

5. Defendant maintains its principal office in the District of Maine at Portland, Maine.

6. Defendant is a labor organization as defined in Section 2 (5) of the Act and its authorized agents or officers are engaged in representing or acting on behalf of employee members in the District of Maine.

JURISDICTION AND VENUE

7. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 and Section 301 of the Act, 29 U.S.C. § 185, and 9 U.S.C. § 9. [Check with local counsel on FAA.]

8. Venue is proper in the District of Maine pursuant to 29 U.S.C. § 185 and 28 U.S.C. § 1391.

FACTUAL BACKGROUND

9. The Union represents certain employees of BMN. In 2007, BMN and the Union entered into a collective bargaining agreement (“2007 Agreement”) that governs the terms and conditions of employment of these employees.

10. The 2007 Agreement is a contract covered by 29 U.S.C. § 185.

11. In March, 2008, it was announced that the Seattle Times Company, which owns BMN, had decided to require BMN to sell its assets and a broker was engaged to solicit bids from prospective buyers.

12. It is well known that the newspaper industry is in decline and is suffering difficult economic times. The Seattle Times and BMN are no exception. BMN has already implemented cost-cutting measures, and the sale proceeds are needed to reduce bank debt and to avoid the dire consequences of being in default.

13. Upon learning of the plans to sell the assets of BMN, the Union informed BMN that it will seek to stop any sale of the assets if BMN does not insist, as a condition of any sale, that the buyer agree to assume and be bound by the 2007 Agreement.

14. In an April 10, 2008, letter to BMN, the Union asserted that the 2007 Agreement requires the company to “make certain as a condition of any sale – stock or asset – that the Collective Bargaining Agreement is assumed by the purchaser.” A copy of this letter is attached as Attachment A.

15. In the letter, the Union threatened to “take any and all legal means necessary to make sure the Publisher honors this contractual obligation” and enclosed a copy of an arbitration decision involving a different employer and a Temporary Restraining Order entered by a federal court enjoining a sale of another business pending an arbitration to decide that employer’s obligation under a different collective bargaining agreement.

16. BMN disagrees with the Union’s strained interpretation of the 2007 Agreement and disagrees that the 2007 Agreement requires BMN to insist, as a condition of a sale of assets, that a buyer assume the 2007 Agreement. That is simply not what the contract says.

17. A prompt resolution of this dispute is essential to BMN’s efforts to find a buyer to secure its future and stabilize its operations and critical for the future of BMN’s employees, many of whom may be laid off if BMN cannot find a suitable buyer.

18. Having this contract interpretation question raised but not answered has already had a chilling effect on BMN’s efforts to sell its assets and may present BMN from finding a suitable buyer.

19. The longer BMN is unable to sell its assets, the more likely it will have to implement additional and drastic cost-cutting measures, involving more layoffs.

20. If BMN is unable to sell its assets as a result of the Union's threats, its parent company may default on a bank loan, exposing BMN to the lenders' potential remedies, such as foreclosure and other adverse and dire consequences.

21. The 2007 Agreement provides grievance and arbitration procedures for resolving disputes over the meaning of its terms. It also states the importance of expeditious resolution of disputes and requires the parties to try to expedite the resolution of grievances.

22. In an effort to resolve the disagreement regarding the interpretation of the 2007 Agreement in an orderly and timely way, BMN asked the Union on May 19, 2008 to agree to submit the dispute jointly to the arbitration provided for in the agreement and to agree to bypass the preliminary grievance steps so that the matter could be decided in an expedited arbitration. BMN pointed out the language in the 2007 Agreement by which the parties agreed to try to resolve disputes more expeditiously than the default timelines provided for in the agreement.

23. Despite the parties' agreement to try to expedite the resolution of disputes and despite the Union's position and threat in its April 10, 2008 letter to BMN, on May 20, 2008, the Union refused to participate in a joint submission to arbitration and refused to agree to an expedited resolution of the dispute. A copy of an email exchange between the Union and BMN is attached as Attachment B.

24. Because of the Union's refusal to submit the matter to expedited arbitration, and in the hope of resolving the matter before the dispute makes it impossible

for BMN to sell its assets, on May 21, 2008, BMN initiated the regular grievance resolution process provided for in the contract by sending a letter to the Union identifying its grievance and requesting a meeting to resolve it. A copy of this grievance letter is attached as Attachment C.

25. Upon receipt of BMN's grievance letter (Attachment C), the Union responded with a letter dated May 23, 2008, refusing to acknowledge the grievance and refusing to meet. A copy of this letter is attached as Attachment D.

26. BMN responded further on May 28, 2008, again urging the Union to comply with contractual grievance procedure and to meet and discuss this important issue. A copy of this letter is attached as Attachment E.

27. The Union failed to schedule a meeting of the Publisher-Guild Grievance Committee within seven days after the receipt of the grievance, as required by the 2007 Agreement.

