

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**ERNEST L. SMITH, JR., DARRYL PAYNE,  
JOHN BLOM, RICHARD CEPHAS,  
ROBERT DICKEY, TONY PERLSTEIN,  
LEONARD RILEY, ROBERTA SILVER,  
ALVIN SOILEAU and BEVERLY WOODS,**

**Plaintiffs,**

**COMPLAINT**

**-against-**

**JOHN BOWERS, as President of the  
INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO,**

**Defendant.**

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Plaintiffs, by their attorneys Kennedy, Schwartz & Cure, P.C. as and for their Complaint  
against Defendant, allege as follows:

**NATURE OF THIS ACTION**

1. This is an action for declaratory, injunctive and other appropriate relief brought  
by  
Plaintiffs, each of whom is a member of Defendant International Longshoremen's Association,  
AFL-CIO ("ILA" or the "Union"), to remedy violations of their voting rights that occurred in  
connection with an ILA contract ratification vote which was plagued by substantial and  
widespread irregularities.
2. Plaintiffs allege that the manner in which the vote was conducted violated:
  - (1) the ILA Constitution (the "Constitution") and election rules issued by the  
ILA pursuant to its Constitutional authority;
  - (2) Section 101(a)(1) of the Labor Management Reporting and Disclosure Act

(“LMRDA”), 29 U.S.C. § 411(a)(1); and  
(3) the ILA’s duty of fair representation.

3. Plaintiffs also allege that Defendant has unlawfully retaliated against Plaintiffs Ernest L. Smith, Jr., (“Smith” )and Darryl Payne (“Payne”) by threatening to discipline them for (1) protesting the voting irregularities that took place during the ILA contract ratification vote, (2) protesting the disenfranchisement of thousands of ILA members that occurred as a result of these voting irregularities and Defendant’s response to thereto, (3) speaking out in opposition to ratification of the ILA’s Master Contract for the East and Gulf Coasts and (4) participating in this action to seek redress of the violation of their legal rights, in violation of Sections 101(a)(2) and (4) and 609 of the LMRDA, 29 U.S.C. §§ 411(a)(2) and (4) and 529.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331; Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185(a); and Section 102 of the LMRDA, 29 U.S.C. § 412.

5. Pursuant to 28 U.S.C. § 1391(b), 29 U.S.C. § 185 and 29 U.S.C. § 412, venue is proper because Defendant’s principal office is located in this District and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

### **PARTIES**

6. All Plaintiffs are employees within the meaning of Section 2(3) of the LMRA, 29 U.S.C. § 152(3), and Section 3(f) of the LMRDA, 29 U.S.C. § 402(f), and members of the ILA within the meaning of Section 3(o) of the LMRDA, 29 U.S.C. § 402(o), and, in addition, are members of the following ILA local unions:

<u>PLAINTIFF</u>	<u>LOCAL</u>	<u>LOCATION OF LOCAL</u>
Ernest L. Smith, Jr.	1408	Jacksonville, Florida
Darryl Payne	1526	Fort Lauderdale, Florida
John Blom	333	Baltimore, Maryland
Richard Cephas	1694	Wilmington, Delaware
Robert Dickey	1588	Bayonne, New Jersey
Tony Perlstein	1588	Bayonne, New Jersey
Leonard Riley	1422	Charleston, South Carolina
Roberta Silver	1588	Bayonne, New Jersey
Alvin Soileau	2047	Lake Charles, Louisiana
Beverly Woods	1351	Houston, Texas

7. Defendant ILA is a labor organization within the meaning of Section 2(5) of the LMRA, 29 U.S.C. § 152(5), and Sections 3(i) and (j) of the LMRDA, 29 U.S.C. § 402(i) and (j), and exists for the purpose of representing employees in collective bargaining with many employers.

8. Many ILA members are employed at marine cargo terminals as longshoremen, loading and unloading cargo ships; some ILA members work in related job titles, such as checker.

9. Defendant John Bowers (“Bowers”) is President of the ILA, whose principal office is located at 17 Battery Place, New York, New York 10004-1261.

**FACTS RELEVANT TO ALL CAUSES OF ACTION**

10. On June 8, 2004, the ILA held a ratification vote (the “Ratification Vote” or “Vote”) for a proposed Master Contract it had negotiated with representatives of employers located in states situated on the East and Gulf Coasts of the United States, from Maine to Texas (the “Master Contract”) . The Master Contract, if duly ratified by the Union’s affected membership, would become effective on October 1, 2004 and remain in effect for a six-year period ending on September 30, 2010. The Master Contract sets forth most of the terms and conditions of employment, including wages, of ILA members working in the East and Gulf Coast states.

