injunction enjoining defendants from a) trespassing or picketing within any Charter facility; b) approaching within 25 feet of any Charter facility, vehicle or other property; c) directing abusive or threatening language or gestures toward any person at or in the vicinity of any Charter facility, vehicle, or other property; d) delaying, obstructing, or otherwise interfering with the entry of people and/or vehicles into Charter facilities; and e) obstructing, harassing, intimidating, assaulting, threatening or interfering with any Charter employee or an employee of an entity doing business with Charter. Doc. 2. In support of the OSC, Charter submitted, inter alia, affidavits of Charter employees who attested to allegedly illegal conduct by Local 3 picketers including, among other things, blocking ingress and egress to Charter

facilities and verbal abuse of Charter employees. Docs. 7, 9-14, 16, 19. On October 12, 2017, this Court signed the OSC but declined to grant Charter a TRO on the ground that, pursuant to Labor Law § 807, such relief could not be granted without a hearing. Tr. of Proceedings of 10/12/17, at p. 28-29. This Court then directed that a hearing be scheduled to determine whether Charter was entitled to injunctive relief. Id.

The Hearing

This Court conducted a hearing in this matter pursuant to Labor Law § 807 on October 23, 25, 26 and 27, 2017. The scope of the hearing included the blocking of ingress and egress at Charter facilities since September 15, 2017. Tr. of Proceedings. of 10/23/17, at 3, 14; Tr. 397. Charter's attorney acknowledged that his application for injunctive relief was limited to "unlawful picketing and the threats and the damage to property." Tr. 450. At the outset of the hearing, counsel for Local 3 stipulated that the union had "engaged in picketing activity at many [] Charter locations." Tr., at 24.

Lance Van Arsdale, Assistant Business Manager for Local 3, was called as a witness for Charter. He testified that he had engaged in collective bargaining with Charter and its predecessor corporation, Time Warner Cable. Tr., at 16-17, 19. Van Arsdale identified a sign used by Local 3 pickets during the current strike (Tr., at 26; Ex. 2) and represented that every Local 3 picket line was to have a picket captain or shop steward from the union present. Tr., at 36. The picket captains and shop stewards were instructed to monitor picket lines and observe whether entrances and exits to Charter facilities were being blocked. Tr., at 37-38.

Charter also called its employees Justin Finnerty, Michael Buck, Michael Baird, Ken Urban, Tom Ellis, Dennis Schuler, Lester Mahon, Dennis Falls, Anthony Rodriguez, and Nigel Wilkie as witnesses.

The hearing testimony established that, on multiple occasions, Local 3 picketers interfered with the ingress and/or egress of Charter vehicles or vehicles of its employees to and from Charter facilities, or interfered with the work of Charter employees:

Michael Baird, a supervisor at Charter's Staten Island facility, said that, on September 15, 2017, over 100 picketers carrying Local 3 signs and wearing Local 3 hats and shirts blocked vehicles at Charter's facility in Staten Island. Tr. 143-145. Although police arrived at about 7 a.m., they left soon thereafter. Tr. 145. Picketers chased and surrounded one technician's truck, screaming at the driver and folding in the vehicle's mirrors. Tr. 146. The police returned after 8 a.m., directed Local 3 member Billy Silverglad to stop using a bullhorn, and then left after a few minutes. Tr. 148-149. When the police left, blocking of the ingress and egress of cars from the Charter lot continued. Tr. 149. Sometime after 10:45 a.m., Baird, who had left the facility earlier that morning, returned to the site and 10-15 picketers surrounded him for about 6-7 minutes. Tr. 150. After he parked, he noticed that two "scab" stickers had been placed on his truck. Tr. 152.

