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

GERALD E. ROSEN

JED DODD; and RONALD A. BOWDEN,

Plaintiffs

v.

FREDDIE N. SIMPSON; PERRY K. GELLER;  
and BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYES,

Defendants

Civil Action

No.

VIRGINIA MORGAN

JURY TRIAL DEMANDED

**FILED**

MAY 10 2004

CLERK'S OFFICE  
U.S. DISTRICT COURT  
ANN ARBOR, MI

COMPLAINT

Plaintiffs Jed Dodd and Ronald A. Bowden, by their attorneys, as and for a Complaint in the above matter, hereby state to the Court as follows:

Introduction

1. This is an action for injunctive relief and damages at trial by rank-and-file members of the Brotherhood of Maintenance of Way Employees ("BMWE" or "the Union") to enforce the right of all Union members to vote in the upcoming election for a new president of the BMWE. On April 14, 2004, the President of the BMWE resigned for health reasons. The Union Constitution requires that officers of subordinate bodies meet with 60 days and cast votes equal to their body's membership for a new president. The election has been scheduled for June 8. However, Defendant Freddie N. Simpson, the Acting President, has determined that none of the 7,000 BMWE members who live in Canada may have their votes cast in the election.

2. Not only is this decision contrary to the express terms of the Constitution, but it is a political maneuver taken in bad faith, since most of the Canadian members have been opposed to Defendant Simpson's policies and are unlikely to vote for him when he seeks a permanent

term of office. This discrimination violates Section 101(a)(1) of LMRDA, which protects the equal right of union members to vote in elections.

3. Plaintiffs seek a preliminary injunction, made permanent thereafter, requiring that electors representing all Canadian members in good standing, as set forth in the Constitution and Bylaws of the Union, be allowed to vote in the election.

### **JURISDICTION**

4. This action arises under Section 101(a)(1) of the Labor Management Reporting and Disclosure Act of 1959, *as amended* ("LMRDA"), 29 U.S.C. § 411(a)(1); under the Railway Labor Act, 45 U.S.C. § 51 *et seq.*; and/or under the common law of the State of Michigan. This Court has jurisdiction pursuant to 29 U.S.C. § 412; and 28 U.S.C. §§ 1331 and 1337. The Court further has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367, because said state law claim is so related to the federal claims as to form part of the same case or controversy.

5. Venue is proper in the Eastern District of Michigan, since Defendants regularly conduct business in this District, the BMWWE maintains its principal office here; many of the acts and decisions complained of in this Complaint have happened or will happen in this District; and there is no other District which has any better claim to venue over the conduct of Defendants herein.

### **PARTIES**

6. Plaintiff Jed Dodd is a resident of the City of Philadelphia, Pennsylvania. He is a member of the BMWWE and has been since 1977. He currently holds the elected position of General Chairman of the Pennsylvania Federation of the BMWWE, a subordinate body of the

Union which 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.

7. Plaintiff Ronald A. Bowden is a resident of Ottawa, Canada. He is a member of the BMWE and has been since 1978. He currently holds the elected position of System Federation General Chairman of the Eastern System Federation of the BMWE, a subordinate body of the Union which represents approximately 2,500 BMWE members in the Central and Eastern part of Canada who are employed by various railway companies, including Canadian National Railway.

8. Plaintiffs are members in good standing of the BMWE.

9. Defendant Freddie N. Simpson is an adult citizen of the State of Michigan. He is currently the elected Secretary-Treasurer of the BMWE. Since in or about July 2, 2003, he has also served as the Acting President of the BMWE.

10. Defendant Perry K. Geller is an adult citizen of the State of Ohio. He is currently the elected Grand Lodge Executive Board Chairman of the BMWE and general chairman of the Consolidated Rail System Federation. Since in or about July 2003, he has also served as the Acting Secretary-Treasurer of the BMWE.

11. Defendant BMWE is an unincorporated voluntary association and a labor organization within the meaning of Section 3(i) of the LMRDA, 29 U.S.C. § 402(i). It maintains its principal offices at 20300 Civic Center Drive, Suite 320, Southfield, Michigan 48076-4169. The Union 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.

