

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JED DODD; and RONALD A. BOWDEN,	:	
	:	
Plaintiffs	:	Civil Action
	:	
v.	:	No. 04-71764
	:	
	:	Hon. Gerald E. Rosen
FREDDIE N. SIMPSON; PERRY K. GELLER;	:	
and BROTHERHOOD OF MAINTENANCE OF	:	
WAY EMPLOYES,	:	
	:	
Defendants	:	

**DECLARATION OF JED DODD IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	S.S.
COUNTY OF PHILADELPHIA	:	

I, JED DODD, hereby depose and state as follows:

1. I am one of the Plaintiffs in the above matter. I make this Declaration in support of Plaintiffs' Motion for Preliminary Injunction, filed herewith. Except as otherwise noted, this declaration is based on personal knowledge. Documents attached are those that have been made publicly available by the author or recipient thereof.

A. Background

2. I am a resident of Philadelphia, Pennsylvania. I have been a member of the Brotherhood of Maintenance of Way Employes ("BMWE") since 1977. I currently hold the elected position of General Chairman of the Pennsylvania Federation of the BMWE. From 1998 until August 31, 2002, I was also an elected member of the Grand Lodge Executive Board.

3. Plaintiff Pennsylvania Federation, Brotherhood of Maintenance of Way Employes ("Pennsylvania Federation") is a labor organization with its principal offices in Philadelphia,

Pennsylvania. The Pennsylvania Federation represents approximately 2,600 workers in the railway industry for the purposes of collective bargaining throughout Pennsylvania, New Jersey, New York, Delaware, Maryland, District of Columbia, West Virginia, Indiana, Illinois, and Ohio. It is a subordinate body of the BMWE.

4. Defendant BMWE is a labor organization with its principal offices at 20300 Civic Center Drive, Suite 320, Southfield, Michigan 48076-4169. The BMWE represents approximately 36,000 workers in the railway industry throughout the United States and Canada for the purposes of collective bargaining. BMWE members are primarily engaged in the construction, repair and maintenance of railroad tracks, buildings and bridges related to railroad operations, and the overhead electric catenary system on Amtrak's Northeast Corridor.

5. Under its Constitution and Bylaws, the BMWE has several layers of organization. The International Union, known as the "Grand Lodge," consists of all BMWE members throughout the United States and Canada. Within the Grand Lodge are 32 "System Divisions" and "Federations," which are regional subordinate bodies of the Grand Lodge. Finally, within each Federation or System Division are Local Lodges based in a particular geographic area. All levels of the BMWE are governed by officers elected pursuant to the requirements of the BMWE Constitution and Bylaws.

6. In addition to being a System Federation officer and a former member of the Grand Lodge Executive Board, I have also held numerous positions of responsibility for the Grand Lodge, including chairing the Amtrak and Conrail bargaining committees since 1987; serving on the Grand Lodge Constitution and Bylaws Committee as a member in 1986 and 1990, as the vice chairman in 1994 and 1998, and as an advisor in 2002; as an employee member of

several Public Law Boards and Special Boards of Adjustment in which we arbitrated hundreds of disputes with Amtrak, Conrail and Norfolk Southern Railroads. I have personally worked with Defendant Freddie N. Simpson, Defendant Perry K. Geller, former president Mac Fleming, Plaintiff Ronald A. Bowden, and virtually every other regional and national leader in the union for over twenty (20) years.

7. The BMWE is governed by a Constitution and Bylaws ("the Constitution") which was most recently amended at the convention in July 2002. A copy of the document is attached hereto as Exhibit 1.

8. Pursuant to Article I, Section 3 of the Constitution, Grand Lodge officers consist of a President, a Secretary-Treasurer, seven (7) Vice Presidents, and six (6) members of the Executive Board. All of these officers are elected by secret ballot vote of the elected delegates to the Grand Lodge's quadrennial conventions.