On September 17, 2017, Anthony Rodriguez, a Charter supervisor working out of its College Point, Queens facility, received a call from Ronald Johnson, another supervisor at College Point, asking for assistance on a job in Electchester, where Local 3's headquarters were located. Tr. 327-330. Johnson asked Rodriguez to sit in his truck while he did a job. Tr. 330, 333. While Rodriguez waited for Johnson, another Charter supervisor, Kenny Espinosa, drove by and, while Rodriguez and Espinosa were talking, three men, wearing Local 3 gear and carrying a Local 3 sign, started shouting at them, calling them "scabs". Tr. 333-335. The three men began banging on the Charter trucks and threatening to kill the families of Rodriguez and Espinosa. Tr. 336. They would not allow Rodriguez to leave his car and prevented him from driving away by blocking his vehicle. Tr. 337. Rodriguez called the police but they did not respond. Tr. 336-338. He exited his car and asked the men to let him leave but they told him "[g]et back in the car you [expletive]." Tr. 339. After his second call to the police, they responded, moved the men aside, and

Rodriguez was able to leave. Tr. 339-340. He had been blocked for approximately one hour. Tr. 340.

On September 18, 2017, 25-30 picketers appeared at Charter's Staten Island facility and impeded the flow of traffic into and out of the premises. Tr. 155-156.

On September 21, 2017, Justin Finnerty, a manager at Charter's Staten Island facility, saw picketers, who were carrying Local 3 signs and wearing Local 3 clothing, blocking exiting and entering traffic at that location. Tr. 74-81. Michael Buck, a supervisor at the facility, estimated that it took approximately 45 minutes for Charter's service vehicles to leave the facility that day, whereas it usually took about 10 minutes. Tr. 80-81; 123-127.

On September 22, 2017, Nigel Wilkie, a manager at Charter's Woodside facility, saw approximately 30 picketers, who were wearing Local 3 hats and shirts and carrying Local 3 picket signs, blocking ingress and egress at that location. Tr. 346, 348-350. The picketers blocked the entrance of workers' cars into the parking lot at the facility. Tr. 350. They also placed a plastic drum in the middle of the exit of the parking lot, preventing vehicles from leaving the facility. Tr. 351; 353-354; 360. Although it usually took Charter trucks between 5 and 20 minutes to exit the facility, it took over 1 ½ hours that day. Tr. 362. Although the police had to be called three times before they arrived, they successfully assisted in the process allowing the Charter trucks to exit the facility. Tr. 367.

On September 25, 2017, picketers wearing Local 3 paraphernalia blocked cars entering Charter's facility in Staten Island. Tr. 81-91. For approximately one hour, cars were unable to move. Tr. 93. When Finnerty urged the Charter drivers to be patient, Silverglad chest bumped him and cursed at him. Tr. At 90-92. The police were called twice and appeared after the second phone call, at which time the blocked vehicles were able to enter Charter's parking lot. Tr. 88-89, 92-93.

On September 25, 2017, a Charter technician named Markel Kuis was followed to his first job of the day by Scott Toder, a striking employee, as he drove across Staten Island. Tr. 128-130. Kuis' supervisor, Buck, met Kuis at the location where Kuis was to make his first service call of the day. Tr. 130-131. Before Kuis arrived, Buck saw Toder on the phone telling others to come to his location. Tr. 131-132.

Buck called the police and, after the police explained to him that strikers were permitted to picket, Buck told the police that they did not need to stay at the site. Tr. 133.² After Kuis arrived at the job site, about 15-20 picketers arrived. Tr. 134. The picketers bent the mirrors on Kuis' truck, sprayed the truck with purple liquid, and put a sticker on his truck which said "scab." Tr. 134. They also bent the license plate on Buck's truck and affixed a sticker to it saying "slut." Tr. 134-136.

On September 27, 2017, Local 3 picketers appeared at Charter's facility in Sunset Park, Brooklyn and blocked Charter vehicles attempting to leave the facility for a shift commencing at 11 a.m. Tr. 219-220. Picketers also blocked Charter vehicles at a nearby intersection, surrounding the vehicles and screaming at the Charter employees therein. Tr. 224. While Dennis Schuler, Charter's Director of Field Engineering for Brooklyn and Queens, attempted to assist the employees in the surrounded trucks, Silverglad pushed a Charter supervisor. Tr. 210-211; 226-227. One of the picketers present was Pradeep Ramohlom, also known as Jimmy, who was a shop steward at the Sunset Park facility. Tr. 228-229. The picketers delayed Charter vehicles by approximately 20 minutes that day. Tr. 247.

