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

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

LISA BURKE and MICHAEL CARPER,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

UTAH TRANSIT AUTHORITY, JOHN
ENGLISH, individually, LOCAL 382 OF THE
AMALGAMATED TRASIT UNION and the
UNITED STATES DEPARTMENT OF
LABOR,

Defendants.

ORDER DENYING PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION

Case No. 2:04-CV-00985 PGC

In this labor dispute, plaintiffs (several light-rail or "TRAX" operators) have moved for a preliminary injunction enjoining defendant, Utah Transit Authority (UTA), (1) from transferring any bus employees to the TRAX division, (2) from transferring bus employees to the TRAX division with seniority rights that would trump the seniority rights of existing TRAX employees, and (3) from interfering with plaintiffs' First Amendment rights to free speech and association by denying them access to post union information on company and employee bulletin boards

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pending the outcome of this litigation. Plaintiffs argue that they are entitled to this relief because UTA has denied them their right under state and federal law to be represented, for collective bargaining purposes, by separate representatives of their own choosing. Local 382 of the Amalgamated Transit Union (Local 382) represented and bargained on behalf of both bus and light-rail UTA employees in the most recent collective bargaining negotiations. The TRAX employees believe they were entitled to separate union representation and accordingly argue that the collective bargaining agreement now in place violates both federal and state labor statutes requiring that employers respect the collective bargaining rights of their employees. Plaintiffs further allege that UTA has violated their First Amendment rights by refusing to allow them to post certain union information on UTA company and employee bulletin boards.

The court concludes that plaintiffs have not established that they are substantially likely to prevail on the merits of their claims at trial. Because this is the basic requirement in order to obtain injunctive relief, plaintiffs' motion for preliminary injunction is denied.

I. Background

Local 382 has represented UTA transit employees continuously since 1904. Initially, the Local represented only streetcar employees, but then came to represent both bus and streetcar employees during the 1940s when buses were being phased into Salt Lake's transit system. After streetcars disappeared into the dustbin of history, the Local continued to represent UTA's bus employees up until light rail transport was (re)introduced in the 1990s.

In 1995, UTA and Local 382 entered into an agreement providing essentially that Local 382 would represent the new light rail division employees whose work was comparable to that of

bus division employees. In December of 1998, UTA and Local 382 reached a collective bargaining agreement providing that light-rail employees would come from UTA's existing bus divisions and that bus drivers transferring to the light rail division would retain their bus division seniority rights. Most, if not all, of the plaintiffs in this case transferred into their light rail jobs from UTA bus divisions under the terms of this agreement.

The issues presented in this lawsuit first arose in 2003 when negotiations between the union and UTA began on a new collective bargaining agreement. In the course of these negotiations, TRAX employees petitioned management demanding separate union representation. Recognition of this right was not forthcoming and, on August 10, 2004, the new collective bargaining agreement was ratified by the union membership. This new agreement contained the same provisions regarding transfer of bus employees into the TRAX division with existing bus division seniority rights.

Plaintiffs then filed suit against UTA (among others). Plaintiffs raise collective bargaining claims and a First Amendment claim. As to collective bargaining, plaintiffs allege that UTA violated both federal and state labor laws in failing to recognize their right to separate union representation. Plaintiffs seek an injunction aimed at preventing UTA from further transferring any bus employees to the TRAX division or from granting transferred employees seniority rights superior to those of employees already in the TRAX division. As to the First Amendment, plaintiffs seek an injunction barring UTA from interfering any further with their attempts to post information regarding their rights to separate union representation. Neither the collective bargaining nor the First Amendment claim is persuasive.

II. Plaintiffs' Motion for a Preliminary Injunction

A. Collective Bargaining Claims

Plaintiffs first argue they are entitled to an injunction on their collective bargaining claims. The standard for granting a preliminary injunction is well known. To establish their right to injunctive relief, plaintiffs must show “(1) a substantial likelihood of success on the merits of the case; (2) irreparable injury to the [plaintiffs] if the preliminary injunction is denied; (3) the threatened injury to the [plaintiffs] outweighs the injury to the other party under the preliminary injunction; and (4) the injunction is not adverse to the public interest.”¹ Where, as here, the plaintiffs (the moving parties) seek to disturb the *status quo* (in this case, by altering the terms of an existing collective bargaining agreement), each of these elements must “weigh heavily and compellingly in [plaintiffs’] favor before such an injunction can be issued.”²

As an initial matter, then, plaintiffs must demonstrate that they are likely to succeed on the merits of their claims in order to obtain their requested relief. Plaintiffs base their collective bargaining claims on UTA’s alleged violations of § 13(c) of the Federal Transit Act and § 17A-2-1031 of the Utah Code. Among other things, the Federal Transit Act governs the obligations of public transit systems which receive federal funding. Section 13(c) of the Act provides that

(1) As a condition of financial assistance under [the Act], the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable.

¹*Salt Lake Tribune Publishing Co., LLC v. AT&T Corp., et al.*, 320 F.3d 1081, 1099 (10th Cir. 2003) (quoting *Kikumura v. Hurley*, 242 F.3d 950, 955 (10th Cir. 2001)).

²*Id.* (quoting *Kikumura*, 242 F.3d at 955) (internal quotations omitted).

And this section also conditions federal funding on

- (A) the preservation of rights, privileges and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
- (B) the continuation of collective bargaining rights;
- (C) the protection of individual employees against a worsening of their positions related to employment.