B. The 2002 Officer Elections

9. From 1990 until April 14, 2004, Mac A. Fleming was the President of the BMWE.

10. The Grand Lodge's quadrennial Convention took place on July 8-12, 2002, in Las Vegas, Nevada.

11. At the convention, and before the election of officers, the Constitution and Bylaws Committee recommended that the Constitution be amended to, *inter alia*, provide that Vice Presidents and Executive Board members be *nominated* from a particular region and from Canada, but be *elected* at large by all the delegates. Previously, the Constitution provided for the election of Vice Presidents and Executive Board members by vote of only the delegates from

their respective U.S. regions or from Canada. The amendment was adopted by the delegates over the intense opposition of most Canadian delegates as well as others.

12. On July 9, 2002, after amending the Constitution as described above, the delegates elected or re-elected Grand Lodge officers, including Mac Fleming as President, Defendant Simpson as Secretary-Treasurer, Kenneth Deptuck as Vice President of Canada, and Defendant Geller as Executive Board member from the Northeast Region.

13. On or about August 9, 2002, I filed a protest about the conduct of the Grand Lodge officer elections with the Grand Lodge pursuant to Article III, Section 1 and Article X of the Constitution. On or about August 30, 2002, Gary D. Housch, a BMW member in Canada, also filed a protest about the conduct of the Grand Lodge officer elections pursuant to Article III, Section 1 and Article X of the Constitution. Both protests alleged, *inter alia*, that Union and employer assets were used to support the election of various candidates.

14. On or about, February 13, 2003, President Fleming sent Mr. Housch and myself a letter dismissing our election protests, stating that the Constitution did not provide any basis for a post-Convention protest concerning election of officers.

15. On or about March 10, 2003, Mr. Housch and I filed a complaint with the United States Department of Labor ("DOL"), alleging that the election of certain Grand Lodge officers at the 2002 Convention violated Section 401(g) of LMRDA, 29 U.S.C. § 401(g).

16. After a detailed investigation, the Secretary of Labor filed a civil action in this Court on or about July 7, 2003, to declare null and void the elections of Mr. Fleming, Defendant Simpson, and Mr. Deptuck. The Secretary alleged that the following conduct violated Section 401(g): (1) that President Fleming received campaign assistance from a professional political

consultant that was paid for by a law firm that does business with BMW members; (2) that Mr. Deptuck used Union computers, email and secretarial assistance in campaigning; (3) that Defendant Simpson used a system federation's computers to prepare campaign materials. The Complaint is captioned as *Chao v. Grand Lodge, BMW*, C.A. No. 03-72597 (E.D. Mich.), and is currently pending in this Court. A copy of the original complaint is attached hereto as Exhibit 2. According to the Court's latest scheduling order, the case is currently scheduled for trial in or about September or October 2004.

C. President Fleming's Disability and Resignation

17. On or about July 2, 2003, President Fleming announced that he was taking an indefinite medical leave. In his absence, the Grand Lodge Officers voted to appoint Defendant Simpson as Acting President, and Defendant Geller as Acting Secretary-Treasurer, pursuant to Article I, Section 7(a) of the Constitution.

18. Although members were not given any concrete information about Mr. Fleming's condition, it appeared to me that he would not be returning. Accordingly, on January 29, 2004, I wrote to Defendant Simpson, stating that Mr. Fleming's position should be declared vacant so that a democratic vote, reflecting the votes of the membership, could be held. A copy of the document is attached hereto as Exhibit 3. Defendant Simpson responded on February 10, 2004, simply asking on what basis I concluded that there was a vacancy. A copy of the document is attached hereto as Exhibit 4.

19. I again wrote to Defendant Simpson, demanding that an election be held to elect a new president. A copy of the document is attached hereto as Exhibit 5. By letter dated March 12, 2004, Defendant Simpson rejected my request by simply stating that Mr. Fleming remained

on extended medical leave. A copy of the document is attached hereto as Exhibit 6.

