

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

THERESE BOYLE, MARY)	
ESPOSITO-USTERBOWSKI,)	
CASSANDRA HOGGATT, MARÍA)	Case No. 22-CH-03351
SOTO, AND PHILIP WEISS)	
)	
Plaintiffs,)	
)	
v.)	
)	
CHICAGO TEACHERS UNION and)	
MARIA T. MORENA,)	
)	
Defendants.)	

DEFENDANTS’ 2-615 MOTION TO DISMISS THE COMPLAINT

Introduction

This case involves an upcoming internal election in the Chicago Teachers Union (“CTU”). As detailed below, Plaintiffs’ Verified Complaint for Breach of Contract and Injunctive Relief (“Complaint”) should be dismissed because Plaintiffs come to this Court *admitting* that they have failed to exhaust the CTU’s internal processes for addressing their dispute. It should also be dismissed because Plaintiffs’ dispute falls within the range of discretion that Illinois Courts allow for unions to interpret their own governing documents.

In CTU internal elections, candidates often join together in political affiliations called “slates.” Plaintiffs are competing for office in the CTU in a slate called “Members First.” Under the CTU’s procedures, getting on the ballot in the first place requires turning in a sufficient number of signatures. This must be done by March 25 (all dates 2022). Candidates who turn in a sufficient number of signatures to be on the ballot can submit another document called a “consent form” to request ballot placement in a particular slate. If a candidate does not submit a

consent form, the candidate will be listed on the ballot as independent, i.e., not affiliated with any slate. The consent form on its face says that it should be submitted by March 25. But Plaintiffs do not allege any particular statement in any of the CTU's governing documents requiring that deadline for submitting consent forms.

Candidates from each of the various slates turned in enough signatures to be on the ballot, but failed to turn in consent forms. This included candidates from Plaintiffs' slate, called "Members First." The CTU's committee running the election decided to allow more time for candidates to turn in consent forms, in case any candidates forgot about that form. This extension was granted to all candidates, including those candidates from Plaintiffs' slate who may have forgotten about that form.

Plaintiffs objected to this extension of time by filing an internal protest. They allege that their protest is scheduled to be heard April 15. Courts of equity will not interfere in a union's internal processes while those processes are still ongoing, under the exhaustion doctrine. Thus, the Complaint cannot state a claim because it admits, on its face, that Plaintiffs have not exhausted the CTU's internal processes.

Even if those processes had ended in rejection of Plaintiffs' protest, this Complaint should still be dismissed. That is because Plaintiffs have not shown anything barring extensions of the March 25 deadlines for submitting consent forms. Given this ambiguity on whether the deadline for consent forms must be the same as the deadline for petitions, and on whether it can be extended, the Court should follow the long line of precedent deferring to a union's internal interpretation of its governing documents.

In any event, Defendant Maria Moreno must be dismissed. She is CTU's agent only. The

law in Illinois is that union representatives are not personally liable for their actions on behalf of the union they represent.

Facts

Plaintiffs' Complaint on its face states facts that show that it should be dismissed, so dismissal is appropriate under Section 2-615.

Plaintiffs' Complaint addresses the form of the ballot in an upcoming CTU election. They do not complain of any individual candidate being *excluded* from the ballot. They only complain about how particular candidates will be identified. In particular, will candidates be allowed to identify as a member of a particular slate of candidates, or will they be identified as independent candidates? Candidates are supposed to submit a document called a "consent form" to request ballot placement with a particular slate, but many candidates failed to file that form by March 25. Failure to submit the form means that the candidate will be listed on the ballot as "independent" and not affiliated with any slate. (Complaint ¶¶ 17-24.)

The CTU's committee that governs its elections is called the Rules-Election Committee. The Complaint alleges that candidates from multiple slates failed to submit the consent form by March 25 and that the Rules-Election Committee then decided to allow candidates extra time to file that form. Plaintiffs concede that this extension was granted to candidates affiliated with their own slate. This extension of time does not add or subtract any candidates from the ballot, since eligibility for being on the ballot is determined based on number of petition signatures. The consent form is simply about *where* a candidate appears on the ballot. This allowance of extra time does not require any candidate to choose affiliation with a slate. It simply allows

candidates a few days to correct any accidental failure to request affiliation, if they want voters to be aware that they are affiliated with a particular slate. (Complaint ¶¶ 17-35.)

On April 6, Plaintiffs filed an internal union protest to this extension (Complaint ¶ 38). Plaintiffs attach a copy of the consent form, which states that it is due on March 25 (Complaint Ex. C). But that date on the face of the form is all that Plaintiffs point to as a deadline for submitting that form. They do not point to any governing documents requiring that date or any documents prohibiting that date from being extended. They make an unsupported allegation that there is no “authority to extend the deadline to submit Consent Forms” (Complaint ¶ 30), but they provide nothing to support this bald assertion. They do not point to any governing documents of CTU in support of that bald assertion.