11. Each ILA-affiliated local union having members who are covered by the Master Contract (the “Locals”) participated in the Ratification Vote by holding its own balloting.

12. Pursuant to rules issued by the ILA prior to the Ratification Vote, each Local was required to hold a secret ballot on the question of ratification of the Master Contract, with voting to take place on June 8, 2004, from 6:00 a.m. to 6:00 p.m. and reasonable advance notice of the Vote being provided to each of the Locals’ members covered by the Master Contract. A copy of a notice that was issued to Locals by ILA Secretary-Treasurer Robert E. Gleason (“Gleason”) on May 11, 2004, informing them of some of the election rules they were required to follow, is annexed hereto as Exhibit 1.

13. Voting irregularities significantly tainted the Vote at a number of Locals.

14. The irregularities that occurred included, *inter alia*:

- (1) a lack of adequate advance notice of the Vote to members of a number of Locals;
- (2) the lack of a secret ballot at a number of Locals;

- (3) undue and improper influence exerted upon ILA members by ILA officers and their associates at the voting sites to vote in favor of ratification of the Master Contract;
- (4) limiting the voting at some Locals to brief periods of time far shorter than the twelve-hour time period specified by the ILA;
- (5) nullifying the votes of the members of some, but not all, Locals which held their Vote outside the hours specified by the ILA.

15. The voting irregularities had the purpose and effect of, *inter alia*, suppressing voter turnout at Locals where the majority of members were expected to vote against ratification of the Master Contract, reducing the number of votes cast against ratification of the Master Contract, increasing the number of votes cast in favor of ratification of the Master Contract, and causing large numbers of ILA members' votes to be disqualified and not included in the official vote tally and depriving members of their equal right to participate in the Vote.

16. Despite the widespread irregularities that took place, Defendant ILA determined that the Vote was proper and that the Master Contract had been duly approved by the Union's membership.

17. Defendant upheld its determination that the Ratification Vote was proper and the Master Contract duly ratified, despite a number of written protests having been lodged by members of the Union. (*See*, Letter dated July 12, 2004, from John Bowers to Susan M Jennik, Esq., annexed hereto as Exhibit 2.)

18. The ILA's final determination regarding the Ratification Vote was that the Master Contract had been ratified by a vote of 4873 to 3886. (*See*, Ex. 2 at 3.) Prior to the lodging of protests by various ILA members, including Plaintiffs, Defendant had announced a final Vote tally of 5084 in favor of ratification and 3920 against.

19. Plaintiffs have exhausted available internal Union appeal procedures.

20. The number of votes that were either (1) disqualified by the ILA and not counted in the official Vote tally due to the failure of some Locals to hold their Vote during the designated hours of 6:00 a.m. to 6:00 p.m., (2) cast under circumstances that created a climate of duress (including the lack of secret balloting at numerous Locals and improper, high-pressure tactics employed by Local officials at certain voting sites in order to persuade members to vote “yes”), or (3) never cast due to either a lack of adequate notice provided to members or a failure to provide the mandated twelve-hour period in which to vote, exceeds the difference between the total number of “yes” and “no” votes. Therefore, the irregularities of the voting could have affected the outcome of the Ratification Vote.

21. The allegations set forth in Paragraphs 1 through 20 above are incorporated by reference into each of the Causes of Action set forth below.

### **AS AND FOR A FIRST CAUSE OF ACTION**

22. The ILA Constitution constitutes a contract between the ILA and its members and Locals pursuant to Section 301(a) of the LMRA, 29 U.S.C. § 29 U.S.C. § 185(a).

23. Article XXIII, § 7 of the Constitution (a copy of the relevant portions of which are annexed hereto as Exhibit 3), requires that approval or disapproval of a collective bargaining agreement covering more than one Local be determined by the “aggregate vote cast by the membership of all the [covered] locals” and that notice of a contract ratification vote be given “by means reasonably calculated to reach the members affected by such agreement.”

24. Pursuant to its Constitutional authority, the ILA issued rules governing the June 8,

2004, Master Contract Ratification Vote. These rules required, *inter alia*, (1) the use of secret ballots, (2) voting hours of 6:00 a.m. to 6:00 p.m., and (3) the provision of reasonable notice of the Vote to affected members.

25. By conducting the Vote in the manner described above, Defendant has violated the Constitutional rights of the Union's East and Gulf Coast members, including Plaintiffs.