20. According to a memorandum issued by Grand Lodge, sometime in April 2004, Mr. Fleming announced that he was resigning from office effective April 14, 2004.

21. Article I, Section 7(b) of the Constitution provides that where there is a vacancy in the office of President, a date for a special election must be set "immediately," and a new president must be chosen by vote of the Grand Lodge Officers and System Division and Federation General Chairmen, in the manner prescribed in the Constitution and Bylaws. The election must be held not more than sixty (60) days from the date the vacancy occurs.

22. Article I, Section 7(b) further states:

Each Grand Lodge Officer will be entitled to cast one vote, and each General Chairman in the United States, *and each System Federation General Chairman in Canada*, or his duly-authorized representative, will be entitled to cast the representative vote of the membership of the System Division or Federation he represents, for the membership paid up to the end of the previous quarter, as shown by the Grand Lodge record as of the date the vacancy occurred. [emphasis added].

23. Article XXII, Section 8 of the Constitution and Bylaws provides in pertinent part:

Every member in good standing shall have the right and privilege to vote in elections or referendums of this Brotherhood, to attend membership meetings and participate in the business of such meetings subject, however, to applicable provisions of this Constitution and By-Laws and to such reasonable rules and regulations, qualifications, limitations or restrictions as may be provided by other applicable laws, policies or decisions of the Brotherhood including those contained in Constitutions and/or By-laws of System Divisions or Federations or Local Lodges. [emphasis added].

24. In a letter dated April 26, 2004, Defendant Simpson announced that an election to fill the vacant office of President would take place pursuant to Article I, Section 7(b) of the

Constitution, among all Grand Lodge and System Federation officers on June 8, 2004, in Panama City Beach, Florida. The letter further announced that, with the approval of the Grand Lodge Executive Board, he was interpreting the Constitution to exclude the participation of all Canadian members from the vote. A copy of the document is attached hereto as Exhibit 7.

25. Panama City Beach is in the Western panhandle of Florida, geographically distant to all of the system federations who have in the past opposed policies of the Fleming-Simpson administrations. However, it is close to Defendant Simpson's own stronghold in the Southeast and Southwest. A Southeastern-Southwestern Regional Conference will be taking place in Panama City Beach at that time. Defendants have thus made it as inconvenient as possible for most of us likely to vote against Defendants Simpson and Geller to attend the vote.

26. In a letter to the Grand Lodge Executive Board dated April 20, 2004, Defendant Simpson asked for their concurrence in his decision to suspend and dispense with the Constitution so as to exclude the votes of Canadian members in the election for president. In essence, Defendant Simpson argued that as a result of hostile raids by other unions on the Canadian membership of the BMWE, and as a result of the alleged evident desire of many Canadian members to be represented by a different union, an "emergency" is presented in which the "vast majority" of members in Canada will shortly be represented by a different union. A copy of the document is attached hereto as Exhibit 8.

27. Upon information and belief, Defendant Simpson intends to run for election as President of the BMWE at the June 8 election. Another BMWE member, Joel Myron, has openly declared his candidacy for President as well.

D. Defendants' Conduct As to Canadian Members

28. The BMWWE currently has approximately 7,000 members in good standing who live and work in Canada. Most of the BMWWE members in Canada work for either the Canadian National Railway ("CN") or the Canadian Pacific Railway ("CP"). A smaller number of the BMWWE members work for other employers.

29. Since the Grand Lodge Convention in 2002, a number of BMWWE members in Canada have expressed anger and unhappiness at their treatment by Former President Fleming, Defendant Simpson, and their supporters. Despite their efforts to resolve their dispute with Grand Lodge, Defendants have failed and refused to address any of their concerns.

30. In particular, many Canadian members of BMWWE believed that the changes to the Constitution voted at the 2002 Convention violate the rules of the Canadian Labour Congress, in that the officers of BMWWE Canada are no longer chosen by vote of only Canadian members. I have learned through discussions with my Canadian acquaintances that a number of Canadian members tried to negotiate an acceptable compromise with the Grand Lodge Officers without success.