On September 28, 2017, Dennis Falls, a supervisor at Charter's College Point, Queens facility, along with other Charter employees, had to terminate a service call near Electchester because they were repeatedly accosted by a striker in Local 3 dress who screamed profanities, kicked their equipment, and refused a customer's demand that he (the Local 3 member) leave her property.³ Tr. 284-285; 289-295.

Schuler recalled that, for over one hour on October 2, 2017, picketers attempted to block the exits to the Sunset Park facility and kicked over safety cones and tape placed by Charter management in an attempt to clear a path for exiting vehicles. Tr. 232-235. Although the police arrived and assisted in allowing the Charter vehicles to leave the facility, the departure of the vehicles was delayed by over three hours. Tr. 236-240.

² This is contradicted by Charter's brief, in which it asserts that the police refused to stay to help Buck and Kuis. Charter Brief, at p. 4.

³ Charter has been sending out crews of two people in the Electchester section of Queens, where Local 3 headquarters are located, since there have been incidents of vandalism against Charter property in that area. Tr. 286-287.

On October 5, 2017, Baird learned that picketers were blocking traffic at the Staten Island facility and was able to watch the picketers in real time with an app on his phone. Tr. 157-163; Exs. 15-18. Video of the picketers showed that they stood directly in front of Charter vehicles so that they could not move. Tr. 163; Exs. 15-18.

On October 10, 2017, Finnerty saw picketers knock a mirror off of the side of a Charter truck at Charter's Staten Island facility. Tr. 93-95. He further stated that, since September of 2017, stickers had been placed on his truck, his mirrors had been turned in, and his license plate had been bent. Tr. 96-101. Baird said that, the same day, he saw picketers delaying each vehicle exiting or entering the premises for 3 to 4 minutes. Tr. 164. Picketers bent in mirrors, attempted to open the rear doors of Charter vehicles, and unlatched ladders secured to the roofs of the trucks. Tr. 164-166.

On October 11, 2017, Falls and a Charter technician were riding in a Charter vehicle in Fresh Meadows, Queens, near Electchester, when they were surrounded by Local 3 strikers, including Silverglad, shouting at them. Tr. 296-302. The strikers yelled profanity, pushed mirrors in and out, threw liquid at the truck, played with the windshield wipers, and blocked the path of the truck for approximately 15 minutes. Tr. 299-302.

On October 12, 2017, Baird observed picketers delaying the exit of approximately 20 Charter trucks from the Staten Island facility for about 3-4 minutes each. Tr. 166-167.

On October 12, 2017, Falls observed picketers at the Charter facility in College Point, Queens. Tr. 311-313. The picketers yelled profanity at Charter technicians arriving for work, pushed in the mirrors on their vehicles, and blocked them from entering the facility. Tr. 313. Despite the presence of police, when Charter trucks tried to leave the facility that morning, picketers yelled profanities, and pushed in mirrors and smacked windows of Charter trucks. Tr. 315-316. The departure of the trucks from the facility that day, which usually takes 20 minutes, took about one hour. Tr. 316.

On October 13, 2017, picketers wearing Local 3 clothing and carrying Local 3 signs blocked the ingress and egress of vehicles at Charter's Paidge Avenue facility in Brooklyn. Tr. 178, 181-182. This included blocking the exit to the building housing Charter technicians. Tr. 265, 267-269. When Lester Mahon, a director of field operations for Charter, approached picketer Darren Fonseca, the latter, who was blocking a Charter employee driving his or her own personal vehicle, cursed at Mahon's family members and threatened that, when he returned, he would "look for" Mahon." Tr. 272-273. Mahon saw Fonseca speaking with Local 3 shop steward James Himko. Tr. 276. Although the police arrived at the scene, they were ineffective in preventing the picketers from impeding the ingress and egress of vehicles. Tr. 191-192. That day, the process of Charter trucks exiting the lot of the Charter facility, one which usually took 10 minutes, took somewhere between 45 minutes to over one hour. Tr. 191-192; 269; 284.

On October 17, 2017, Baird saw picketers delaying the exit of approximately five vehicles from the Staten Island facility for about 3-4 minutes each. Tr. 170-171.

