

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN

ROBERT W. EARLEY,	)	
	)	
Plaintiff,	)	
	)	CASE NO. 1:94 CV 0597
-vs-	)	
	)	JUDGE LESLIE BROOKS WELLS
EXECUTIVE BOARD of the	)	
UNITED TRANSPORTATION	)	
UNION, et al.,	)	
	)	
Defendants.	)	

**MOTION FOR INTERVENTION**

COMES NOW LANCE E. RUCK, pursuant to Rule 24 of Fed. R. Civ. P. and files this his Motion for Intervention in Case No. 1:94 CV 0597 and would respectfully show the Court the following:

**PARTIES**

\_\_\_\_1. Plaintiff is a resident of the State of Maryland. He is member of and holds the elective office of Vice President in the United Transportation Union ("UTU"). The UTU is an unincorporated labor organization whose headquarters is situated in the City of Lakewood, State of Ohio.

2. Defendant Executive Board of the United Transportation Union (the "Executive Board") is a subsisting board, duly established by Article 2 of the International Constitution of the UTU (the "Constitution"), and is comprised of four (4) members.

The Executive Board is authorized and empowered by Article 24 of the Constitution, among other duties and responsibilities, to investigate charges preferred against officers of the UTU, and, if appropriate, to try and determine such charges. In the event the Executive Board determines a charge is within its jurisdiction to decide, no other board of officer of the UTU has authority to **interfere** in the proceedings of the Executive Board. Executive Board members are "elected" officers of the International and any decision made by them is appealable to the supreme body of the International (the "Convention") in accordance with Article 26 of the UTU Constitution.

3. Lance E. Ruck is a resident of the State of Texas. He is a member of Local 1571 and a member of the Board of Appeals of the UTU, an Internal Board which determines internal disputes and issues substantive rulings which are recognized by the Federal Courts.

#### **JURISDICTION**

4. This Court has subject matter jurisdiction of the action set out in Plaintiff's amended complaint alleging violations of 18 § 2510 et seq. and 29 § 411, 412, pursuant to the general federal question subject matter jurisdiction provisions of 28 § 1331.

5. Venue lies in this Court because the alleged

unlawful conduct plaintiff seeks to enjoin will allegedly occur in Lakewood, Ohio if the UTU Executive Board is allowed to try Plaintiff on charges filed by Intervenor Ruck.

#### **FACTS**

6. Intervenor Ruck hereby incorporates the averments contained in Statement of Facts attached to New Party Defendant's Opposition to Plaintiff's Renewed Motion for a Preliminary Injunction herein and expressly makes them part of this filing.

7. I did write a letter to UTU General Counsel Miller on March 28, 1994 and that letter with response and copy of Order are New Party Defendant's Exhibit # 3 in my Answer to Plaintiff's Amended Complaint and are expressly made part of this filing.

8. The reason for my letter to General Counsel Miller was the strange occurrences which transpired on March 22, and 23 of 1994 in Cleveland Ohio. Defendant Smoot, per his lawyer's advise could not provide his representative or witness (me) with the Memorandum Opinion and related Orders. Upon arrival at UTU headquarters, Mr. R. A. Cushing, Jr., and I were advised the Trial was postponed from 9 am to 11 am because General Counsel Miller and Plaintiff's attorneys were meeting with a Judge at 9 am. While arriving to late to participate in whatever was occurring in the Judge's Chambers, General Counsel Miller spoke with us upon exiting

the Judge's chambers. At that time he advised he would give us a copy of the memorandum and stated his interpretation was Smoot could not participate at all, rather than amend his charges.

9. Mr. Cushing, upon a full reading of the Memorandum Opinion advised Smoot not to participate at all. However, while no indication had ever been given by Smoot he did not have amended charges ready, Plaintiff Earley showed his concern that charges might go forward in his statement before the Executive Board<sup>1</sup> from the Transcript of the Executive Board Trial which is Exhibit #1 of New Defendant's Opposition to Plaintiff's Renewed Motion for a Preliminary Injunction and is expressly made part of this filing.

10. As neither Smoot nor his Attorney were present behind the closed doors of the Judges chamber, one might reasonably conclude there would be no Executive Board Trial on March 23, 1994 no matter what Smoot did, i.e., submitted his amended charges which left out all reference to the Executive Session of PLB 3882.