### **AS AND FOR A SECOND CAUSE OF ACTION**

26. Section 101(a)(1) of the LMRDA, 29 U.S.C. § 411(a)(1), guarantees equal voting and political rights to every member of a labor organization and specifically provides:

Every member of a labor organization shall have equal rights and privileges within such organization to . . . vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

27. By conducting the Ratification Vote in the manner described above, and/or permitting the Ratification Vote to stand despite the existence of significant and widespread irregularities in the voting process, Defendant has deprived Plaintiffs of their right to equally participate in deliberations concerning the Ratification Vote, and their right to vote on the Master Contract, on an equal basis with the members of Locals which conducted the Ratification Vote properly, in violation of 29 U.S.C. § 411(a)(1).

### **AS AND FOR A THIRD CAUSE OF ACTION**

28. Plaintiff Smith is and, at all relevant times was, a business agent of ILA Local 1408, in Jacksonville, Florida.

29. On the day of the Ratification Vote, June 8, 2004, at approximately 4:00 p.m.,

Smith learned for the first time, during a telephone conversation with ILA Secretary-Treasurer Gleason, that the ILA had issued election rules for the Ratification Vote that required the Vote to be held from 6:00 a.m. to 6:00 p.m.

30. In contravention of the applicable ILA election rules, Local 1408 President Vincent S. Cameron (“Cameron”) had scheduled Local 1408’s Vote to be held at a meeting commencing at 7:00 p.m., on June 8, 2004. A copy of Cameron’s notice to Local 1408’s members apprising them of the time and location of the Vote, is annexed hereto as Exhibit 4. This notice was issued on or about May 27, 2004.

31. Only 93 of the approximately 1000 Local 1408 members eligible to vote actually cast ballots, due to, *inter alia*, (1) a failure to provide Local 1408 members with the required twelve hours of time during which they could cast their votes, (2) confusion at the 7:00 p.m. meeting over whether the votes would be counted, and (3) a failure to provide the members who did vote with sufficient privacy while marking their ballots to ensure that their ballot was, in fact, secret.

32. As soon as Smith heard that voting was not permitted after 6:00 p.m., he asked ILA Secretary-Treasurer Gleason to intervene, so that Local 1408 members’ votes would be counted. After several telephone conversations between Smith and Gleason during the afternoon and evening of June 8, 2004, the ILA decided that Local 1408’s votes would not be counted.

33. Two days after the June 8, 2004 Ratification Vote, Smith, along with other members of Local 1408, lodged a formal protest with the ILA regarding the voting irregularities that took place at Local 1408 and the disenfranchisement of Local 1408 members. A copy of their protest is annexed hereto as Exhibit 5.

34. On June 30, 2004, counsel for Plaintiffs notified Defendant Bowers that it represents a group of ILA members, including Plaintiff Smith, protesting the conduct of the Ratification Vote and requesting a re-run of the Vote. By this letter, Plaintiffs also provided Defendant with notice of their intention to pursue legal action should Defendant decline to re-run the Ratification Vote and enclosed several written statements and affidavits of ILA members, including Smith, documenting voting irregularities at various ILA Locals. A copy of the June 30, 2004, letter from Plaintiffs' counsel to Bowers is annexed hereto as Exhibit 6. A copy of the statement of Plaintiff Smith that was provided to Bowers is annexed hereto as Exhibit 7.

35. Bowers responded to Plaintiffs' counsel's letter on July 12, 2004. (*See*, Ex. 2.) In his response, Bowers stated that Plaintiff Smith would be charged with "malfeasance under the internal union discipline procedure" for failing to "rectify [Cameron's] non-compliance" with the election rules and further stated that the commencement of disciplinary proceedings against Smith had "already been directed."

36. Defendant's disciplinary action against Smith is retaliatory and punitive and being taken to punish Smith for exercising his lawful rights to (1) protest the voting irregularities that took place at Local 1408 and other ILA Locals, (2) protest the disenfranchisement of Local 1408 members and other members of the ILA, (3) speak out in opposition to ratification of the Master Contract and (4) participate in this legal action to seek redress of the violation of his rights.

37. Section 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2), guarantees freedom of speech and assembly to members of labor organizations and specifically provides:

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the

labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings.

38. Defendant's retaliation against Smith violates Smith's rights under Section 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2).

**AS AND FOR A FOURTH CAUSE OF ACTION**

39. Plaintiffs repeat and re-allege the allegations contained in ¶¶ 28 -36.

40. Section 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4), protects the right to sue of members of labor organizations, specifically providing:

No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, . . . or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding.