31. On September 16, 2003, Defendant Simpson sent a letter to All Grand Lodge and System Officers in the United States and Canada, notifying them that the BMWWE would be entering into merger negotiations with the International Brotherhood of Teamsters ("Teamsters"). A copy of the document is attached hereto as Exhibit 9.

32. According to correspondence that I have seen between Defendant Simpson and Canadian officers, sometime in or about August 2003, the Canadian Auto Workers ("CAW") began soliciting Canadian BMWWE members to sign authorization cards to have CAW represent

them in the future.

33. Similarly, I have learned that shortly thereafter, the United Steelworkers of America ("Steelworkers") filed an application with the Canadian Industrial Relations Board ("CIRB") to be certified as the bargaining agent for all maintenance of way employees at CN, who are currently represented by the BMW E.

34. In a letter dated October 14, 2003, Defendant Simpson wrote to the general chairmen of the three Canadian system federations, stating that in light of information about the activities of the CAW and the Steelworkers, "I am convinced that action must be initiated in order to protect the rights of Canadian BMW E members." The letter continued:

Please be advised that I have agreed to commence a card signing campaign for our members in Canada for the purpose of signing Teamsters Canada Rail Conference, Maintenance of Way Employees Division cards. *These cards will be held by the Brotherhood of Maintenance of Way Employees and will not be used without BMW E consent.*

The attached letter of agreement signed by International Brotherhood of Teamsters General President James P. Hoffa, Teamsters Canada President Robert Bouvier and me will adequately provide a method to provide a safe haven for our members while we negotiate a merger agreement with the International Brotherhood of Teamsters. [emphasis added].

A copy of the document is attached hereto as Exhibit 10.

35. Defendant Simpson caused to be distributed to all Canadian members of the BMW E a letter dated October 14, 2003 and signed by Defendant Simpson, Teamsters President Hoffa, and Teamsters Canada President Bouvier. The letter states in part:

In order to protect the integrity of the BMW E in Canada, *we are asking all Canadian BMW E members to sign authorization cards (and tender the \$5 (CDN) required by Canadian law) for the Teamsters Canada Rail Conference, Maintenance of Way*

Employes Division.

. . . .

. . . BMW, both in Canada and in the United States is currently discussing a merger with the Teamsters and with Teamsters Canada. . . . BMW is a full partner in these discussions and these discussions will guarantee that BMW members in Canada and in the United States will have the right to vote on whether to approve a merger with full information regarding its terms.

. . . .

. . . The Teamsters Canada cards will not be used to force a merger without the consent of the BMW. . . . *These cards will be a deterrent to the other Unions and will only be used with the Consent of the BMW.*

. . . .

Sign a card and tender your \$5 for the Teamsters Canada Rail Conference, Maintenance of Way Employes Division. Sign it TODAY. [emphasis added].

A copy of the document is attached hereto as Exhibit 11.

36. I have learned from correspondence from Canadian officers within the BMW that Defendants have paid and directed their own agents and representatives to travel throughout Canada to encourage BMW members to sign membership cards for the Teamsters.

37. It is my understanding from the correspondence that in or about November 2003, the Teamsters, with the active agreement and encouragement of the BMW, filed an application with the CIRB to represent the maintenance of way employees at CP who are currently represented by the BMW.

38. It is further my understanding that at the present time, both the Teamsters and the Steelworkers are contesting for the right to represent maintenance of way employees at CP and CN that are currently represented by the BMW. No one has filed a petition to represent the other Canadian employees currently represented by the BMW.

39. Notwithstanding the pendency of these petitions for certification, I understand that except for the purported transfer agreement of May 10 described below, all BMWWE members in Canada are still members in good standing and continue to pay their dues to the BMWWE. Moreover, the BMWWE is still active in its role as the collective bargaining agent for the BMWWE Canadian members, and continues to represent the Canadian members in arbitrations, disciplinary proceedings, and grievances and employer investigations.

