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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

International Association of United Workers Union, et al., PLAINTIFFS v. United Mine Workers of America, et al., DEFENDANTS	UMWA DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT (Oral Argument Requested) Civil Action No. 2:04CV00901 Honorable Dee Benson

UMWA DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO THEIR MOTION TO DISMISS SECOND AMENDED COMPLAINT

1) Lack of standing: In linking the alleged immigration law violations with their RICO claims, Plaintiffs assembled a convoluted house of cards that cannot withstand legal scrutiny. First, Plaintiffs simply contend that there is a "case or controversy," which it asserts confers jurisdiction because the Employer has a "personal stake" in whether it lawfully terminated its employees. Having an interest in the outcome, however, is insufficient to establish standing.[1] Though CW Mining may have a personal stake in how the NLRB proceedings will develop, it cannot escape those administrative procedures by filing for declaratory action in federal court.[2]

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[1]Indeed, the UMWA has already filed unfair labor practice charges against the Employer for its conduct in firing these employees, and that matter is pending before the National Labor Relations Board; the NLRB has exclusive jurisdiction to consider alleged violations of federal labor laws. San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

[2]By adding the declaratory claim as its first claim for relief, Plaintiffs provided no new basis for conferring jurisdiction on this court. Skelly Oil Co. v Phillips Petroleum Co., 339 U.S. 667, 671 (1950)(effect of Declaratory Judgment Act was procedural only; it did not expand federal courts'

Second, Plaintiffs failed to respond to the UMWA's assertion (and case support) that only the federal government – and not private party plaintiffs – can prosecute alleged violations of our nation's immigration laws.[3] Without standing to pursue immigration-related claims, those alleged violations of immigration law do not present a "controversy" that confers jurisdiction for private party litigation.[4]

Third, the RICO-based theory for jurisdiction advances a creative theory, but it lacks the requisite factual support to proceed. For example, the Second Amended Complaint includes a number of unsupported assertions, such as 1) the employees were agents of Defendant, 2) who acted within the scope of their agency (Complaint at ¶¶ 21, 72), and 3) the employees and UMWA constitute "an enterprise" within the meaning of RICO (Complaint at ¶ 70). However, there is no allegation that the UMWA engaged in any criminal conduct, and the pleadings fail to show any factual basis for the alleged enterprise. Accordingly, and in the absence of any factual support for these essential elements to the RICO allegation, as a matter of law the RICO allegations cannot provide the jurisdictional basis for this action.[5] RICO pleading requirements

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jurisdiction, just the remedies); Utah Animal Rights Coalition v. Salt Lake City Corp., 371 F. 3d 1248, 1265 (10th Cir. 2004).

[3]As for whether the fraud was plead with sufficient particularity, Plaintiffs charge that in applying for their jobs, seven employees used social security cards and other documentation that the Employer has since determined to have been falsified. However, in describing its theory of fraud, Plaintiffs failed to include the particularity required by Federal Rule 9(b). When alleging fraud, a plaintiff is charged with including the who, where, when details which are absent here: if an employee proffered false documentation, Plaintiffs should have specified the date each such document was proffered, by whom, and what was the document alleged to be false, and in what manner it was inaccurate, or why the Employer deemed it to be inaccurate. Only seven employees' documents are at issue, the Employer's basis for deeming the documentation inaccurate is simple and within the Employer's control. See Arena Land & Investment v. Petty, 906 F. Supp. 1470, 1476 (D. Utah, 1994); *aff'd.* unpubl.opinion., 1995 U.S. App Lexis 31140, 69 F. 3d 547 (1995).

[4]See also, UFCW Local 1564 v. Albertson's, Inc., 207 F. 3d 1193, 1197-98 (10th Cir. 2000)(though plaintiff union included a claim under the Fair Labor Relations Act, because right to seek declaratory relief lies with the federal government, plaintiff did not have standing; case dismissed for lack of subject-matter jurisdiction.)

[5]In claiming that the UMWA (derivatively) violated 18 U.S.C. §1962, Plaintiffs aver that seven named employees provided what the Employer has since determined to be faulty documentation.

are exacting because RICO provides extraordinary relief for exceptional situations.[6]

In addition, as demonstrated in the UMWA's Memorandum in Support of Motion to Dismiss Second Amended Complaint, at p. 5, without a breached collective bargaining agreement, no jurisdiction lies in 29 U.S.C. §185, either. See also, Textron Lycoming v. UAW, 523 U.S. 653 (1998). For the reasons stated herein along with those in the UMWA's Memorandum in Support of Dismissal, there is no actual controversy before this court.

2) Plaintiffs offer no response to the UMWA's arguments for dismissal of the alleged unfair labor practice claims, other than to rely on portions of the Plaintiffs' Memorandum in Opposition to the Defendant Miners' (initial) Motion to Dismiss. The UMWA hereby incorporates the first section of its own Reply to Plaintiffs' Opposition to Defendant UMWA's (initial) Motion to Dismiss, at pp. 1-3, as well as the first section, at pp.1-2, of the Defendant Miners' (initial) Reply Brief. In brief, the unfair labor practice claims are pre-empted by the NLRB, the UMWA has no contractual relations with any party, there is no allegation that either the institutional parties or any individual miners breached any collective bargaining agreements, and individual employees cannot be sued under 29 U.S.C. §185.