41. Defendant's retaliation against Smith violates Smith's rights under Section 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4).

**AS AND FOR A FIFTH CAUSE OF ACTION**

42. Plaintiffs repeat and re-allege the allegations contained in ¶¶ 28 -36.

43. Section 609 of the LMRDA, 29 U.S.C. § 529, provides:

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act.

44. Defendant's retaliation against Smith violates Smith's rights under Section

609 of the LMRDA, 29 U.S.C. § 529.

**AS AND FOR A SIXTH CAUSE OF ACTION**

45. Plaintiff Payne is a member of, and is Secretary of, ILA Local 1526, in Fort Lauderdale, Florida, which held its Ratification Vote after 6:00 p.m. on June 8, 2004.

46. Plaintiffs repeat and re-allege the allegations contained in ¶¶ 35-36.

47. Among the written statements submitted to Bowers on June 30, 2004, was a written statement signed by Payne which described voting irregularities at Local 1526, including the holding of the Vote after 6:00 p.m. and a lack of adequate notice of the Vote. A copy of Payne's statement is annexed hereto as Exhibit 8.

48. Payne was listed among the persons mentioned as a potential plaintiff in Plaintiffs' counsel's June 30, 2004, letter to Bowers requesting a re-run of the Ratification Vote. (Ex. 6 at 1.)

49. In his response to Plaintiffs' counsel, Bowers stated that Defendant ILA has "directed that appropriate charges be brought against" Payne for an alleged failure to "take steps to insure that the vote [was] conducted properly." (Ex. 2 at 2.)

50. Defendant's disciplinary action against Payne is retaliatory and punitive and being taken to punish Payne for exercising his lawful rights to (1) protest the voting irregularities that took place at Local 1526 and other ILA Locals, (2) protest the disenfranchisement of Local 1526 members and other members of the ILA, (3) speak out in opposition to ratification of the Master Contract and (4) participate in this legal action to seek redress of the violation of his rights.

51. Section 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2), guarantees freedom of speech and assembly to members of labor organizations and specifically provides:

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings.

52. Defendant's retaliation against Payne violates Payne's rights under Section 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2).

**AS AND FOR A SEVENTH CAUSE OF ACTION**

53. Plaintiffs repeat and re-allege the allegations contained in ¶¶ 45-50.

54. Section 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4), protects the right to sue of members of labor organizations, specifically providing:

No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, . . . or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding.

55. Defendant's retaliation against Payne violates Payne's rights under Section 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4).

**AS AND FOR AN EIGHTH CAUSE OF ACTION**

56. Plaintiffs repeat and re-allege the allegations contained in ¶¶ 45-50.

57. Section 609 of the LMRDA, 29 U.S.C. § 529, provides:

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act.

58. Defendant's retaliation against Payne violates Payne's rights under Section 609 of the LMRDA, 29 U.S.C. § 529.

### **AS AND FOR A NINTH CAUSE OF ACTION**

59. As their collective bargaining representative, Defendant owes a duty of fair representation to all ILA members covered by the Master Contract, including Plaintiffs.

60. The Ratification Vote was conducted in a manner that ultimately excluded all the votes cast by members of several Locals, including Locals 1408, 1526 and 2047.

61. The disenfranchisement of the members of those Locals whose Vote was determined to be invalid by Defendant, together with the other irregularities alleged in this Complaint, caused the Ratification Vote to be conducted and tallied in an arbitrary, capricious and discriminatory manner, in violation of Defendant's duty of fair representation.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Declare the June 8, 2004, Master Contract Ratification Vote to be null and void;
2. Enter an Order directing a new ratification vote on the Master Contract to be

conducted by an independent, experienced election agency in which every member is given reasonable notice of the vote and an equal opportunity to cast a secret ballot and have their vote counted;

3. Enjoin the ILA from executing or putting into effect the terms of the Master Contract until such a new ratification vote is held;

4. Enter judgment against Defendant in favor of Plaintiffs for damages in a sum equal to the damages sustained, if any, as a result of the actions of Defendant;

5. Enjoin Defendant from taking, directing, continuing or allowing disciplinary action against Plaintiffs Smith, Payne, or any other Plaintiff, in connection with their actions relating to either the Ratification Vote or this action;

6. Award Plaintiffs damages equal to the fees, costs and expenses expended to enforce their rights, including attorneys' fees; and

7. Grant Plaintiffs such other and further relief as is just and equitable.

Dated: July 13, 2004

KENNEDY, SCHWARTZ & CURE, P.C.  
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