28. On June 2, 2008, twelve days after receiving the first letter and five days after receiving the second from BMN, the Union finally responded. A copy of the Union's email is attached as Attachment F. The Union offered to meet with BMN regarding the grievance on June 12, 2008, 22 days after BMN lodged the grievance and 15 days after the meeting should have been held under the 2007 Agreement. See Attachment F. In another email to BMN on June 2, 2008, the Union questioned whether the grievance was arbitrable. A copy of the Union's email is attached as Attachment G.

29. During the June 12, 2008 meeting, the Union reiterated its position that there is no arbitrable issue ripe for arbitration, and a Union representative claimed that he would not provide the Unions final response for another 21 days.

30. The Union has refused to cooperate in the processing of the grievance. It now appears that, despite its initial threatening letter, the Union is not interested in resolving the dispute about the interpretation of the contract through arbitration.

31. Upon information and belief, the Union's object in refusing to cooperate is to obstruct and delay the dispute resolution and arbitration process provided for in the 2007 Agreement so as to prevent a resolution of the dispute and disrupt BMN's efforts to sell its assets.

32. Because the Union refuses to participate in the dispute resolution process provided for in the 2007 Agreement and because of the Union's implicit threat to seek an injunction against any sale pending arbitration, BMN seeks from this court (a) a judgment declaring that the Union has waived any right it may have had to insist that BMN exhaust the contractual grievance procedure and that the issue of whether the 2007 Agreement requires BMN to insist, as a condition of a sale of its assets, that any buyer assume the 2007 Agreement may properly be decided by the court and (b) a judgment declaring that the 2007 Agreement imposes no obligation on BMN to insist that a purchaser of its assets assume the obligations of the 2007 Agreement. In the alternative, BMN seeks (c) an order compelling the Union to arbitrate this dispute pursuant to the procedures and schedule ordered by the court.

THE COLLECTIVE BARGAINING AGREEMENT

33. The underlying dispute between the Union and BMN is whether the 2007 Agreement requires BMN to insist, as a condition of a sale of its assets, that any buyer assume the 2007 Agreement.

34. Article XXIX of the 2007 Agreement is titled “Duration and Renewal,” and it provides, in part, as follows:

This Agreement shall begin on the first day of June 2007, and shall expire on the 31st day of May 2011, and shall inure to the benefit of and be binding upon the successors and assigns of the Publisher.

35. As explained above, the Union contends that this provision requires BMN to insist, as a condition of a sale of its assets, that any buyer assume the 2007 Agreement.

36. BMN’s position is that neither this provision nor anything else in the agreement imposes such an obligation and that other provisions of the agreement, the parties’ bargaining history, and other facts indicate the parties did not intend to create such an obligation. The weight of arbitral authority supports BMN’s interpretation of the agreement.

37. The 2007 Agreement provides grievance and arbitration procedures to resolve disputes such as the disagreement over the interpretation of the Duration and Renewal clause. Article X sets out the procedures and timelines for resolving such disputes.

38. According to Article X, these procedures apply to:

any issues arising out of the application of this Agreement, its interpretation with respect to conditions of employment set forth therein or any alleged failure by either party to abide by the express terms of this Agreement . . .

Article X, sec. 1. That Article also provides that, other than grievances involving the termination of an employee, grievances “concerning the application, interpretation or compliance with any of the provisions of this Agreement” “shall be presented by the grieving party to the other” within 60 days of discovery. Article X, sec. 2.

39. The agreement specifically provides that “[t]he grievance procedure may be utilized by the Publisher in processing company grievances.” Article X, sec. 11.

40. Article X also states that “expeditious resolution of grievances is in the best interests of both parties and the employees affected,” Article X, sec. 3, and that the parties “shall endeavor to settle all grievances in less time than the . . . specified time limits.” Article X, sec. 5.

THE UNION’S BREACH OF THE AGREEMENT

41. After receiving the Union’s April 10, 2008, letter in which it asserted its interpretation of Article XXIX and threatened to take legal action to enforce its interpretation of this provision, BMN invoked the dispute resolution and arbitration provisions of the 2007 Agreement.

42. Despite the Union’s implicit threat of litigation to enjoin a sale pending arbitration over the meaning of Article XXIX and despite the plain language of Article X, sec. 3(a)(2), the Union has refused to participate in the dispute resolution process provided for in the 2007 Agreement and is attempting to stall and delay the resolution of the parties’ dispute in order to undercut BMN’s efforts to sell its assets.

43. Specifically, when Plaintiff requested that the Union agree to a joint submission and an expedited arbitration, pursuant to Article X, sec. 4 (“expeditious resolution of grievances is in the best interest of both parties and the employees affected”) and Article X, sec. 5 (providing that the parties will try to expedite resolution of disputes), the Union refused.

