

UNITED STATES DISTRICT COURT - NORTHERN  
DISTRICT OF ILLINOIS

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VINCENT TENUTO, JOSEPH VERCELLO, )  
LEO "DUKE" CLARK, BILLIE KESSLER, )  
SHERYL FRANKLIN, KEITH RUSSELL, )  
JOHN MARTINEC, Collectively Called )  
FIGHTING FOR THE FUTURE SLATE )

Plaintiffs, )

v. )

THOMAS CLAIR, JOHN FAIZONE, KEN )  
BRANTLEY, JOHN HURLEY, MIKE )  
MARCATANTE, LINDA CRUZ AND TONY )  
FIORI, )

Defendants. )

Case No.

08CV1617

COMPLAINT FOR PRELIMINARY INJUNCTION

NOW COME the Plaintiffs, by and through their attorneys, FRITZSHALL &  
ASSOCIATES, and for their Complaint state:

PARTIES

1. Plaintiffs, are now, and at all times relevant hereto, citizens of the State of Illinois and reside within the jurisdiction of the Northern District of Illinois Court. They are Vincent Tenuto, Joseph Vercillo, Leo "Duke" Clark, Billie Kessler, Sheryl Franklin, Keith Russell, and John Martinec and are collectively the slate called "Fighting for the Future" (Plaintiffs).
2. Defendants, Thomas Clair, John Faizone, Ken Brantley, John Hurley, Mike Marcatante, Linda Cruz and Tony Fiori are now and at all times relevant hereto, citizens of the State of Illinois and reside within the jurisdiction of the Northern District of Illinois Court and are collectively the slate called (Defendants).



## RELEVANT LAW

### PERTINENT SECTIONS

*The National Labor Relations Act (NLRA) Applicable provisions in Section 1 (Sec. 151)*

"It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

*Labor-Management Reporting and Disclosure Act of 1959, Title IV - Elections. Sec. 401(c)*

"Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution."

### FACTS

10. The union contract provides for arbitration, but the joint council and International Board of Teamsters (IBT) who act as arbitrators have not acted to date (5 months).
11. There has been a concerted effort by Defendants to derail Plaintiffs' campaigning.
12. Management has blocked campaigning of Plaintiffs at several locations by cooperating with Defendants.
13. The ballots were mailed to the union membership with the returns to a post office box which was controlled by Defendants, and Defendant Thomas St. Clair had complete access to all of the ballots that were returned to the post office without monitoring for a period of five days.

14. Monitors were appointed by Defendants but all of the monitors were employees or agents of Defendants, who restricted access to the ballots. Defendants also controlled ballots at Union Hall when the ballots were counted. Returned ballots were in the sole possession of Defendants.
15. Plaintiffs only had limited observation of the ballots. Plaintiffs determined that active member labels provided were short by 147; these labels were used to send to members with ballots.

#### CAMPAIGN OBSTRUCTION - MANAGEMENT CO-OPERATION WITH DEFENDANTS

16. The Plaintiffs' state that as early as August 21, 2007, while campaigning at the Illinois Tollway Authority on Touhy Avenue, several members of Plaintiffs' slate found a very receptive group of union members to the Plaintiffs' arguments for voting for Plaintiffs. The campaigning had to be cut short because of intimidation and threats, which came from management employer.
17. At another location, a management supervisor threatened police action to thwart lawful union campaign activity.
18. Plaintiffs' pamphlets were torn off the Union Boards.

#### PLAINTIFFS MAIL EFFORTS FRUSTRATED

19. On September 7, 2007, Plaintiffs, the Fighting for the Future Slate, conducted a mailing at Local 726 Union Hall, as required by the election rules of the Local. The Plaintiffs' slate understood that there would be an independent monitor but Defendants' business agent, Kevin Kaiser, was appointed as monitor, in violation of the "monitor rules" of the Local 726 election regulations. Since Kevin Kaiser was allowed to observe the Fighting for the Future mailing, Plaintiffs' slate should have been afforded similar monitor status for any mailings, but Plaintiffs were denied a monitor.

#### DEFENDANTS CONTROLLED RETURNED BALLOTS AT POST OFFICE

20. Ballots of union members were returned to the post office and they were to be placed in a secure container by an independent monitor. An incumbent, Defendant Thomas

St. Clair rented a mail box and had complete and unfettered access for five days to that box as the ballots were being counted by the union members.

**DEFENDANTS CONTROLLED BALLOTS AS THEY WITNESSED THEM BEING COUNTED.**

21. Defendants and each of them had unfettered access and control at Union Hall while counting the ballots. They prevented Plaintiffs from observing the counting of the ballots at Union Hall. Defendants asserted complete control of the ballots and denied several hundred members their right to vote. Defendants also had several hours of unfettered access while the ballots were being counted and maintained complete unilateral control.
22. All returned ballots were in possession of Defendants; Plaintiffs were denied a monitor.
23. Plaintiffs were able to observe mailing labels that were not properly prepared or reviewed. Printout was not aligned correctly and many labels had to be cut and pasted or rewritten to be of any use. The count was also incorrect based on previously received information provided in an August 31<sup>st</sup>, 2007 letter.
24. The active member labels provided were short by 347. Many labels included the word "retiree" and still other included addresses in Michigan, Texas and Florida. The membership list should have been reviewed and updated prior to the mailing of ballots, and Plaintiffs should have had an opportunity to observe the same.

**ADMINISTRATIVE PROCEDURE**

25. Plaintiffs were entitled to an administrative procedure to avoid court litigation. Plaintiffs filed many protests with the Joint Council and the International Brotherhood of Teamsters (IBT) which should be acted upon in 90 days; to date, Plaintiffs have not heard from the Joint Council or the IBT. Many activities of the Union have been ignored by the present executives since the campaign. Many Union members informed Plaintiffs that their grievances are without representation to plead their case to Management. Management is in violation of the by-laws, and support for union members is being ignored.
26. Plaintiffs believe that the administrative review procedure now under way will be useless since the "joint council" and International Board of Teamsters (IBT) Officers generally affirm the election outcome because they are elected to their office by the officers of Local 726. Plaintiffs have been waiting 5 months for a review of their

election protests to the joint council and LBT. They are supposed to have a response no later than 4 months.

- 27. Defendants have virtually abandoned the Union members; 16 grievances have been filed by members and they are without assistance.
- 28. Plaintiffs and 4,500 Union members are suffering irreparable injury and will continue until a new election and new slate of officers are elected.

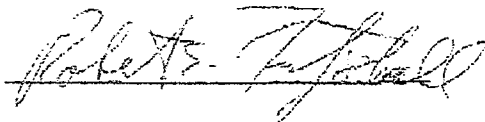
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray this Honorable Court:

- a. Enter a preliminary injunction restraining Defendants with further interference of Plaintiffs' rights under the by-laws and constitution of the union, and rules set forth in the NLRA;
- b. Enjoin Defendants' slates and each of them from further management of the union;
- c. Appoint a trustee to operate union business;
- d. Declare the election of November 3<sup>rd</sup>, 2007 be void; and
- e. Order that a new election is held under the supervision of a monitor appointed by this Court.

STATE OF ILLINOIS            )  
  )  
COUNTY OF COOK            )

I, Robert S. Fitzshall, Esq. depose and state that I am the Plaintiffs' attorney, and to the best of my knowledge and belief, the statements made therein are true and accurate.



SUBSCRIBED and SWORN to before me this  
19 Day of March, 2008