UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Hon. Sean F. Cox

CITY OF DETROIT, ET AL., Case No. 77-71100

Defendants.
_____/

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MOTION BY LOCAL 207 OF THE AMERICAN FEDERATION OF STATE, CITY AND MUNICIPAL EMPLOYEES (AFSCME) TO DISSOLVE THE TEMPORARY RESTRAING ORDER ISSUED BY HONORABLE SEAN P. COX AND IN OPPOSITION TO THE REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF FILED BY THE DETROIT WATER AND SEWERAGE DEPARTMENT

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Local 207 of the American Federation of State, City and Municipal Employees (AFSCME)("Local 207") moves to dissolve the temporary restraining order issued today and in opposition to the request for preliminary injunctive relief.

Local 207 moves to dissolve the TRO on the following grounds:

1. The Court issued the TRO without any attempt to notify or hear from counsel for the union and in specific breach of an agreement that counsel would be present at anytime this afternoon at the Court's option.

2. The Court is without jurisdiction to issue this injunction or TRO under 29 U.S.C. s. 101, et seq.

3. There is no basis for this injunction

Local 207 therefore moves to dissolve the ex parte TRO issued at 8:45 AM this morning and opposes the request for a preliminary injunction.

By AFSCME Local 207's attorneys,
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Dated: October 1, 2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v. Hon. Sean F. Cox

CITY OF DETROIT, ET AL., Case No. 77-71100

Defendants. /

_____/

AFSCME LOCAL 207'S BRIEF IN SUPPORT OF ITS MOTION TO DISSOLVE THE TEMPORARY RESTRAING ORDER AND IN OPPOSITION TO THE DWSD'S MOTION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AGAINST A STRIKE, PICKETING OR ANY RELATED CONDUCT

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ISSUES PRESENTED

DOES THE NORRIS LAGUARDIA ACT, 29 U.S.C. s. 101 et seq DEPRIVE THE COURT OF JURISDICTION TO ISSUE ANY INJUNCTION AGAINST A STRIKE OR PICKETING?

DOES THE COURT HAVE ANY BASIS FOR ISSUING ANY OTHER RELIEF AGAINST A STRIKE, PICKETING OR ANY OTHER CONDUCT SET FORTH IN THE DWSD'S MOTION?

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

29 U.S.C. s. 101, et seq

Crowe v. Bricklayers and Masons Union, 713 F 2d 211 (6th Cir. 1983)

Milk Wagon Drivers' Union Local 753 v. Lake Valley Farm Products, 311 U.S. 91(1940)

Telegraphers v. Chicago & N.W. R. Co., 362 U.S. 330 (1960)

Brotherhood of Railroad Trainmen v. Toledo, P. and W. R.R., 321 U.S. 50 (1944).

STATEMENT OF FACTS

In the motion filed Friday after the close of business, the Detroit Water and Sewerage Department sought preliminary and permanent injunctive relief preventing Local 207 and its members from "engaging in a strike" and from engaging in other acts. Local 207 vehemently opposes every aspect of that motion. The Court has, however issued a temporary restraining order on this matter without notice to the union and despite the fact that union counsel had been contacted about an afternoon conference on this matter

Local 207 moves to dissolve the temporary restraining order and opposes a preliminary injunction because the Court lacks jurisdiction to issue it and because there is no basis for it.

Local 207 does not now have time to respond to the "facts" set forth in the DWSD's motion. Suffice it to say here that at any hearing, Local 207 can show that there is no harmunder the Clean Water Act and no violation or frustration of any order of this Court.

Local 207 asserts that the DWSD has unclean hands and is not entitled to any injunctive relief. The DWSD has caused this dispute by its flagrant failure to engage in any meaningful bargaining at all. Management has hid behind this Court's order, which they procured behind Local 207's back. It "interprets" that order in any way that it wants to—and neither Local 207 nor any other labor union can even challenge that "interpretation" because the Court has denied every attempt to intervene and even to seek clarification of its order.