Additionally, under Utah state law,

Employees of any public transit system established and operated by the district shall have the right to self-organization, to form, join, or assist labor organizations and to bargain collectively through representation of their own choosing provided, however, that such employees and labor organizations shall not have the right to join in any strike against such public transit system. The district *shall recognize and bargain exclusively with any labor organization representing a majority of its employees in an appropriate unit with respect to wages, salaries, hours, working conditions, and welfare and pension and retirement provisions*, and, upon reaching agreement with such labor organization, to enter into and execute a written contract incorporating therein the agreements so reached.³

By refusing to recognize the right of TRAX employees to be represented separately from bus division employees, plaintiffs argue that UTA violated their collective bargaining rights under federal and state labor laws – specifically, § 13(c) of the Federal Transit Act and Utah Code § 17A-2-1031.

Plaintiffs urge the court to treat this an “accretion” case under existing labor law precedents. An “accretion” case is one in which the propriety of a new group being added to an existing bargaining unit without a representation election is challenged. Plaintiffs argue that *Baltimore Sun Company v. National Labor Relations Board*⁴ and *Boire v. International*

³UTAH CODE ANN. § 17a-2-1031 (2004) (emphasis added).

⁴257 F.3d 419 (4th Cir. 2001).

*Brotherhood of Teamsters*⁵—both “accretion” cases—govern the outcome of this case and support a finding of unfair labor practices on the part of UTA. Yet both cases are factually distinguishable from the present action—*Baltimore Sun* because it involved a group of employees who the company would not agree to let the union represent or bargain for, and *Boire* because it involved a group of entirely new, non-union, independent contractors added when the company opened a new facility in another state. Here, the union forged an agreement with UTA before the creation of the light rail division to represent UTA’s future light rail employees. As part of this agreement, the union was able to secure transfer and seniority rights for bus division employees wishing to join TRAX. In turn, the majority of TRAX’s initial work force was comprised of employees who had transferred to the new light rail division from the bus division under the terms of this agreement. Indeed, that very agreement had been ratified by the full bus division membership before these transfers.

Given these facts, the court views the present case as one in which plaintiffs seek “severance” from an existing bargaining unit instead of one in which plaintiffs have been improperly “accreted” to an already existing unit. Plaintiffs’ ability to prevail on its collective bargaining claims, then, hinges on proving that a bargaining unit made up of *both* bus and TRAX employees is not an appropriate bargaining unit for purposes of § 17A-2-1031 or § 13(c) of the Federal Transit Act. The plaintiffs have offered little to support this position.

For starters, the National Labor Relations Board has previously ruled in an analogous case involving both bus and streetcar operators of a public transportation system that a “system-

⁵479 F.2d 778 (5th Cir. 1973).

wide unit, including both operating and maintenance employees, is the most appropriate unit.”⁶ Even though the National Labor Relations Board has no jurisdiction over public entities, the NLRB’s pronouncements are persuasive on the issue of the appropriateness of a given bargaining unit here.

Moreover, history and current national standard practice also fail to support plaintiffs’ claims. As noted earlier, Local 382 represented Salt Lake’s streetcar operators from 1904 up until the 1940s – at which point it represented *both* bus and streetcar drivers until streetcars were permanently phased out of service. UTA has also presented ample evidence that across the country many public transit systems with light rail operations bargain with units routinely made up of both bus and light rail employees.

Federal law only requires that the collective bargaining rights of public transit employees be preserved. Utah law only requires UTA to bargain with “*an* appropriate unit,” not the *most* appropriate unit. Given NLRB precedent, Local 382’s history in representing Salt Lake public transit employees, and standard practices around the nation, the court would be hard pressed to conclude that a collective bargaining unit made up of both bus and light rail employees is somehow “inappropriate.” Because the available evidence fails to support plaintiffs’ claims, it follows that plaintiffs have not demonstrated a substantial likelihood of success on the merits of their claims and thus, that their request for preliminary injunctive relief must be denied.

⁶*National Labor Relations Board v. St. Louis Public Service Co.*, 77 N.L.R.B. 749, 755 (1948).

B. Plaintiffs' First Amendment Claim

Similarly, on their First Amendment claim, plaintiffs have failed to demonstrate a likelihood of success on the merits. Plaintiffs maintain that UTA has violated their First Amendment rights by not allowing them to post competing organizing information on company and employee bulletin boards. However, plaintiff's argument is severely undercut by the Supreme Court's decision in *Perry Education Association v. Perry Local Educators' Association*,⁷ which held that a collective bargaining agreement denying a rival union access to teacher mailboxes and the interschool mail system did not violate the First Amendment. *Perry Education Association* explains that the "exclusion of the rival union may reasonably be considered a means of insuring labor peace within the schools."⁸ "The policy," the decision continues, "serves to prevent the District's schools from becoming a battlefield for inter-union squabbles."⁹

Plaintiffs have not persuasively distinguished their First Amendment claim from the one at issue in *Perry*. To the contrary, *Perry Education Association* seems quite similar. In any event, to obtain a preliminary injunction, the plaintiffs must shoulder the burden of showing a likelihood of success on the merits. This they have failed to do, and their motion for preliminary injunctive relief on this claim is accordingly denied.

⁷460 U.S. 37 (1983).

⁸*Id.* at 52.

⁹*Id.* (quoting *Haukvedahl v. School District No. 108*, No. 75C-3641 (N.D.Ill.1976)).

III. Conclusion

The plaintiffs have failed to show a likelihood of success on the merits for either their collective bargaining claims or their First Amendment claims. Because such a showing is the basic prerequisite for a preliminary injunction, their motion for such an injunction (# 10-1) is denied. In light of this disposition, the court need not resolve the more difficult issue of whether the anti-injunction provisions of the Norris-LaGuardia Act apply to actions involving public entities.

DATED this 25th day of January, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
January 26, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00985

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