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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KATHLEEN A. CARROZZA, et al. *Plaintiffs,* **vs.** **INTERNATIONAL ASSOCIATION OF MACHINISTS** *Defendant.*	NO. _____ CIVIL ACTION

EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs, by and through undersigned counsel, hereby submit the following Application for a Temporary Restraining Order and Preliminary Injunction consistent with Local Rule 65.1:

I. Background

Plaintiffs are flight attendants covered by a collective bargaining agreement between the International Association of Machinists Union (Defendant) and

ExpressJet Airlines. Defendant wants to force a vote on a new collective bargaining agreement with no time to properly assess its merits and/or demerit and by disenfranchising a large percentage of the rank-and-file thereby depriving them, and every other member, of a meaningful vote. Plaintiffs further rely on the facts as set forth in their complaint referred to and incorporated herein.

II. Subject Matter Jurisdiction of This Court.

This court has jurisdiction over this case over this case pursuant to Title 1 of Labor-Management Reporting and Disclosure Act, 29 U.S.C.S § 411-412 (LMRDA).

Title I of LMRDA, 29 U.S.C. §§ 411-12. Title I protects union members against discriminatory application of union rules. *See* 29 U.S.C. § 411(a)(1). Title I further provides that "any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate." 29 U.S.C. § 412. Thus, the question of subject matter jurisdiction turns on whether plaintiffs have sufficiently alleged a violation of Section 411.

The pertinent provisions of the LMRDA, 29 U.S.C. § 411(a), provide:

(a)(1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to . . . vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, . . . upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

In *Calhoon v. Harvey*, 379 U.S. 134, 85 S. Ct. 292, 13 L. Ed. 2d 190 (1965), members of a union alleged that certain provisions of a union's constitution and bylaws violated the LMRDA because the provisions infringed their right to nominate candidates in an election. The Supreme Court found that the district

court's jurisdiction under Title I "depends entirely upon] whether this complaint showed a violation of rights guaranteed by [Title I, 29 U.S.C. § 411(a)(1)]." *Id.* at 138.

In some cases, the courts have been reluctant to follow *Calhoon* where the union defendants have behaved in such a way as to prevent members from casting a meaningful vote. See *Livingston v. International Association of Bridge, Structural and Ornamental Iron Workers*, AFL-CIO, 647F.Supp. 723, 728 (W.D. N.C1986).

Courts have held that unions violate Title 1 where union officials have circulated inadequate or misleading information about the matters to be voted on. *See Bunz v. Moving Picture Machine Operators Protective Union Local* 244, 567 F 2d 1117, 1122 (DC.Cir). 1977; where they have shortened the ratification timeframe to deny the opposition the opportunity to present their opinion. *Bauman v. Presser* 1984 WL 3255*8; or where they violate the Constitution and/or bylaws. *Bunz* 567 F.2d at 1122.

In this case, the Plaintiffs are asserting, inter alia, that they are being discriminated against in the exercise of their rights including but not limited to their right to a meaningful vote, as union members. As such, the complaint invokes the Court subject matter jurisdiction under sections 411 and 412. In short, the

Plaintiffs are able to predicate jurisdiction on a violation of a specific right enunciated in § 101(a)(1); *Carothers v. Presser*, 818 F.2d 926, 931, 260 U.S. App. D.C. 277 (D.C. Cir. 1987) ("First and foremost, the court must determine whether the union's conduct deprived the plaintiffs of a right *specifically enumerated* in the statute, such as the right to an equal vote, found in subsection 101(a)(1), or the right to 'express any views, arguments, or opinions,' found in subsection 101(a)(2)."). Therefore, prior to granting any relief, the Court must identify the specific statutory right in Section 411 that has been infringed. *Carothers*, 818 F.2d at 929.

It is submitted that by virtue of the violations of the LMRDA as set forth in the complaint but argued in more detail herein, that this Court has subject matter jurisdiction.

III. Plaintiffs Satisfy the Standard for a TRO and/or Preliminary Relief.

Notice by the Defendant that there was a new collective bargaining agreement which required ratification was sent to all flight attendants via email on June 29, 2018.

A. Plaintiffs Can Show Substantial of Success on Their Claims.

It is submitted, that the Plaintiffs have shown a substantial likelihood of success on their claim that they are being deprived of a meaningful vote in the referendum on the new collective bargaining agreement in violation of the LMRDA.

B. Deprivation of a Meaningful Vote.

Section 411(a)(1) of the LMRDA guarantees equal rights in voting to all members of labor unions. This means that every member of the union should have equal rights and privileges within the organization to vote in elections and/or referendums. They also have the right to participate in the deliberations and voting on the business of such meeting subject to reasonable rules and regulations in the union's constitution and bylaws.