3) The UMWA's alleged defamatory statements do not convey a defamatory meaning in

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Even if those employees had proffered faulty documentation when they applied for work (a matter about which the UMWA has no knowledge – knowledge Plaintiffs neither claim the UMWA actually possesses nor would have reason to possess), the Second Amended Complaint fails to indicate how non-union employees' submission of faulty documentation to secure a job would implicate the UMWA in a RICO scheme. Under RICO, for the UMWA to be part of an "enterprise" would require evidence of an association in fact between the Defendants, here the UMWA and the Defendant miners who allegedly perpetrated the scheme. Yellow Bus Lines Inc., v. Drivers, Chauffers, & Helpers Local 639, 913 F. 2d 948 (D.C. Cir. 1990); *cert den*, 501 U. S. 1222 (1991); Bancoklahoma Mort. Co. v. Capital Title Co., 194 F. 3d 1089 (10th Cir 1999). Such underlying facts are not alleged and they remain illusory. See also, U.S. v. Sanders, 928 F. 2d 940, 943-44 (10th Cir. 1991)(setting forth pleading criteria for a RICO enterprise); Beck v. Prupis, et al., 529 U.S. 494 (2000)(when the alleged injury results from non-racketeering act, there is no claim under 1964(c).) The RICO-related pleading deficiencies noted herein are demonstrative only, not exhaustive. See e.g. Defendant Miners' Reply Brief.

[6]See e.g., Bache Halsey Stuart Shields Inc v. Tracy Collins Bank & Trust, 558 F. Supp. 1042 (D. Utah 1983).

the context of the labor dispute. While Plaintiffs' Opposition reflects an effort to fit the allegedly defamatory statements into an appropriate analytical framework, Plaintiffs' argument nevertheless amounts to nothing more than a series of conclusory statements. However, the court need only to refer to the Second Amended Complaint to see that none of the statements attributed to the UMWA represent the kind of language that could give rise to damages. Second Amended Complaint at ¶¶ 106-130. In Linn v Plant Guard Workers, the Supreme Court expressly acknowledged that participants in labor disputes may engage in "bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions," without being subject to tort liability. 383 U.S. 53, 58 (1966). Indeed, the Court noted that "labor and management [may] speak bluntly and recklessly, embellishing their respective positions with imprecatory language." Id. Nothing Plaintiffs alleged extends beyond what the Supreme Court sanctioned in Linn. Indeed, listeners and readers of UMWA communications expect it to speak in a partisan manner; that it did so in the course of this dispute does not expose the UMWA to liability under Plaintiffs' defamation claim.[7]

To the extent Plaintiffs seek to impose liability on the UMWA for the speech of others, including the miner-Defendants, Plaintiffs' agency allegations constitute legal conclusions lacking in factual support. Moreover, that other speech also enjoys Linn's protections.

4) The UMWA is also not vulnerable to the remaining state-based tort actions, all of which allegedly arose from the parties' labor dispute. First, in claiming that the state-based claims could all be resolved without referring to a collective bargaining agreement (Plaintiffs'

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[7]Also, see Beverly Enterprises, Inc. v. Dotson, 182 F.3d 183, 188 (3rd Cir. 1999)(finding a union leader's public accusation that company official was a "criminal" and that "you people at [employer] are all criminals" "was reasonably understood as a vigorous and hyperbolic rebuke, but not a specific allegation of criminal wrongdoing".) Context thus provides substantial protection to such partisan speakers. Especially given the actual context of this prolonged labor dispute, even under state law the statements would be deemed rhetorical hyperbole, and "opinion," not "fact." Plaintiffs provide no support for a contrary conclusion. In addition, the UMWA generally adopts the support and rationale submitted by the Newspaper Defendants; though generally adopting the legal arguments advanced by all of the Newspaper Defendants, the UMWA does not concede that any of its communications referred specifically to any of the individually-named Plaintiffs.

Opposition at p.10), Plaintiffs ignore the large body of Garmon preemption law set forth in the UMWA's Memorandum in Support of Motion to Dismiss Second Amended Complaint, at pp. 5-13. Second, the claims alleging other torts all arise from the facts proffered for the unfair labor practice and defamation claims; they introduce nothing new. Such broad, conclusory statements cannot support Plaintiffs' additional claims.[8]

CONCLUSION

Wherefore, for the reasons set forth above, the Second Amended Complaint should be dismissed in its entirety – on the merits and with prejudice.

Respectfully submitted,

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[8]Regarding the state torts alleged in the fourth, fifth, sixth and seventh claims for relief, the UMWA further relies on the arguments advanced by the Militant in defense thereof.

CERTIFICATE OF SERVICE

I do hereby certify that on this 18th day of October, 2005, a true copy of the foregoing UMWA Defendants' Reply to Plaintiffs' Opposition to UMWA's Motion to Dismiss Second Amended Complaint was served via U.S. first-class mail, postage prepaid, upon the following:

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