Plaintiffs’ Complaint attaches the CTU’s procedural rules which address how protests like this are handled:

The Rules-Election Committee shall issue its written decision regarding the challenge or protest no later than ten (10) calendar days after its receipt of the challenge or protest. The Rules-Election Committee's decision on the protest shall be final, and it shall inform the protester and the challenged party in writing of its decision.

(Complaint Ex. B at 19.)

Plaintiffs’ Complaint states that their protest is scheduled for a decision by the Rules-Election Committee on April 15 (Complaint ¶ 41). This will be nine calendar days after Plaintiff Boyle filed the protest on April 6 (Complaint Ex. F). Thus, it is not yet decided whether Plaintiffs’ protest will be granted by the Rules-Election Committee.

Argument

The Complaint should be dismissed for two reasons. Both of them appear on the face of the Complaint. Thus, the Complaint can and should be dismissed under Section 2-615, 735 ILCS 5/2-615, which provides for dismissal of facially defective pleadings like this one.

The first reason the Complaint should be dismissed is that Plaintiffs must first exhaust the CTU's internal processes. Plaintiffs in fact plead that an internal CTU meeting is currently scheduled to consider their protest. Illinois courts do not allow lawsuits seeking to interfere with union processes, where those processes are not yet exhausted.

The second reason is that union internal processes are entitled to deferential review by the courts and here it is reasonable to allow this extra time, evenhandedly granted to all candidates. The documents Plaintiffs attach to support their Complaint show this reasonableness on their face. The consent form itself states a due date of March 25, but no other document Plaintiffs have submitted requires that particular date. Nor do any bar an extension of that date. The consent form is merely a technicality for individual candidates to opt for affiliation on the ballot with a particular slate. It would be entirely reasonable for the Rules-Election Committee to conclude that an extension is warranted. All the extension does is allow candidates who will be on the ballot in any case to avoid accidentally being listed as "independent," if they in fact desire affiliation with a particular slate. Deference to this discretion is required by Illinois law.

In any event, Moreno must be dismissed because Illinois law does not make her liable personally for actions she took as the CTU's representative.

I. Plaintiffs' Complaint Should Be Dismissed Under Illinois Precedent for Failure to Exhaust Internal Remedies.

Plaintiffs allege that their protest will be heard on April 15 and that no ruling on their protest has yet been issued (Complaint ¶¶ 41-42). Thus, Plaintiffs admit that the issue is still pending the CTU's internal process.

Illinois law is clear that “a court of equity may not intervene until the remedies within the procedures of the union have been exhausted.” *McGinness v. Luna*, 46 Ill. App. 2d 43, 44 (1st Dist. 1964), cert. denied 379 U.S. 959 (1965). Accordingly, Plaintiffs' claim cannot come before the Court at this time. *Id.* Plaintiffs must complete the CTU's internal processes. *Id.*

The *McGinness* case is substantively indistinguishable from this case. In *McGinness*, a union president had been removed from his office at a local union for “the raising of dues without notice and without a secret ballot.” *Id.* The president-plaintiff “moved for a temporary injunction to enjoin the defendants from holding an election in the Local until determination of his right to be a candidate on the local ballot.” *Id.* But, at the same time, an “appeal by the plaintiff from the finding and order [was] pending before the national convention of” the local union. *Id.*

The First District Appellate Court affirmed the denial of a TRO against the union election. The First District noted held that “a court of equity may not intervene until the remedies within the procedures of the union have been exhausted.” *Id.* at 45. The First District went on to note that, “By seeking a temporary mandatory injunction the plaintiff attempts to circumvent this rule.” *Id.*

That is, of course, exactly what these Plaintiffs are doing. Rather than proceed through the CTU's internal remedies, as they must, they are rushing to this Court to seek a TRO. But

that is simply not allowed in Illinois Chancery courts. *Id.*

The Illinois Supreme Court has held the same. In *Engel v. Walsh*, 258 Ill. 98 (1913), the Supreme Court upheld a dismissal where the plaintiff had “failed to set out the by-laws and regulations of the union.” *Id.* at 105. Accordingly, the Supreme Court did “not know whether he has exhausted all of his remedies, by appeal or otherwise, within the union.” *Id.* This meant that his claim for injunctive relief could not possibly be granted, because “clearly he would have no standing, in any event, in a court of equity until he had exhausted the remedies provided by his association for the redress of his supposed grievance.” *Id.*

The same applies to the Plaintiffs. As the Supreme Court has described it, “clearly” a plaintiff has no standing to seek equitable interference with a union’s internal process, until exhausting “the remedies provided by his association.” *Id.* Indeed, Plaintiffs here fails this test even more than the plaintiff in *Engel* . In *Engel* , that plaintiff simply failed to plead whether or not he had exhausted the union’s internal remedies. Here, Plaintiffs affirmatively plead that they have not exhausted, since they affirmatively plead that their protest is pending and will be heard on April 15 (Complaint ¶¶ 41-42). Plaintiffs have pleaded themselves out of court by admitting their failure to exhaust their remedies.