### **FACTUAL ALLEGATIONS**

#### **A. Unlawful Status of the Current BMWF Officers**

12. The BMWF is governed by a Constitution and Bylaws ("the Constitution") which was most recently amended at the convention in July 2002.

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

14. Pursuant to Article I, Section 3 of the Constitution as it existed prior to the July 2002 Convention, Grand Lodge officers consisted 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.

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

16. 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.

17. 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.

18. On or about August 9, 2002, Mr. Dodd 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.

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

20. On or about March 10, 2003, Mr. Dodd and Mr. Housch 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).

21. 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. The case is currently scheduled for trial in or about September or October 2004.

**B. President Fleming's Disability and Resignation**

22. 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.

23. Although there was no evidence that Mr. Fleming intended to return to his position, Defendant Simpson failed and refused to declare the office vacant by reason of a disability and conduct a vote of representatives of the membership.

24. In a letter dated sometime in April 2004, Mr. Fleming announced that he was resigning from office effective April 14, 2004.

25. 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.

26. 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].

27. Article XXI, 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].

28. 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.

29. In a letter to the Grand Lodge Executive Board dated April 20, 2004, Defendant Simpson asked for their concurrence in his decision to "interpret" 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 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.

30. 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.

**C. Defendants' Discriminatory Conduct Against Canadian Members**

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

32. Since the Grand Lodge Convention in 2002, a number of BMWE 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.

33. In particular, many Canadian members of BMWE believed that the changes to the Constitution voted at the 2002 Convention violate the rules of the Canadian Labour Council, in that the officers of BMWE Canada are no longer chosen by vote of only Canadian members. A number of Canadian members have tried to negotiate an acceptable compromise with the Grand Lodge Officers.



34. 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 BMW E would be entering in merger negotiations with the International Brotherhood of Teamsters ("Teamsters").

35. Sometime in or about August 2003, the Canadian Auto Workers ("CAW") began soliciting Canadian BMW E members to sign authorization cards to have CAW represent them in the future.

36. 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.

37. 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].

38. Defendant Simpson caused to be distributed to all Canadian members of the

BMW 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 in Canada, we are asking all Canadian BMW members to sign authorization cards (and tender the \$5 (CDN) required by Canadian law) for the Teamsters Canada Rail Conference, Maintenance of Way Employees 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 Employees Division. Sign it TODAY. [emphasis added].

39. 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.

40. 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.

41. 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 BMWE.

42. Notwithstanding the pendency of these petitions for certification, all BMWE members in Canada are still members in good standing and continue to pay their dues to the BMWE. Moreover, the BMWE is still active in its role as the collective bargaining agent for the BMWE Canadian members, and continues to represent the Canadian members in arbitrations, disciplinary proceedings, grievances and employer investigations.

43. Contrary to the assertions of Defendants, there is no certainty that the Canadian members of the BMWE will be leaving the BMWE in the near future, or at all. This is because:

1. Canadian members may be given a vote on one or both of the pending applications for certification, and could well reject one or both of the applications from the Steelworkers and the Teamsters.

2. There is no set deadline as to when the CIRB will issue final rulings on the pending applications or when the Canadian courts will rule on any appeals. In the meantime, the Canadian members remain full and active members of the BMWE.

3. A number of Canadian members and officers have taken the position that they want to stay in the BMWE and are seeking ways to keep the Union from splitting apart.

4. One of the announced candidates for President of BMWE, Joel Myron, has publicly stated that he is campaigning on a platform of keeping the Canadian members within the BMWE.

5. Even if both of the applications for certification at CN and CP are granted, there are additional BMWE members in Canada who work for other employers and whose membership will not be affected by any change of collective bargaining agent at CN or CP.