29 U.S.C. § 411(a)(1) is the provision the LMRDA Bill of Rights. It is intended to guarantee that unions are run democratically and to assure "full and active participation by the rank and file in the affairs of union." *Sertic v. Cuyahoga, Lake, Geauga & Ashtabula Counties Carpenters Dist. Council,* 423 F.2d 515, 521 (6th Cir. 1970) (internal quotation omitted).

The LMRDA guarantees union members not only an equal vote, but also a meaningful" vote *Bunz v. Motion Picture Mach. Operators' Union* 186 U.S. App. D.C. 124, 567 F.2d 1117, 1121 (D.C. Cir. 1977). Whether members were

afforded a meaningful vote depends on "whether they were given adequate notice and information regarding the subject matter and nature of the vote" and whether they "had enough time and opportunity to mount effective support or opposition to the leadership's position." *Bauman v. Presser*, 1984 U.S. Dist. LEXIS 23478, 117 L.R.R.M. 2393, 1984 WL 3255, at *7 (D.C. Cir. 1984).

C. The "Quickie" Vote.

Here, the Defendant is conducting "quickie" referendum. In support, Plaintiffs cite to *Presser*, 1984 WL 3255. Their mail ballots were due a month after they were mailed out, the court held it was a "surprise vote" on a proposed collective bargaining agreement and therefore violated the LMRDA. The court stated in relevant part that "the vast majority" of members casting ballots did so without the benefit of an informational meeting, and where, "after the first key weekend, the holding of meetings and the circulation of literature was futile inasmuch as a large portion of the targeted audience had already voted") *Blanchard v. Johnson*, 388 F. Supp. 208, 215-16 (N.D. Ohio 1974), *aff'd in relevant part*, 532 F.2d 1074 (6th Cir. 1976) (finding that the plaintiffs were denied sufficient time and opportunity to express their views before a merger referendum began, and ordering that the union permit at least thirty days for dissemination of opposition viewpoints following the mailing of the re-vote ballots); *Hayes v. Int'l Org. of Master, Mates & Pilots*, 670 F. Supp. 1330, 1334-35

(D. Md. 1987) (declining to create "a *per se* rule which requires a union to mail opposition literature and ballots at the same time in all elections," but finding that the union had provided no justification for not sending the two together, even where it had provided a lengthy 90-day balloting period).

In this case, Plaintiffs do not even have 30 days. The quickie referendum has been thrust upon them with no more than two weeks between the notice that there will be a referendum and the referendum itself.

D. No Mail Ballot for No Reason.

In this case, the union is not even sending out ballots but requires, for no legitimate reason whatsoever, that union members show up in person to cast their votes. Voting can only occur on July 9, 2018 from 9.00 am to 6.00 pm (local time), on July 11 from 9.00 am to 6.00 pm (local time) and on July 13, 2018 from 9.00 am to 6.00 pm (local time). Voting is geographically restricted to only the airports of Newark, O'Hare (in the Hilton Hotel), Houston, Cleveland, Dallas-Fort Worth, LaGuardia and Atlanta. Further, Defendant knows that its rank and file are flight attendants whose job it is to fly around the country and abroad and who are often unable to get back to airports at a specific time and place in order to vote .

The practical effect, which Defendant has deliberately choreographed, is to deprive a substantial number of the rank-and-file not only of a meaningful vote but of any vote.

Further, the Defendant has refused to accommodate those who are absent because of work or vacation; those who are disabled and those who are on military leave or reserve duty; those who are on FMLA, On the Job Injury (OJI) or Company Offered Leave of Absence (COLA).

E. No Accommodation for Anyone.

The failure to accommodate these categories is a violation of the Defendant's own bylaws section 7 (hereto attached and incorporated herein as Exhibit 2.) Those bylaws state, in relevant part, that an absentee ballot can be received by someone who resides in an outlying district (more than 25 miles from the designated balloting place), confined because of verified illness, on leave qualifying under federal, state or territorial family leave, on vacation, on a travel assignment from the employer or on reserve military leave.

In the case at bar, Defendant has not only refused to issue any ballots but is also not given any accommodation to categories it acknowledges as protected.

As a consequence of these clear violations, Plaintiffs believe that they will succeed on the merits.

F. Irreparable Harm Will Occur If the Vote Goes Forward

If a vote on this collective bargaining agreement is allowed to go forward, the Plaintiffs will suffer irreparable harm and the public interest will be adversely affected.

a. *Deprivation of Voting Rights Is Irreparable*

The deprivation of voting rights is per se irreparable harm. See *Elrod v. Burns*, 427 U.S. 347, 49 L. Ed. 2d 547, 96 S. Ct. 2673 (1976). The possibility of a fair and meaningful vote in this referendum is not impossible. The Defendant has deliberately poisoned the electoral well. The potential harm is quantifiable and tangible.