In a separate motion, Local 207 has renewed its motion for this Court to recuse itself in this matter. As there set forth, the Court cannot possibly be both the effective director of labor relations for the DWSD—the main proponent of drastic cuts in employee benefits—and at the same time serve as an impartial judge in a dispute that involves the labor relations policies of the DWSD.

Beyond that, Local 207 asserts that no judge in this Court has jurisdiction to grant the relief that the DWSD seeks because a specific Act of Congress declares that this Court has no jurisdiction to enjoin a strike or picketing based on any claimed violation of a state or federal law or even of this Court's orders. As will be seen, governing decisions of the Sixth Circuit and the Supreme Court have held that the Act precludes such jurisdiction.

For the reasons set forth below, this Court should deny that relief immediately so that the DWSD might, at long last, actually bargain.

ARGUMENT

I

THIS COURT HAS NO JURISDICTION TO ISSUE THE REQUESTED INJUNCTIVE RELIEF.

Following the onset of the Great Depression and Felix Frankfurter[1] famous exposes of the federal courts' practice of allowing employers to impose the most outrageous employment conditions and then to procure ex parte and preliminary injunctions to stop the strikes that opposed those conditions, Congress specifically declared that the federal courts had no jurisdiction to issue injunctions to stop strikes, picketing or any other similar conduct.

Except for acts of violence and the like—which could only be enjoined under very narrow circumstances that are not present here—the law provides that the federal courts have no jurisdiction to issue injunctions like those that the DWSD seeks:

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.
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> 29 U.S.C. s. 101

[1] Felix Frankfurter and Nathan Greene, "Labor Injunctions and Federal Legislation, 42 Harv L Rev 766 (April 1929).

The Norris-LaGuardia Act specifically deprived the federal courts of *any* jurisdiction to issue an injunction, like that requested, which sought to end striking or picketing:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> **(a)** Ceasing or refusing to perform any work or to remain in any relation of employment;
>
> ***
>
> **(d)** Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
>
> **(f)** Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
>
> **(g)** Advising or notifying any person of an intention to do any of the acts heretofore specified;
>
> **(h)** Agreeing with other persons to do or not to do any of the acts heretofore specified; and
>
> **(i)** Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified ...
>
> 29 U.S.C. s. 104.

Even as to acts of violence and the like, the Congress deprived the federal courts of jurisdiction to issue injunctions against those acts unless the employer showed specific acts that the public officers were not able, through normal means, to deal with (none of which are even alleged to have occurred here). 29 U.S.C. s. 107. And even there, the employer may not obtain an injunction even against violence unless the employer shows that it has bargained in good faith and has exhausted all reasonable means for negotiating a resolution of the dispute. *Brotherhood of Railroad Trainmen v. Toledo, P. and W. R.R.*, 321 U.S. 50 (1944). As will be seen, neither

this management nor the Court can possibly meet that standard because everything important has been obtained by unilateral orders secured behind the unions' back.

The DWSD's assertion that that this Court may issue the injunction it requests because of alleged violations of the Clean Water Act, the All-Writs Act, the Public Employment Relations Act, or of this Court's orders has no merit at all. Those acts are explicitly subordinate to the Norris-LaGuardia Act's specific provisions denying this Court jurisdiction to issue injunctions against strikes and picketing.

Thus, the Supreme Court and the Sixth Circuit have directly *held* that the Norris-LaGuardia Act's ban on federal injunctions is "...not lifted because the conduct of the union is unlawful under some other, nonlabor statute." *Crowe v. Bricklayers and Masons Union*, 713 F 2d 211, 214 (6th Cir. 1983)(union strike in violation of Bankruptcy Reform Act); *Milk Wagon Drivers' Union Local 753 v. Lake Valley Farm Products*, 311 U.S. 91, 103 (1940)(alleged violation of Sherman Anti-Trust Act). As the Supreme Court declared, holding "that mere unlawfulness under any law is enough to remove the strictures of the Norris-LaGuardia Act would require a modification or abandonment" of the declared congressional purpose and "would run counter to the mandate of the Act." *Telegraphers v. Chicago & N.W. R. Co.*, 362 U.S. 330, 766 (1960). See also *East Texas Motor Freight Lines v. International Brotherhood of Teamsters*, 163 F.2d 10, 12 (5th Cir.1947)(Norris-LaGuardia denies federal jurisdiction to issue anti-strike injunction even if the strike violates the Interstate Commerce Act).