44. This refusal to cooperate in the timely resolution of an urgent dispute of critical importance over the interpretation of the contract constitutes a breach of the 2007

Agreement by the Union. It also constitutes a breach of the Union's obligation to act in good faith and deal fairly with Plaintiff in the performance of its obligations under the 2007 Agreement.

45. After the Union refused to cooperate in an expedited or joint submission to arbitration, BMN delivered to the Union a letter formally stating its grievance and seeking a meeting within seven days, as provided for in Article X, sec. 3(a)(2) ("The Publisher-Guild Grievance Committee shall meet to resolve the grievance within seven (7) calendar days after receipt of the written grievance"). See Attachment C.

46. When BMN invoked the agreement's regular dispute resolution process by sending the Union a grievance and requesting a meeting to discuss the matter as provided for by Article X, sec. 3(a)(2), the Union refused to convene the meeting within seven days as provided for in the contract. See Attachment D.

47. In an attempt to avoid the necessity of litigation, BMN attempted to convince the Union that it needed to comply with the contract. See Attachment E.

48. When the Union finally responded to BMN's two letters on June 2, 2008, it continued to delay the processing of the grievance. The Union scheduled a meeting to discuss the grievance on June 12, 2008, 15 days after such a meeting *should have occurred* under the 2007 Agreement. See Attachment F. At the meeting, the Union indicated that it will still not process the grievance and suggested that the grievance might not be ripe for arbitration.

49. The Union's continued efforts to delay resolution of the underlying dispute and continued refusal to comply with the dispute resolution procedures set out in

Article X constitute a breach by the Union of the 2007 Agreement and a waiver of any right to require that Plaintiff continue its efforts to exhaust that procedure.

COUNT I
(REQUEST FOR DECLARATORY RELIEF)

50. This suit is, *inter alia*, an action for declaratory relief pursuant to 29 U.S.C. § 185 and 28 U.S.C. §§ 2201 & 2202, for the purpose of determining questions of actual controversy between the parties, namely (1) whether Local 31128 has waived or is estopped from asserting any right it may have had to insist that BMN exhaust the contractual grievance procedures in the 2007 Agreement before seeking relief from this court and (2) whether the 2007 Agreement imposes any obligation on BMN to insist that a purchaser of its assets assume the obligations of the 2007 Agreement.

51. Plaintiff is entitled to a determination and adjudication by the court of the rights and liabilities of the parties with respect to the 2007 Agreement. Specifically, Plaintiff is entitled to declarations and findings (1) that the Union has waived or is estopped from asserting any right it may have had to insist that BMN exhaust the contractual grievance procedure and (2) that the 2007 Agreement imposes no obligation on BMN to insist that a purchaser of its assets assume the obligations of the 2007 Agreement.

COUNT II
(REQUEST FOR INJUNCTION COMPELLING ARBITRATION)

52. In the alternative, Plaintiff is entitled to injunctive relief, specifically an order compelling arbitration.

53. In the absence of such an order, Plaintiff will suffer irreparable harm for which monetary damages are inadequate compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BMN prays for the following relief:

A. That the court enter a judgment (a) declaring that the Union has waived or is estopped from asserting any right it may have had to insist that BMN exhaust the contractual grievance procedure and that the issue of whether the 2007 Agreement requires BMN to insist, as a condition of a sale of its assets, that any buyer assume the 2007 Agreement may properly be decided by the court and (b) declaring that the 2007 Agreement imposes no obligation on BMN to insist that a purchaser of its assets assume the obligations of the 2007 Agreement, or in the alternative, enter an order (c) compelling the Union to arbitrate this dispute in accordance with an arbitration process and procedure to be ordered by the court.

B. That the court award Plaintiff such damages as it may prove arising from the Union's breach of the 2007 Agreement.

C. That the court award Plaintiff its costs and reasonable attorneys' fees incurred in this action.

D. That the court award such other additional and further relief to Plaintiff as may be just and equitable under the circumstances.

DATED this 17th day of June, 2008.

Respectfully submitted,

/s/ Michael G. Messerschmidt

Michael G. Messerschmidt, Esq.
Geoffrey K. Cummings, Esq.

Matthew J. LaMourie, Esq.
PRETI, FLAHERTY, BELIVEAU &
PACHIOS, LLP
One City Center
P. O. Box 9546
Portland, ME 04112-9546
Tel: (207) 791-3000
Fax: (207) 791-3111

mmesserschmidt@preti.com
gkcummin@preti.com
mlamourie@preti.com

Mark A. Hutcheson, Esq.
Harry J. F. Korrell, Esq.
DAVIS WRIGHT TREMAINE, LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Tel: (206) 757-8065
Fax: (206) 757-7700

HarryKorrell@dwt.com
MarkHutcheson@dwt.com

Counsel for the Plaintiff