II. Illinois Courts Grant Unions Discretion to Interpret Their Governing Documents and an Extension Is Reasonable Here Given That No Governing Document Bars Extending the March 25 Date for Consent Forms.

As stated above, Plaintiffs assume that their protest will be denied. But of course that is not clear yet, because the CTU is still considering it through the CTU's internal processes.

Plaintiffs must wait for that to complete before running to this Court.

Even once CTU's internal processes are complete, both Illinois courts and federal courts defer to the discretionary power that a union has granted to its internal decision-making bodies. *Diamond v. United Food & Commer. Workers Union Local 881*, 329 Ill. App. 3d 519, 526 (3d Dist. 2002), 201 Ill. 2d 564 (2002). Indeed, Plaintiffs acknowledge in their Complaint that the CTU has granted its Rules-Election Committee "final" authority over Plaintiffs' protest:

The Rules-Election Committee shall issue its written decision regarding the challenge or protest no later than ten (10) calendar days after its receipt of the challenge or protest. The Rules-Election Committee's decision on the protest shall be final, and it shall inform the protester and the challenged party in writing of its decision.

(Complaint Ex. B at 19.)

The decision to allow an extension on submitting slate consent forms would be within the discretion that courts allow to unions when unions interpret their internal documents. Plaintiffs' Complaint on its face confirms the insignificant effect of this extension. This extension for filing consent forms:

- (a) does not effect ballot eligibility for any candidate (Complaint ¶ 21);
- (b) does not even change the makeup of individual candidates to be on the ballot (Complaint ¶ 21);
- (c) merely allows more time for individual candidates to opt to affiliate themselves with a particular slate of candidates (Complaint Ex. E); and

- (d) evenhandedly benefits all slates, since Plaintiffs’ own slate and other slates in the election had candidates who failed to submit timely consent forms (Complaint ¶ 31).

Thus, allowing this purely technical allowance is well within the discretion allowed to internal union decision making by Illinois courts, discretion which the CTU has specifically granted to its Rules-Election Committee (Complaint Ex. B at 19). Notably, Plaintiffs allege that “the deadline for returning...Consent Forms [was] March 25, 2022.” (Complaint ¶ 28.) But they do not cite to any specific portion of a document saying this. That is because none of the governing documents that they attach to their Complaint say that this is the deadline. The form itself says that it should be turned in by March 25 (Complaint Ex. D), but that is all. Neither the form, nor anything else, addresses whether that deadline can be extended. Thus it is within the discretion allowed to the Rules-Election Committee — perhaps particularly since there is no prejudice to any candidate — to determine whether that deadline can be extended. *Diamond*, 329 Ill. App. 3d at 526. An internal union decision may be rejected “only if it is unreasonable.” *Id.* Plaintiffs have cited no prohibition on extending the deadline for consent forms, nor is there any prejudice to anyone from doing so. Therefore it would not be unreasonable for the Rules-Election Committee to grant such an extension, should the Committee choose to do so on April 15. *Id.*

III. Defendant Maria Moreno Must Be Dismissed.

Defendants style their lawsuit as being for “Breach of Contract.” The contract they rely on is the CTU’s constitution and bylaws (Complaint ¶¶ 44-45). But Defendant Maria Moreno is not personally a party to any such contract. Plaintiffs allege that she is the CTU’s Financial

Secretary (Complaint ¶ 8). Individual agents acting on behalf of a union are not liable in Illinois for claims based on their actions as representatives. *Zander v. Carlson*, 2020 IL 125691. Any claim Plaintiffs have based on CTU's constitution and bylaws is against CTU only. Moreno must be dismissed as a defendant.

CONCLUSION

Plaintiffs' Complaint is doomed on its face. It admits that it is seeking the Court's interference in not-yet-exhausted internal union processes. But Illinois law does not allow that. Plaintiffs must first exhaust the internal processes.

It also shows on its face that there is no particular governing document compelling the March 25 deadline at issue or barring it from being extended. There is good reason to extend the deadline and Plaintiffs' slate of candidates was given the same treatment as everyone else. Even if it were appropriate to consider the extension at this time, the Court should not overrule the reasonable decision to extend the March 25 deadline.

Further, Defendant Moreno is simply CTU's agent. There is no contract with her, personally, and she must be dismissed.

Robert E. Bloch
Josiah A. Groff
Elizabeth L. Rowe
DOWD, BLOCH, BENNETT, CERVONE,
AUERBACH & YOKICH, LLP (#12929)
8 S. Michigan Ave., Suite 1900
Chicago, IL 60603
(312) 372-1361
jgroff@laboradvocates.com

Respectfully submitted,

/s/ Josiah A. Groff

April 14, 2022

CERTIFICATE OF SERVICE

I, Josiah A. Groff, an attorney, hereby certify that, on April 14, 2022, I caused to be served the foregoing Defendants' 2-615 Motion to Dismiss the Complaint to all attorneys of record by using the Odyssey eFileIL service.

/s/ Josiah A. Groff