On October 19, 2017, picketers wearing Local 3 clothing and carrying Local 3 signs blocked the ingress and egress of vehicles at Charter's Paidge Avenue facility in Brooklyn. Tr. 181-182. Picketers pushed in mirrors on Charter trucks and yelled at Charter drivers. Tr. 186. Ellis saw picketers hit and kick Charter vehicles, surround vehicles of employees on their way to work, and surround employees on the sidewalk. Tr. 199. Charter manager William Urban saw picketers remove their Local 3 hats and shirts and put them in a car with their Local 3 signs. Tr. 178; 183-184. Urban learned that Himko directed the Local 3 picketers to put those items into a car because they were to be acting as civilians and not Local 3 picketers that day. Tr. 184-185. Ellis confirmed that he heard Silverglad tell another individual to put the signs away. Tr. 201. After the picketers put the items into a car, they continued blocking traffic. Tr. 187-188. Urban estimated that traffic was blocked for a total of 45-50 minutes that day. Tr. 188. After drivers left their trucks to fix the mirrors that had been pushed in, picketers ran up to the trucks again and pushed them back in. Tr. 202-203. Urban recalled that, once the police arrived, it took them approximately 5-10 minutes to move the picketers back. Tr. 188. Urban did not recall any violence that day. Tr. 189. Ellis recalled that the police provided temporary assistance in restoring traffic flow but that they were unable to clear the way for all exiting traffic. Tr. 203-205.

On April 4, 2017, Kevin Smith, vice-president of labor relations for Charter, sent a letter to Christopher Erickson, business manager for Local 3, requesting that Local 3 “cease and desist from any unlawful behavior.” Tr. 18; 375, 385; Ex. 28. Erickson responded with an April 7, 2017 letter to Charter denying any responsibility for the acts of the Local 3 picketers. Tr. 385; Ex. 29.

Smith conducted collective bargaining with Local 3 commencing on February 6, 2017. Tr. 414. Charter and Local 3 have held approximately 9 collective bargaining sessions in total. Tr. 414. Local 3 commenced a strike on March 28, 2017. Tr. 414. From May 23 until October, 2017, the parties had four collective bargaining sessions. Tr. 414. During those four sessions, the parties were assisted by a federal mediator. Tr. 415. Smith has also had several telephone conversations with the mediator. Tr. 415. In July of 2017, after the parties reached a “good faith impasse”, Charter “implemented terms and conditions of employment.” Tr. 422-423.

Smith acknowledged that criminal complaints had been filed against certain Local 3 members as a result of their actions. Tr. 425; 458.

Van Arsdale was recalled as a witness for Local 3. Tr. 462. He admitted that Local 3 had distributed approximately 5,000 picket signs since the strike began. Tr. 466. In response to Smith’s letter of April 4, 2017, Erickson wrote a memorandum to all Local 3 members directing them “not to engage in any and all such acts that could imperil the safety of the citizens of New York City.” Tr. 470-474, 477; Ex. D.

On October 13, 2017, Local 3 sent a memorandum to all of its members stating, inter alia, that all picketers are “not to impede or otherwise obstruct the flow of Charter/Spectrum vehicles or their employees from entering or leaving Charter/Spectrum facilities or from performing service for Charter/Spectrum.” Tr. 479; Ex. E. The memorandum was also posted on the Local 3 blog called “NYCableTruth” on October 14 or 16. Tr. 479. Van Arsdale was not aware of any

vandalism conducted by Local 3 members. Tr. 474. On October 16, 2017, Local 3 called a meeting of job stewards and picket captains to inform them that blocking of ingress and egress to Charter facilities was prohibited. Tr. 481; 492-493.

After Van Arsdale learned of striker misconduct at the Paidge Avenue facility on October 19, 2017, he had Himko and the others involved come to his office and warned them that, if such conduct occurred again, the members would be brought up on internal charges. Tr. 481-483. He also assigned seven different business agents to monitor the picket lines to ensure that there was no blocking of ingress or egress. Tr. 484.

