

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: Burke, Carper, et al v. UTA, et al

Court/Agency Appeal From: District of Utah (Central)

Court/Agency Docket No. 2:04-CV-00985 District Judge: Paul Cassell

Party or Parties filing Notice of Appeal/Petition: Plaintiffs

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW.

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: 04/06/05

a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: No

b. Is the United States or an officer or an agency of the United States a party to this appeal? Yes, at the time the appeal was filed. However, since the filing the District Court has dismissed the Department of Labor on the grounds that the Plaintiffs failed to allege that in 2001 the Department of Labor was aware of a labor dispute that occurred in 2004. See Exhibit 6. Of course, the Plaintiffs will be appealing that order in the future.

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. P. 4(a)(1)(A) X Fed. R. App. P. 4(a)(6) _____

Fed. R. App. P. 4(a)(1)(B) _____ Fed. R. App. P. 4(b)(1) _____

Fed. R. App. P. 4(a)(2) _____ Fed. R. App. P. 4(b)(3) _____

Fed. R. App. P. 4(a)(3) _____ Fed. R. App. P. 4(b)(4) _____

Fed. R. App. P. 4(a)(4) X Fed. R. App. P. 4(c) _____

Fed. R. App. P. 4(a)(5)_____

Other:

3. Date final judgment or order to be reviewed was filed and **entered** on district court docket: 03/09/05 (minute entry only). Appellants requested a signed order but the request was never granted.

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b). No

(If the order being appealed is not final, please answer the following questions in this section.)

a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? Yes.

c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable?

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court: On 1/31/05 A revised motion for a preliminary injunction was filed that the District Court has characterized as motion for reconsideration.

b. Has an order been entered by the district court disposing of that motion, and, if so, when? Yes, March 9, 2005

6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court?

a. Please state the approximate amount of such assets, if known.

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed:

2. Date of the order to be reviewed:

3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order:

4. Specify the time limit for filing the petition (cite specific statutory section or other authority):

C. APPEAL OF TAX COURT DECISION

1. Date notice of appeal filed:

(If notice was filed by mail, attach proof of postmark.)

2. Time limit for filing notice of appeal:

3. Date of entry of decision appealed:

4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and, if so, when? *See* Fed. R. App. P. 13(a)

II. LIST ALL RELATED OR PRIOR APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

None.

III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.

This case involves a group of public employees involved in a light-rail operation, attempting to protect their free association rights not to have an employer-approved bargaining representative imposed upon them. The light-rail employees, while not covered by the National Labor Relations Act, have equivalent rights guaranteed by the Urban Mass Transportation Act and Utah State law. Despite this and approximately 70% of the employees indicating to the state employer, Utah Transit Authority, that they reject the present bargaining representative, the employer is imposing the bargaining representative on the employees and not allowing them to choose their own bargaining representative. The Trial Court has refused to grant a revised injunction protecting the employees' First Amendment rights. The Trial Court, relying on the wrong labor law doctrine (severance), refused to reconsider its decision when presented with clear case law demonstrating that the case involved the wrongful accretion of employees to an existing bargaining unit and not the severance of employees from that bargaining unit. Because of this action the employees are being irreparably harmed due to the loss of their statutory and constitutional rights to choose their own bargaining representative for their bargaining unit.

IV. ISSUES RAISED ON APPEAL.

- I. Did the Trial Court Commit Error By Denying the Preliminary Injunction Under the Wrong Legal Standard?
- II. Did the Trial Court Violate Plaintiffs Due Process Rights by Denying Them Both an Evidentiary and Motion Hearing On the Preliminary Injunction?

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18 U.S.C. § 3742 (a) or (b) of the sentence imposed? _____
- B. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty?

- E. Is defendant on probation or at liberty pending appeal? _____

NOTE: In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL.

If so, please state why.

Oral argument is requested. The case involves issues of first impression under both the Urban Mass Transportation Act and Utah State law. Additionally, the case involves First Amendment issues that have been addressed by persuasive authority but not in the Tenth Circuit. The Appellants request oral argument to facilitate the court in reaching a determination on these multiple complex issues. Oral argument is also appropriate due to the importance of protecting First Amendment and statutory rights for approximately 150 people.

VII. ATTORNEY FILING DOCKETING STATEMENT:

Name: _____ Telephone: () _____

Firm: _____

Address: _____

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A.

X - Appellant

Petitioner

Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

Retained Attorney

Court-Appointed

Employed by a government entity (please specify) _____)

Employed by the Office of the Federal Public Defender.

Signature

Date

NOTE: A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be attached to all copies of the Docketing Statement**, except as otherwise provided in Section 1 of the instructions.

The original and four copies of this Docketing Statement must be filed.

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I, _____, hereby certify that on [appellant/petitioner or attorney therefor]

_____, I sent a copy of the foregoing **Docketing Statement**, [date]

to: _____, at _____ [counsel for/or appellee/respondent]

_____, the last known address, by way of United States mail or courier.

Signature

Dated signed

[Printed name and address of
person completing service]

**EXHIBITS TO DOCKETING STATEMENT OF LISA BURKE AND MICHAEL
CARPER**

1. **CIVIL DOCKET FOR CASE NO. 2:04-cv-985**
2. **DOCKET ENTRY DATED WEDNESDAY, MARCH 9, 2005**
3. **ORDER DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION DATED JANUARY 25, 2005**
4. **MOTION FOR PRELIMINARY INJUNCTION DATED JANUARY 31,
2005**
5. **MOTION FOR A FINAL ORDER; EXPEDITED ACTION REQUESTED
DATED APRIL 4, 2005**
6. **ORDER GRANTING U.S. DEPARTMENT OF LABOR'S MOTION TO
DISMISS DATED APRIL 6, 2005**
7. **NOTICE OF APPEAL DATED APRIL 6, 2005**