11. My charges of March 28, 1994 against Plaintiff Earley are not "essentially the same as those charges Smoot was

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<sup>1</sup> pg. 2-3 Transcript of Executive Board: Mr. Earley:  
"Originally, my counsel was Attorney Bill Mahoney, and we were advised -- at least it was my understanding that we were going to come to the Executive Board just to open it and close it down, words to that effect. If that's what's going to go forward, I have no problem with that, but my counsel for the Executive Board charges, or the charges alleged by Mr. Smoot, my counsel, I have dismissed him."

enjoined from prosecuting" and they make no mention of the **content** of any Executive Session but rather are based on serious violations of the UTU Constitution and per se violations of the Railway Labor Act and Landrum-Griffin Act. My charges are identified as New Party Defendant Exhibit 4 in my Answer to the Amended Complaint and are expressly made part of this filing.

12. Plaintiff Earley made his feelings to my charges known to the Executive Board Chairman by letter dated April 1, 1994 and I responded to those comments by letter of April 6, 1994. Those letters are herein attached as Exhibit "A" and are expressly made part of this filing.

13. While my concerns for the contradictory nature of the two cases UTU is involved in with Mr. Smoot and the possible conflict of interest in defense of Smoot v. UTU, et al., if UTU agent Earley is determined to have violated his obligation of office was apparently mooted by the withdrawal of Smoot's charges, they remain a viable concern for General Counsel Miller. Indeed, with charges again about to be heard by the Executive Board and the Constitution forbidding anyone to interfere, it is General Counsel Miller who requested an indefinite postponement per the Thompson letter of April 18, 1994 (herein attached as Exhibit "B" and expressly made part of this filing). Indeed, General Counsel Miller contacted me at approximately 3:30 pm on April 14, 1994 at a

private club by telephone to advise that Mr. Larry Gordon would file retraining orders against the Executive Board and me at 10:30 am in the Federal Court on April 15, 1994. The purpose of his call was to give me Mr. Gordon's telephone number so I could contact him (ostensively I suppose to meet the requirement of Rule 65(a)(1) and again stop the scheduled April 19, 1994 Executive Board Trial). However when I advised I wouldn't call Mr. Gordon but would rather just show up at the Courthouse a 10:30 am, General Counsel Miller seemed very concerned and needed to know where I could be reached that night. I gave him the phone number where I was staying but did not arrive there until after 9:00 pm. A message had been left by Executive Board Chairman Thompson that it was urgent I call him. Being late, I decided to wait until the next day to call him. However, before I called Mr. Thompson on April 15, 1994, I called the UTU legal department and spoke with Mr. Dan Elliot who advised the Trial scheduled for April 19, 1994 had been postponed until a later date and that plaintiff's attorneys would be filing "something" with the Court that day.

14. These concerns become magnified when information was filed by Plaintiff's attorney which could only have come from General Counsel Miller, i.e. "had driven through the night from El Paso, Texas to aid Smoot in the prosecution of his charge." It is also evident that the **only** way Plaintiff's attorney could know I

had a copy of the Memorandum Opinion and Orders from the Maryland Court wherein he could aver Rule 65(d) ("otherwise" served) was if General Counsel Miller told him since I was removed from the Executive Board "trial" before Mr. Cushing offered the Memorandum Opinion upon the Chairman's request.

15. By letter of April 18, 1994 Executive Board Chairman Thompson advised that the Board is not "**tainted**" (herein attached as Exhibit "C") but rather are professionals able to hear any case fairly and without bias.

16. By cover letter dated April 15, 1994 Plaintiff's attorney has attempted to add me as a New Party Defendant, a Defendant (all without leave of the Court), enjoin me from my rights granted by the UTU Constitution, and requested compensation from me for violations of 18 § 2510 et seq., which have never occurred. Indeed, Plaintiff's attorney avers just the mention of a tape or the Executive Session of PLB 3882 is an intentional disclosure of the **contents** of the oral communication. This stretches the intent of 18 § 2511 (1)(c) and (d) even beyond his liberal interpretation of Rule 65(d) which assumes the Maryland Order applies to me because I am in concert with Defendant Smoot.

17. If Plaintiff is successful in his actions, the Board of Appeals will no longer be the "Court of Last Resort" for the **members** wherein their complaints may be adjudicated by a body of

their peers since any General Chairman and/or International Officer can simply trash the decision in a fabricated Arbitration proceeding.

**ARGUMENT**

Movant respectfully believes he is entitled to intervene in Plaintiff's attempt to enjoin a legally constituted and recognized internal Board, which action impairs my ability to protect my rights and the members rights as contracted by the UTU Constitution. Sufficient evidence exists that my and the member's rights may not be adequately represented by the existing parties. Specifically, Movant wishes to avoid further proceedings behind closed doors which neuter or moot the charging party without his knowledge or permission and without adequate ability to make his case to the Honorable Court.

**PRAYER**

PREMISES CONSIDERED, Lance E. Ruck, respectfully requests the Court grant his Motion for Intervention in Case No. 1:94 CV 0597.

Respectfully submitted,

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LANCE E. RUCK, PRO SE  
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