CONTENTIONS OF THE PARTIES:

Charter argues that it has met all of the criteria required by Labor Law § 807 for injunctive relief. Specifically, it asserts that it made every possible effort to resolve its labor dispute with Local 3 prior to seeking the relief herein. Additionally, it maintains that unlawful acts being committed by Local 3 will continue unless restrained; it will suffer irreparable injury unless it is granted injunctive relief; that it would suffer greater injury if its application is denied than would be inflicted on Local 3 if the application were granted; that it has no adequate remedy at law; and that the public officers charged with protecting its property have failed or are unable to furnish adequate protection. It further asserts that Local 3 and its members ratified the conduct of the strikers who committed unlawful conduct and that this is evidenced by the presence of Himko, a shop steward and Local 3 member, on a picket line. Further, Charter maintains that its claims are not preempted by the National Labor Relations Act ("NLRA").

In opposition, defendants argue Charter's request for injunctive relief is preempted by the NLRA. They also urge that they have neither committed, threatened, ratified, authorized, nor

participated in any unlawful acts. They maintain that a shop steward's presence at a picket line does not signify ratification or authorization of the acts of the picketers. Further, defendants assert that circumstantial evidence cannot be used by Charter to establish its entitlement to injunctive relief pursuant to section 807. In addition, Local 3 maintains that Charter failed to establish that the alleged unlawful acts will continue if not enjoined. Further, Local 3 asserts that Charter is not entitled to the relief requested because it has adequate remedies at law. Local 3 also argues that Charter failed to establish irreparable harm and that the balance of the hardships weighs in its favor. Additionally, Local 3 maintains that the police provided Charter with adequate protection. Finally, Local 3 argues that Charter did not make every reasonable effort to settle this labor dispute prior to seeking injunctive relief.

LEGAL CONCLUSIONS:

Labor Law § 807 (1) provides, in pertinent part:

"1. No court nor any judge or judges thereof shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, as hereinafter defined, except after a hearing, and except after findings of all the following facts by the court or judge or judges thereof to be filed in the record of the case:

"(a) That unlawful acts have or a breach of any contract . . . has been threatened or committed and that such acts or breach will be executed or continued unless restrained;

"(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

"(d) That complainant has no adequate remedy at law;

"(e) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection."

The statute further specifies that the required hearing "shall consist of the taking of testimony in open court with opportunity for cross-examination" and that "no affidavits shall be received in support of any of the allegations of the complaint." Labor Law § 807 (2).

Labor Law § 807 (4) provides, inter alia, that "[n]o injunctive relief shall be granted to any plaintiff who has failed to . . . allege and prove that he has made every reasonable effort to settle such dispute either by negotiation or with the aid of any machinery of mediation or voluntary arbitration, provided for by law or contract between the parties."

Labor Law § 807 (6) provides that:

6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute (as these terms are herein defined) shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of the individual officers, members, or agents, except upon proof by the weight of evidence and without the aid of any presumptions of law or fact, of (a) the doing of such acts by persons who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.

Labor Law § 807 (10) (c) provides that

(c) The term "labor dispute" includes 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, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee.

Where, as here, the parties are involved in a labor dispute, "a grant of injunctive relief must be based upon compliance with the provisions of Labor Law § 807." *Jou-Jou Designs, Inc. v International Ladies' Garment Workers' Union, Local 23-25*, 94 AD2d 395, 405 (1983), *aff'd* 60 NY2d 1011. In discussing the section 876-a of the Civil Practice Act (the predecessor of Labor

Law § 807 [1]), the Court of Appeals stated that "[t]he effect of that statute is to prevent courts from enjoining peaceful picketing. It was never intended to deprive the Supreme Court of jurisdiction to enjoin dangerous, illegal acts which constituted disorderly conduct and breach of the peace." *Busch Jewelry Co. v United Retail Employees' Union Local 830*, 281 NY 150 (1939).

Given the cases and sections of the statute set forth above, it is evident that, in enacting Labor Law § 807, "the Legislature has placed elaborate restrictions on the use of preliminary injunctions in private sector labor disputes." *Uniformed Firefighters Assoc. of Greater New York v City of New York*, 79 NY2d 236, 241 (1992). Thus, this Court must determine whether Charter met the high standard imposed by the statute.