44. Defendants are manipulating the membership status of the BMW members in Canada for their own political ends. Defendants are actively encouraging BMW members in Canada to sign Teamsters cards so that Defendants can maintain control over who represents the employees who are members of the BMW in Canada. It is the intent and purpose of Defendants to have BMW members in Canada be represented by the Teamsters on the premise that the BMW in the United States will also merge into the Teamsters, thus preserving the BMW as an entire union within the Teamsters.

45. As a direct and proximate result of Defendants' improper and unlawful behavior, Plaintiffs were and are being deprived of the equal rights and benefits of membership in the BMW, in that members of the Union in Canada are being denied the right to be represented in the vote to elect a new President of the BMW, while members of the Union in the United States will be represented in that same vote.

46. Defendants Simpson and Geller, acting together and in concert with other BMW members, are seeking to discriminate against Canadian members of the Union for political reasons. Defendants believe that Canadian members of the Union oppose the policies of the Mr. Fleming, Defendants Simpson and Geller; and that Canadian members will vote overwhelmingly against Defendant Simpson in the upcoming election for president.

47. In issuing his interpretation of the of the BMW Constitution on April 20 and 26, 2004, Defendant Simpson did not made a good faith interpretation, but acted in bad faith to pervert the plain meaning of the language of Article I, Section 7(b) of the Constitution to pursue his own political ambitions and those of his supporters.

48. Moreover, Defendant Simpson is only Acting President due to Mr. Fleming's

incapacity. Defendant Simpson's position as Secretary-Treasurer is under challenge by the Department of Labor due to Defendant Simpson's unlawful use of Union resources in his election campaign. Any interpretation of the Constitution by him is not entitled to any deference by the Court.

49. Plaintiff Dodd and others have attempted to exhaust their internal remedies, but are not able to fully do so prior to the scheduled June 8 vote in time for the Court to consider the accompanying Motion for Preliminary Injunction.

**FIRST CAUSE OF ACTION**  
**Breach of LMRDA Bill of Rights, 29 U.S.C. § 411(a)(1)**

50. Plaintiffs hereby reallege the paragraphs above as though fully set forth here.

51. Defendants, acting by themselves and in concert with others, are seeking to deny Plaintiffs Dodd and Bowden, as well as all the individual members of the BMW, the right to an equal vote during the upcoming election to fill the vacancy left by the retirement of Mr. Fleming. Defendants have unlawfully, improperly and arbitrarily discriminated against Canadian members of the BMW by refusing to allow them to be represented in the upcoming vote for President, while allowing all members of the BMW in the United States to be represented in the vote.

52. By their actions, Defendants have acted, are acting, and intend to act in the future in violation of 29 U.S.C. § 411(a)(1), to Plaintiffs' great detriment and harm.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**

53. Plaintiffs hereby reallege the paragraphs above as though fully set forth here.

54. The BMW Constitution and Bylaws constitutes a contract between the Grand Lodge and the subordinate bodies and members of the BMW, enforceable under the terms of

the Railway Labor Act and/or the common law of the State of Michigan.

55. By seeking to exclude all Canadian members from having their votes counted in the upcoming election for President, Defendants are in clear violation of Article I, Section 7(b) of the Constitution and have therefore breached their contractual obligations owed to Plaintiffs and all other members of the BMW, to the latter's great detriment and loss.

**PRAYER FOR RELIEF**

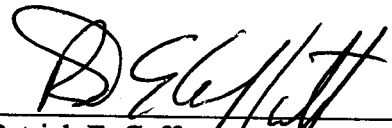
WHEREFORE, Plaintiffs pray that this Court grant the following relief:


- (1) Issue a preliminary and permanent injunction, ordering Defendants to extend equal voting rights to all members of the BMW, and to count the votes of Canadian members, as expressed through their System Federation Chairman, in the election for President on June 8, 2004, or on such date as the election may be rescheduled by Defendants;
- (2) Award Plaintiffs such compensatory damages as may hereafter be proven at trial;
- (3) Pay the reasonable costs and attorneys fees, including expert witness fees and expenses for bringing this action;
- (4) Such other and further relief as the Court deems just and necessary.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: May 10, 2004

  
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