

Arthur F. Sandack (2854)  
8 East Broadway Ste 510  
Salt Lake City, Utah 84111  
(801) 532-7858  
Attorney for Defendants  
Utah State AFL-CIO  
and its President Ed Mayne

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	DEFENDANTS ED MAYNE AND UTAH STATE AFL-CIO'S REPLY MEMORANDUM TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT  Civil Action No. 2:04CV00901 Honorable Dee Benson
--	--

Defendants Utah State AFL-CIO and its President Ed Mayne submit their reply to Plaintiffs' Opposition Memorandum and in support of Defendants' Motion To Dismiss.

**I**  
**DEFENDANTS REPLY TO PLAINTIFFS RESPONSE**  
**RELATIVE TO THE DEFAMATION CLAIM**

Plaintiffs have utterly failed to respond to Defendants' discussion and characterization of Ed Mayne's statements as being non defamatory, opinion that by its very nature cannot be false. Plaintiffs simply rely on their own conclusory allegations that it has met its burden of pleading that "responsible person's made defamatory statements with malice and knowledge of its falsity." (Plaintiffs' Response at 3.) Plaintiffs' silence on this issue speaks volumes about how innocuous

Mr. Mayne's rhetoric is, and how it could not possibly be understood to be defamatory, even if this dispute was not set in a labor context, which it is. Plaintiffs cannot even argue why this is not so. Accordingly, Plaintiffs have failed to state a claim for defamation under Utah law and the standards set forth in Cox v Hatch, 761 P.2d 556, 561 (Utah 1988) (finding statements which constitute opinions or even nettlesome falsehoods that do not damage a person's reputation, as non-defamatory), and under federal law and the heightened standards set forth in Linn v. United Plant Guard Workers of America, 383 US 53 (1966) and Dominion Branch No. 496, Nat'l. Assoc. of Letter Carriers v. Austin, 418 U.S. 264 (1974)(protecting opinion and the use of intemperate, even insulting statements in the context of a labor dispute).

Furthermore, Plaintiffs' defamation claim is pre-empted by federal law under Linn because Plaintiffs have failed to allege facts sufficient to constitute actual malice.

**II.**  
**DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE CONCERNING**  
**ALLEGATIONS OF A CIVIL CONSPIRACY AND OTHER STATE CLAIMS**

Again, Plaintiffs seem to have nothing to say directly to these Defendants' contentions with regard to the preemption of Plaintiffs' state claims, under San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959), aside from their claim for civil conspiracy which Plaintiffs state is the primary claim against Defendants Mayne and Utah State AFL-CIO (See Plaintiffs' Response at page 3). Plaintiffs readily acknowledge if the underlying tort is not preempted, the conspiracy count is not pre-empted, citing Alongi v. Ford Motor, 386 F3d 716, 729(6th Cir 2004). This was exactly the point Defendants made. It is clear the other state law counts against these Defendants are in tort, and are preempted by Garmon, and nothing Plaintiffs

have set forth in any of its responses, to any of the parties, demonstrates why this is not so.

Accordingly these state claims should be dismissed.

Nor have Plaintiffs alleged facts, to state a claim for conspiracy, to even remotely suggest there was a meeting of minds to accomplish an unlawful course of action to commit the unfair labor practices.

Dated this 22 day of ~~March~~<sup>April</sup>, 2005.



Arthur F. Sandack

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of Defendants Ed Mayne and Utah State AFL\_CIO Reply Memorandum was mailed, first class, postage prepaid on 4-22-05, to:

F. Mark Hansen  
F. Mark Hansen P.C.  
431 North 1300 West  
Salt Lake City, Utah 84116

Carl K. Kingston  
3212 South State Street  
Salt Lake City, Utah 84115

Judith Rivlin  
8315 Lee Highway  
Fairfax, VA 22031

Richard Rosenblatt:  
8085 E. Prentice Avenue  
Englewood, CO 80111

Joe Hatch  
5295 South Commerce Drive, Suite 200  
Murray, Utah 84107

Randy Dryer  
Parsons Behle and Latimer  
201 South Main Suite 1800  
Salt Lake City, Utah 84111

Michael Patrick O'Brien  
Jones Waldo Holbrook McDonough  
170 South Main Street, Suite 1500  
Salt Lake City, Utah 84111

Jeffrey J. Hunt  
David C. Reymann  
Parr Waddoups Brown Gee & Loveless  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111