Labor Dispute

A threshold issue in this matter is whether the parties are involved in a "labor dispute" within the meaning of Labor Law § 807 (10) (c). The parties do not disagree that the controversy between them constitutes such a "labor dispute." Charter's Post-Hearing Brief, at 27; Local 3's Post-Hearing Brief at 24.

Preemption

Contrary to Local 3's contention, Charter's request for injunctive relief is not preempted by Federal law. Although "state injunctive relief is generally preempted by Federal labor laws in labor disputes", there is an exception to this rule when it is necessary for a state court to issue an injunction "to prevent mass picketing, violence, and overt threats of violence. The dominant interest of the State in preventing violence or property damage cannot be questioned. It is a matter of genuine local concern." *Brookdale Univ. Hosp. & Med. Ctr. v 1199 SEIU United Healthcare*

Workers E., 31 Misc 3d 1233[A], 2011 NY Slip Op 50967(U), *8 (Sup Ct, Kings County 2011) quoting *United Automobile, Aircraft & Agricultural Implement Workers v Wisconsin Employment Relations Bd.*, 351 US 266, 276 (1956).

Likelihood That Alleged Unlawful Acts Will Continue If Not Restrained

Although Local 3 picketers made some physical contact with Charter employees, such as chest bumping and pushing (Tr. 90-92; 226-227), and threatened Charter employees and their families (Tr. 272-273; 336) there is no evidence that such acts were violent or dangerous. Even assuming that such contact had risen to that level, Charter has failed to establish that such acts will continue if not restrained. On October 13, 2017, Local 3 sent a memorandum to its membership directing them “not to impede or otherwise obstruct the flow of Charter/Spectrum vehicles or their employees from entering or leaving Charter/Spectrum facilities or from performing service for Charter/Spectrum.” Tr. 479; Ex. E. The memorandum was also posted on the Local 3 blog called “NYCableTruth” on October 14 or 16. Tr. 479. On October 16, 2017, Local 3 called a meeting of job stewards and picket captains to inform them that blocking of ingress and egress to Charter facilities was prohibited. Tr. 481; 492-493. Van Arsdale also warned Himko and others involved in alleged misconduct while picketing that, if such conduct occurred again, the members would be brought up on internal charges. Tr. 481-483. He also assigned seven different business agents to monitor the picket lines to ensure that there was no blocking of ingress or egress. Tr. 484. Further, he was not aware of any incidents of misconduct after October 19, 2017. Tr. 484.

Charter maintains that, since the parties stipulated that defendants were formally notified of the alleged misconduct on October 1, 2017 (Tr. 71-72), Local 3 only stopped its misconduct because of this pending litigation. In support of this contention, Charter relies, inter alia, on *United*

States v Diapulse Corp. of America, 457 F2d 25 (2d Cir 1972). In that case, the Second Circuit determined that the trial court had the discretion to assess the likelihood of the repetition of the offense. Here, however, Labor Law § 807 (1) (a) requires that Charter *prove* that “such acts . . . will be executed or continued unless restrained” (*emphasis added*) and the statute does not defer to the discretion of the court. Since Charter failed to establish that the alleged acts will continue if not retrained, it has failed to satisfy this paragraph of the statute.

Irreparable Harm

Charter has failed to establish that it sustained irreparable harm as a result of the alleged acts by Local 3 picketers. See Labor Law § 807 (1) (b). The vast majority of testimony by Charter’s witnesses addresses the blocking of ingress and egress from Charter facilities, which delayed Charter workers arriving for work and leaving for their shifts. Tr. 74-81; 93; 123-127; 155-156; 163; 166-167; 170-171; 181-182; 187-188; 191-192; 219-220; 232-245; 247; 265-269; 284; 299-302; 313; 316; 339-40; 348-350; 362. Local 3 members also blocked Charter employees and/or their vehicles outside of Charter facilities (Tr. 134-136; 289-302; 336-337); bent license plates and put stickers on Charter vehicles (Tr. 96-101; 134-136, 152); broke a mirror on a Charter vehicle (Tr. 93-95); and unlatched ladders mounted on top of Charter vehicles (Tr. 164-166). Although Charter maintains that it was irreparably harmed by these acts, it has failed to prove that this is the case.