The Plaintiffs and the rank-and-file are specifically deprived of their ability to properly assess the merits of this new collective bargaining agreement by the short time between the announcement of the agreement and the vote itself. Other rank-and-file who are in a protected category both under federal law and by the Defendant's own bylaws, will likely not be able to vote at all. Some of these members have lost flight privileges, are disabled, on jury service, in the military reserve, on Company Offered Leave of Absence, on FMLA or are too disabled to

travel and the Defendant is doing nothing to accommodate them. To make matters worse the union knows that many of these rank-and-file have let their union dues lapse and now, the Defendant is going to put an obstacle, by virtue of shortness of time, in renewing those memberships thereby further depriving many of these flight attendants from even casting a vote.

Consequently, a new collective bargaining agreement which will not reflect the true democratic will of the union members will be thrust upon all, in clear violation of the LMRDA and members will be deprived of the opportunity to consider and debate the merits, let alone vote.

Plaintiffs respectfully submit that the foregoing is irreparable harm.

G. Allowing Unions to Violate the Law and Undemocratically Running Amuck Is Not in the Public Interest.

The public interest clearly favors issuing a TRO or a preliminary injunction. The policy underlying the LMRDA is well-established: "The clear policy of the act is to bid farewell to the regime of benevolent well-meaning union autocrats and to give favor to a system of union democracy with its concomitants of free choice and self-determination." *Blanchard v. Johnson*, 388 F. Supp. 208, 215 (N.D. Ohio 1975), *aff'd in relevant part*, 532 F.2d 1074 (6th Cir. 1976).

There is a paramount public policy interest in ensuring that union elections and referendums are run democratically. This means that every union

member should be given the opportunity to have their voice heard. They should not be restricted by travel, illness, military service, disability, jury duty, On-the-Job Injury or Company Offered Leave of Absence. Neither should a fair opportunity to consider debate and oppose the new collective bargaining agreement be calculatingly restricted by time and place. The public interest is clearly threatened when unions are allowed to run amuck in violation of both federal law and the interests of their own rank-and-file.

In light of these circumstances and the public interest being harmed, preliminary relief should be granted by the court.

H. More Harm Will Come to the Plaintiffs and Union Members Than to the Defendant If Preliminary Relief Is Not Granted.

Finally, it is clear that much more harm will come to the Plaintiffs and union members than to the Defendant if the vote is postponed, properly balloted and debated in the future.

There is no logical justification for not permitting a reasonable time for debate and for opposition materials to be drafted and sent to members. Neither is there any justification for the requirement that union members physically present themselves to vote at specific limited times at specific limited locations

If this were not enough, the disabled, the sick, those on vacation, on Company Leave Of Absence, FMLA, On the Job Injury or working will not get their voices heard. Ironically, this deprivation would seem to go against everything a union is supposed to represent.

IV. CONCLUSION

For the reasons set forth above, Plaintiffs, on behalf of themselves and on behalf of all union members and those with lapsed union membership, request this court to grant a temporary restraining order, preventing the vote between July 9, 2018 and July 13, 2018 from going forward, pending a new submission by the union of a new date which allows sufficient time for informed review, debate and the preparation of opposition materials. Plaintiffs further request that the Defendant be required to send out a mail ballot to **all** rank-and-file, so that all have the opportunity to have their voices heard, and that it streamline the process for reinstating union members so none are disenfranchised and that sufficient is provided for review, debate and opposition to the proposed collective bargaining agreement.

Respectfully submitted,

KOLMAN ELY, P.C.

/s/ W. Charles Sipio, Esq.
Timothy M. Kolman, Esq. (lead counsel) (*pro hac vice application to be filed*)
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Dated: July 3, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KATHLEEN A. CARROZZA, et al. *Plaintiffs,* **vs.** **INTERNATIONAL ASSOCIATION OF MACHINISTS** *Defendant.*	NO. _____ CIVIL ACTION **[PROPOSED] ORDER IMPOSING TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT**

THIS MATTER having come before the Court on application of the Plaintiffs for a temporary restraining order and the Court having considered the opposition papers and the reply briefs, if any, and for good cause appearing,

IT IS on this _____ day of _____, 2018 hereby **ORDERED** that Plaintiffs' motion is GRANTED.

IT IS FURTHER ORDERED that the Defendant will confer with Plaintiffs' counsel to determine how and when all flight attendants will be notified of the new vote, when that vote will take place, what materials, including opposition materials to the proposed collective bargaining agreement will be

disseminated and how and when flight attendants, whose membership in the union has lapsed, will be reinstated and how and to whom voting ballots will be disseminated and counted.

IT IS FURTHER ORDERED that this Court shall maintain jurisdiction over these matters until notified by the parties that they are resolved.

_____

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that the following Application for a Temporary Restraining Order was served upon the following via personal service:

INTERNATIONAL ASSOCIATION OF MACHINISTS
District Lodge 142
400 N.E.32nd Street
Kansas City, Mo 64116

/s/ W. Charles Sipio
W. Charles Sipio, Esquire

Dated: July 3, , 2018