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FILED  
U.S. DISTRICT COURT  
2005 APR 19 P 3:02  
BY:   
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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

v. )

**UTAH TRANSIT AUTHORITY, JOHN** )  
**INGLISH, INDIVIDUALLY, LOCAL 382** )  
**OF THE AMALGAMATED TRANSIT** )  
**UNION AND THE UNITED STATES** )  
**DEPARTMENT OF LABOR,** )  
**Defendants.** )

**RULE 56(f) AFFIDAVIT**  
**OF DANIEL MOQUIN**  
  
Civil No. 2:04-CV-00985  
  
Judge PAUL CASSELL

STATE OF ARIZONA )  
: ss  
COUNTY OF COCONINO )

Daniel G. Moquin, being first duly sworn and upon his oath states as follows:

1. I am counsel for plaintiffs in the above-entitled matter.
2. I am an adult and competent to testify regarding the contents of this Affidavit.
3. My client has not been given an opportunity to conduct any discovery in this matter.
4. The reason for the lack of discovery is that one of the defendants in the case had not

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answered and thus discovery was not available.

5. The defendant, the U.S. Department of Labor, was dismissed from the case on April 6, 2005. While the plaintiffs will appeal this dismissal, the decision on whether it will be an interlocutory appeal has not been made.

6. In discovery, plaintiffs intend to ask both the Utah Transit Authority and Amalgamated Transit Union, Local 382, the exact number of union members system-wide. If the number is under 50% then even if a system-wide union could be an appropriate bargaining unit, a contention vehemently denied by plaintiffs, then defendants have an inadequate defense.

7. Plaintiffs intend to conduct depositions with employees demonstrating their bargaining agent preference. Employee preference is one of the factors to determine an appropriate bargaining unit.

8. Plaintiffs have obtained information that Steve Booth, the union president, and John English, UTA general manager, had a meeting in which Steve Booth's company benefits and position were restored to him after having been terminated about three years earlier by the previous UTA general manager. Plaintiffs intend to conduct depositions of both individuals to determine whether plaintiffs' freedom of association rights were compromised by the meeting.

9. Plaintiffs intend to conduct depositions on safety issues. The depositions will show that safety issues are not being addressed by Steve Booth.

10. Plaintiffs intend to determine by document requests what assurances were given by UTA to the DOL that bargaining rights would be protected, including the right to choose

a bargaining representative, the most fundamental bargaining right.

11. The Plaintiffs intend to conduct discovery on what Kathryn Pett told Allan Minor about the removal of posters. This information goes to the heart of the free speech part of the TRAX employees' First Amendment claim.

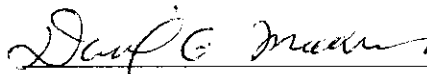
12. The Plaintiffs intend to conduct discovery on the various job positions to determine the comparability of the positions in both bargaining units. This is an essential part of unit determination.

13. Plaintiffs intend to conduct discovery on whether Steve Booth was allowed to intimidate employees at Utah Transit Authority property on the eve of contract elections. This testimony will buttress the claim of interference with free association rights. UTA has denied the incident in its answer, thus creating an important factual dispute.

14. Plaintiffs intend to examine the intent of John English in sending a letter praising the Amalgamated Transit Union, Local 382, and in riding trains with dissident employees. The question of whether there was an intent to intimidate employees from exercising the freedom of association rights in this case is critical.

15. Plaintiffs intend to subpoena hostile union witnesses regarding attempts by the union to use the divide between the bus employees and light-rail employees as a mechanism to maintain power. This testimony goes to the heart of the breach of fiduciary duty claim against the union.

Dated this 9th day of April, 2005.

  
\_\_\_\_\_  
Daniel George Moquin

Subscribed and sworn to before me this 9<sup>th</sup> day of April, 2005.

Carol Yazzie Ward  
Notary Public



**CERTIFICATE OF MAILING**

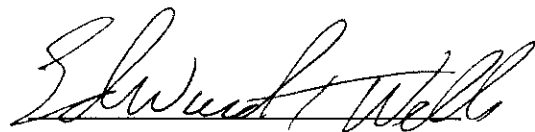
I hereby certify that on this 19<sup>th</sup> day of April, 2005, I caused to be mailed, postage prepaid, the foregoing AFFIDAVIT OF DANIEL MOQUIN to the following:

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A handwritten signature in cursive script, appearing to read "Edward J. Wells".