In asserting that it sustained irreparable injury, Charter asserts, among other things, that it sustained “incalculable harm to [its] business reputation and customer goodwill.” Charter’s Post-Hearing Brief, at 23. However, there is no evidence supporting this contention. Charter also asserts that it sustained irreparable harm since it “cannot quantify with any degree of certainty how

many customers have decided not to utilize its services because of the intimidation, harassment, and general annoyance they have experienced due to [d]efendants' ongoing mass picketing." Charter's Post-Hearing Brief, at 24. This argument is also without merit, since Charter has not proven that it lost even one customer as a result of the alleged actions by Local 3 employees.

Further, Charter's reliance on the case of *Baur v Wepprecht*, 16 Misc2d 847 (Sup Ct Queens County 1958) is misplaced, as the picketing enjoined in that matter was "coercive and oppressive" and "conducted and pursued with disorder, breach of the peace and for an unlawful labor objective." 16 Misc2d, at 849. Thus, Charter has failed to establish that it sustained irreparable harm as a result of the alleged acts of the Local 3 members.

Adequate Remedy At Law

Charter has failed to establish that it has no adequate remedy at law. Labor Law § 807 (1) (d). Charter's claim that it has no such remedy is indeed inconsistent with the filing of its complaint against defendants containing causes of action sounding in private nuisance, public nuisance, assault, and trespass to chattels. Doc. 25. Further, "to the extent that [Local 3's] actions violate the collective bargaining agreement or constitute an unfair labor practice, [Charter] may seek relief before the [NLRB]." *Brookdale Univ. Hosp. & Med. Ctr. v 1199 SEIU United Healthcare Workers, supra*.

Adequate Police Protection

Although Charter asserts that it is entitled to injunctive relief because the police have failed to provide it with adequate protection, the hearing testimony reveals that, although the police did not always arrive immediately, they were frequently successful in resolving the problems for

which they were called, such as restoring ingress and egress and moving picketers out of the way of Charter employees and vehicles. Tr. 88-89; 92-93; 188; 203-205; 236-240; 339-340; 367. Indeed, on one occasion, Buck told the police not to stay at the location where picketing was being conducted. Tr. 133.⁴ Moreover, there is no proof of any injury resulting from the alleged failure by the police to provide adequate protection. Indeed, the testimony reflects that, on several occasions, the police arrived, assessed the situation, and found that no action on their part was necessary. Thus, Charter has failed to satisfy Labor Law § 807 (1) (e).

Relative Harm

Charter has failed to establish that the denial of its application for an injunction will result in greater injury to it than granting the injunction would inflict on Local 3. See Labor Law § 807 (1) (c). As discussed above, the physical contact between Local 3 workers and Charter employees was minimal and, despite vocal threats by some Local 3 workers, there were no violent acts committed and no illegal acts which would constitute disorderly conduct or a breach of the peace. However, an injunction would deprive Local 3 of its constitutional right of freedom of speech, i.e., voicing its opposition to Charter's negotiating position.

Every Reasonable Effort to Settle

As noted above, Labor Law § 807 (4) requires a party seeking injunctive relief to establish that it made "every reasonable effort to settle such dispute either by negotiation or with the aid of

⁴ Although, as noted above, Charter argues that the police refused to stay to help Buck and Kuis.

any machinery of mediation or voluntary arbitration, provided for by law or contract between the parties.” Here, there is no question that significant negotiations took place between the parties. Smith testified that the parties engaged in 9 collective bargaining sessions commencing on February 6, 2017 and were also assisted by a mediator. Tr. 414-415. The parties subsequently reached “a good faith impasse” in July of 2017 (Tr. 442-443). Given Smith’s testimony, as well as the concession by Local 3’s attorney that Charter made “every reasonable effort to settle the dispute” (Tr. 440), this Court finds that Charter satisfied Labor Law § 807 (4).

Participation, Authorization, or Ratification

As noted above, Labor Law § 807 (6) requires that the party seeking injunctive relief establish “actual participation in or authorization of such conduct, or ratification thereof” by any of the defendants, which showing must be made “upon proof by the weight of evidence and without the aid of any presumptions of law or fact.”