The alleged violations of Michigan's Public Relations Act are a matter for the state courts. Similarly, the alleged violations of the collective bargaining contract are state law questions.[2] And the Clean Water Act provides no more jurisdiction to issue an injunction

[2] In *Boys Market, Inc. v. Retail Clerks*, 398 U.S. 235 (1976), the Court held that Section 301 of the Taft-Hartley Act had repealed the provisions of the Norris-LaGuardia Act if the court was enforcing no-strike clauses in a contract

banning picketing or striking than do the Bankruptcy Act, the Sherman Act or the Interstate Commerce Act.

Nor does this Court's November 4, 2011 order overcome the Act. As the Sixth Circuit directly held in *Crowe,* a strike to secure an end that violates a court order is not exempt from the Norris-LaGuardia Act. Thus, in *Crowe, supra,* the Sixth Circuit specifically *held* that the court had no jurisdiction to enjoin picketing or striking to collect a pre-petition debt even though the order issued by the Bankruptcy Court prohibited any attempt to collect that debt.

Local 207 has not found a *single* case from *any* federal court which has authorized a court to issue an injunction prohibiting a strike or picketing by the employees of a state or local government.

This Court should accordingly deny the request to enjoin the strike or picketing because it has no jurisdiction to consider it. Indeed, especially where the Court itself has assumed the role of decreeing the labor relations policies of a party, it should not consider such relief because that far exceeds the possibilities of abuse that Justice Frankfurter and others declared was the original and fundamental purpose of the Norris-LaGuardia Act's ban on federal jurisdiction over motions like the one the DWSD has filed.

II

THE COURT SHOULD DENY THE OTHER RELIEF THAT THE DWSD HAS REQUESTED.

The DWSD's motion also asks for relief against acts of violence, blocking deliveries, and the like. But Norris-LaGuardia and the law of equity say that this Court cannot issue that relief

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between "an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter.." 29 U.S.C. s. 185(a). But that is irrelevant here. In the Taft-Hartley and the National Labor Relations Acts, and thus in Section 301, Congress specifically declared that state and local governments were not "employers" and their collective bargaining contracts were not covered by 29 U.S.C. s. 185(a). 29 U.S.C. s. 152(2). The definition does not apply to Norris-LaGuardia and counsel is aware of no authority anywhere saying that a federal court has the power to enforce a contract covering state and local employees with a no-strike or no-picketing injunction.

unless the DWSD alleges specific acts or threats of such violence, shows that the authorities cannot prevent those violations through normal means, and shows that it has behaved equitably including by using all reasonable means to resolve the underlying dispute. The DWSD can show none of that here. It has not alleged *any* acts or threats of violence or similar conduct. It cannot show that the local authorities have lost control. And it most certainly cannot show that it has attempted to resolve the dispute through *any* normal means. *Brotherhood of Trainmen, supra.*

Nor has the DWSD shown that it has clean hands. As can be established, the DWSD has hid behind its privileged and sole access to this Court. It says the order is effectively beyond modification. It says that its interpretations of that order cannot be challenged. It even refuses to agree what the terms of employment will be if the Sixth Circuit reverses this Court's unilateral promulgation of the November 4 order.

The DWSD is simply using this Court's November 4 order—and the Court's repeated denial of any attempt by any union to intervene or to challenge that order—as the means to decree a dictatorship in which it threatens to eliminate almost all the jobs and in which it refuses to bargain about anything. The DWSD has not met the first prerequisites for that narrow form of relief that is available under the Norris-LaGuardia Act or under equity in general.

CONCLUSION

For the reasons stated, Local 207 asks this Court to dissolve the temporary restraining order that has been issued and to deny the DWSD's motion to enjoin a strike and picketing without a hearing because the Court lacks jurisdiction and after a hearing because there are no facts to support any of the relief requested.

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Dated: October 1, 2012