40. One of the announced candidates for President of BMWWE, Joel Myron, has publicly stated that he is campaigning on a platform of keeping the Canadian members within the BMWWE. A copy of his campaign platform was distributed within the Union within the last ten days and is attached hereto as Exhibit 12.

41. It is my understanding that even if both of the applications for certification at CN and CP are granted, there are additional BMWWE members in Canada who work for other employers and whose membership would not be affected by any change of collective bargaining agent at CN or CP.

42. I have not expressed any final opinion on whether I believe the BMWWE should merge with the Teamsters. I am concerned that as the BMWWE members be allowed to make that and other important decisions about our future and about our rights in accordance with the Constitution, and that we have legitimate officers lawfully elected by all of the Union's members.

43. I am also aware that the Canadian officers and members have had conflict with Defendants Simpson and Geller and former President Fleming on other recent occasions. In 2001 and again in 2002, the BMWWE held membership referenda on whether to merge with the International Brotherhood of Boilermakers. The merger proposals were strongly supported by

Mr. Fleming and Defendants Simpson and Geller during both campaigns. For both votes, I was present at the vote count, which was segregated out the votes of Canada and each of the U.S.-based regions. In both votes, the merger was defeated and the Canadian members voted heavily against the proposals. This caused the supporters of the proposals, including Defendants Simpson and Geller, a great deal of anger.

E. Defendants Illegally Merge the Canadian Members into Teamsters Canada

44. On May 10, 2004, with no prior notice to the BMW members in the United States or Canada, Defendant Simpson signed what purports to be a "Transfer of Jurisdiction Agreement" ("Transfer Agreement") with the Teamsters Canada Rail Conference ("TCRC"), effective the next day. A copy of the document is attached hereto as Exhibit 18.

45. Defendants also issued a press release on the Transfer Agreement. A copy of the document is attached hereto as Exhibit 19.

46. Under the agreement, the BMW transfers "its jurisdiction over all of the Canadian territory to TCRC and renounces any right to act in Canada in the recruitment of employees, representation of employees, representation of labour organizations or in any other way"

47. The Transfer Agreement further provides that the current structure of the BMW will remain in place in Canada "until the adoption of official by-laws by TCRC."

48. The agreement further provides that the Grand Lodge will transfer certain assets and liabilities of its own, "and all of the assets and liabilities of its Canadian subordinate bodies." According to the Transfer Agreement, the final transfers of all property and assets shall be made no later than June 7, 2004. The Transfer Agreement does not mention that June 7 is the day

immediately before the election to fill the vacancy for President of the BMW.

49. Article I, Section 1 of the BMW Constitution provides in pertinent part, "The Grand Lodge shall not merge itself with any other labor organization without first obtaining approval of the majority of the ballots returned by the active membership in good standing through a referendum ballot."

50. BMW officers have repeatedly told the members that the goal was a negotiated merger of the BMW with the Teamsters, both in the United States and Canada. At present, members have not been notified of any merger agreement negotiated between the BMW and Teamsters, either for the entire Union or any portion of it, and no vote has been taken of the members to support a merger with the Teamsters.

51. As noted above, in 2001 and 2002, the Grand Lodge conducted membership referenda on whether to merge the BMW as an entire organization, in the United States and Canada, with the Boilermakers. On both occasions, the merger proposals were defeated by the rank-and-file members voting by secret mail ballot.

52. There has not been a secret ballot referendum of the BMW members to authorize a merger between the BMW and the Teamsters, or a merger between the BMW system federations in Canada and the Teamsters or Teamsters Canada. At no time has there been a secret ballot vote of even the members in Canada to affiliate with the Teamsters or to authorize the Teamsters or Teamsters Canada to represent them.

53. There is nothing in the Constitution which allows a piecemeal vote on the question of a merger.

54. I have been informed by lawyers in Canada that the Transfer Agreement violates

Canadian labor laws.

55. Article VI, Section 11 of the Constitution provides in pertinent part as follows:

Legal title to all property (real, personal and otherwise) of said Brotherhood, and to all interests of said Brotherhood and of its members therein, shall be deemed to be, and hereby is declared, vested in the Trustees of said Brotherhood and their successors, hereinafter mentioned. . . . Said Trustees shall not sell, exchange or encumber any of the property or interests to which they hold title as aforesaid unless previously authorized to do so in each particular case by two-thirds of all Grand Lodge Officers of said Brotherhood.

56. So far as I am aware, under the Transfer Agreement, Defendants Simpson, Geller and the Trustees have received no consideration for their transfer of valuable properties and assets to Teamsters and Canada.

57. By letter dated May 11, 2004, Stephane Lacoste, General Counsel of Teamsters Canada, wrote to John Kruk and Plaintiff Bowden, informing them that they were terminated immediately. The letter claimed that Teamsters Canada now has complete jurisdiction over the jurisdiction that used to be that of the BMW. A copy of the letters to them are attached hereto as Exhibit 20. Both Mr. Kruk and Mr. Bowden were political adversaries of the current administration of the BMW. However, It is my understanding that other BMW officers in Canada who are political allies of Defendants Simpson and Geller have not been let go.

58. By letter dated May 10, 2004, Defendant Simpson terminated Joel Myron from his staff position with the Grand Lodge. A copy of the document is attached hereto as Exhibit 21. Mr. Myron's employment status had been previously determined by a vote of the International Association, an appellate body in the Union that is senior to Defendant Simpson as Acting President.

59. Upon information and belief, Defendant Simpson intends to preclude Mr. Myron from running for president, thus eliminating any competition for the office.

F. Attempts to Exhaust Internal Remedies

60. On April 23, 2004, I sent a letter to Defendant Simpson, stating my opposition to any election which excluded the Canadian members from voting. A copy of the document is attached hereto as Exhibit 13. Defendant Simpson responded by letter dated April 27, 2004, rejected my position and confirming that the election will exclude the Canadian members. A copy of the document is attached hereto as Exhibit 14.

61. In addition, John Kruk, General Chairman of the Canadian System Federation, wrote to Defendant Simpson on April 23, 2004, pointing out that Canadian members had the right to vote. A copy of the document is attached hereto as Exhibit 15.

62. On May 4, 2004, Mr. Kruk sent another letter to Defendant Simpson, appealing his decision to exclude the Canadian members from the upcoming election. A copy of the document is attached hereto as Exhibit 16. In response, Defendant Simpson rejected his appeal. In particular, he rejected Mr. Kruk's demand for an Appeal Board hearing by May 7, 2004. A copy of the document is attached hereto as Exhibit 17.

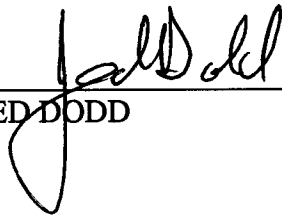
63. Appeal Board hearings are scheduled very infrequently by the Grand Lodge. To my knowledge, no hearing is presently scheduled to consider this matter.

64. As general chairman of the Pennsylvania Federation, my salary is set by the Federation's constitution to be no more than the amount earned by the highest paid member working in the Federation's jurisdiction. My salary last year was approximately \$53,000. I cannot afford to post a large bond to obtain an injunction.

65. On May 12, 2004, I sent a letter to Defendant Simpson, copied to the Executive Board, requesting that the Union take prompt action to remedy the breaches of fiduciary duty described therein. A copy of the letter is attached hereto as Exhibit 22.

I declare that the foregoing is true and correct, subject to the penalties of perjury pursuant to 28 U.S.C. § 1746.

Dated: May 12, 2004


JED DODD

BMWE\DODD AFF1 VACANCY