Charter was unable to produce direct evidence that Local 3 members participated in, authorized, or ratified violent and/or dangerous acts and, since it cannot rely on any presumptions of fact or law, it has failed to meet the strict requirements of Labor Law § 807 (6). Indeed, Van Arsdale testified that he was not aware of any vandalism committed by Local 3 members to Charter property. Tr. 474. The contention by Charter’s attorney that, “[i]f anything, the record indicates that Local 3 has with a wink and a nod, at the very least, encouraged and prompted [the behavior of Local 3 members]” (Tr. 451) is utterly speculative and does not begin to approach the stringent standard set forth in Labor Law § 807 (6).⁵

⁵ This court also rejects the assertion by Charter’s attorney that the Local 3 clothing and signs constituted “compelling proof of Local 3’s ratification” (Tr. 452) given that such argument is purely circumstantial in nature.

Van Arsdale testified that Local 3 picket captains and shop stewards were instructed to monitor picket lines and observe whether entrances and exits to Charter facilities were being blocked. Tr., at 37-38. In fact, shop steward Ramohlom was present at the Sunset Park facility on September 27, 2017 (Tr. 228-229), and shop steward Himko was present at the Paidge Avenue facility on October 13, 2017. Tr. 276. However, contrary to Charter's contention, based on the case of *Browne v Int'l. Bd. of Teamsters, Local Union 851*, 203 AD2d 13 (1st Dept 1994), this did not rise to the level of participation, ratification, or authorization envisioned by the statute. Indeed, Smith admitted that he did not see Van Arsdale, Fitzpatrick, or Jordan in any video footage of alleged picket line misconduct. Tr. 456-457.

In *Browne*, the Appellate Division held that “[s]pecific proof of ‘knowing tolerance by other union officials was not required in order to hold [defendant] directly responsible for the actions of its shop steward on the scene inasmuch as he was clothed with plenary authority to direct the strike on behalf of the union.’” 203 AD2d, at 15. However, *Browne* is clearly distinguishable from the captioned action. First, the plaintiff in *Browne*, a security guard, was not seeking an injunction but rather monetary damages against a union member arising from an assault. Further, the union member hit the security guard in the head with a brick, an act of violence far worse than even alleged much less committed by any Local 3 members in connection with the strike at issue herein.

Charter's reliance on *Yellow Bus Lines v Local Union 639*, 883 F2d 132, 136 (DC Cir 1989), cert denied 501 US 1222 (1991) is also misplaced. *Yellow Bus Lines* involved a claim against a union for destruction of an employer's property by union members during a strike. In that case, the court analyzed the authorization or ratification standard under the Federal Norris-

LaGuardia Act § 6 (29 U.S.C. § 106) in determining whether liability could be imposed on a union for the acts of its agents. It held that specific proof of "knowing tolerance" by union officials of a member's tortious acts was not required under section 6 to hold the union liable where the member was "clothed with plenary authority to direct the strike on behalf of the union." (888 F2d, at 136). Although the court in that case determined that section 6 "applies in 'federal court adjudications of state tort claims arising out of labor disputes'" (888 F2d, at 135 [internal citations omitted]), it did not address the effect of section 6 on state substantive law. *See Saleme v Toussaint ex rel. Local 100 Transp. Workers Union of Am.*, 5 Misc3d 1032 (A) (Sup Ct New York County 2003). Thus, *Yellow Bus Lines* does not support Charter's contention that it is entitled to injunctive relief pursuant to Labor Law § 807.

Since Charter has not proven every element required by Labor Law § 807, its request for injunctive relief is denied. Given this finding, it is unnecessary for this Court to address the remaining contentions of the parties.

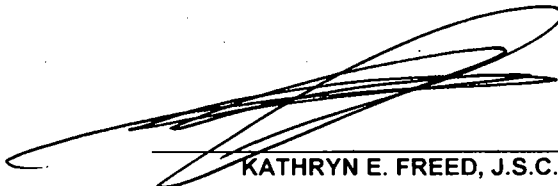
In light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Charter Communications, Inc. seeking a temporary restraining order or preliminary injunction is denied in all respects; and it is further

ORDERED that this constitutes the decision and order of the court.

12/21/2017

DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE