

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

NEWSPAPER, NEWSPRINT, MAGAZINE )  
AND FILM DELIVERY DRIVERS, HELPERS, )  
AND HANDLERS, INTERNATIONAL )  
BROTHERHOOD OF TEAMSTERS, )  
LOCAL UNION NO. 211, )

Plaintiff, )

Civil Action No. 2:19-cv-01472-NR

Judge J. Nicholas Ranjan

vs. )

***ELECTRONICALLY FILED***

PG PUBLISHING CO., INC. d/b/a/ )  
PITTSBURGH POST GAZETTE, )

Defendant. )

**MOTION FOR CIVIL CONTEMPT**

Plaintiff, Newspaper, Newsprint, Magazine, and Film Delivery Drivers, Helpers, and Handlers, International Brotherhood of Teamsters, Local Union No. 211, (hereinafter “Union” or “Local 211”) moves this court for an order finding Defendant in contempt of this Court’s Order dated November 27, 2019 [ECF No. 20] which was clarified by this Court’s Order of December 27, 2019 [ECF No. 37] granting Plaintiff’s request for preliminary injunction and clarifying what Defendants must do to comply with the Court’s Order. In support of this request, Plaintiff avers the following:

1. On November 27, 2019, the Court issued a Memorandum Opinion [ECF No. 19] and Order of Court [ECF No. 20] granting Plaintiff’s Motion for Preliminary Injunction [ECF No. 2] and denying Defendant’s Motion to Dismiss [ECF No. 14].

2. The Injunction required Defendant to “maintain the status quo under the CBA regarding healthcare coverage, manpower, shift scheduling, wages and layoffs pending the outcome of the contractual grievance process until a final decision” on the issues raised by the Union’s grievance. [ECF No. 20].

3. By its terms, the order did not become effective until Plaintiff deposited security with the Court. [ECF No. 20].

4. Plaintiff deposited the required security with the Court on November 27, 2019 [ECF No. 21], the same day the Court issued the Order.

5. Therefore, the Order became effective on November 27, 2019.

6. On December 17, 2019, Plaintiff filed a Motion for Civil Contempt contending that the Defendant refused to abide by the Court’s Order in the following particulars:

- a. Refusing to provide healthcare coverage to at least 26 employees Defendant laid off;
- b. Refusing to recall and reinstate at least 26 employees Defendant laid off; AND
- c. Refusing to return Union members still employed by Defendant to the same routes and 5-day schedule they had worked before the Post-Gazette’s changes. (Molinero Affidavit at ¶¶3, 4, 5). [ECF No. 28].

7. On December 20, 2019, Defendant filed its opposition to Plaintiff’s Motion for Civil Contempt. [ECF No. 32].

8. On December 2, 2019, Defendant filed a Motion to Stay the District Court’s order pending its appeal to the Third Circuit. [ECF No. 22]. Defendant filed a Notice of Appeal on December 20, 2019. [ ECF No. 33].

9. In the Memorandum Opinion dated December 27, 2019, [ECF No. 37] this Honorable Court denied Plaintiff's Motion to Stay its November 27, 2019, Order and denied Defendant's Motion for Contempt opining that:

"The Court believes that its prior injunction order was clear, particularly in the context of a labor dispute.

....

Nevertheless, because there appears to be some legitimate confusion about what the injunction order requests of the Post-Gazette, the Court will deny the Union's motion to hold the Post-Gazette in contempt.

....

"The Court will, instead, clarify that the Post-Gazette must maintain the status quo for healthcare coverage, manpower, shift scheduling, wages, and layoffs that existed *before* the Post-Gazette took the actions that led to the underlying grievance. That means the Post-Gazette must undo the schedule and shift changes it implemented, reinstate any terminated employees, and continue to provide healthcare for all employees. Absent a stay by the Third Circuit, the Post-Gazette must comply with the Court's order, as clarified; if it fails to do so, the Union may re-file its motion for contempt."

10. Since the entering of its Order of December 27, 2019, Defendant has continued to refuse to abide by the Court's Order. By email dated December 30, 2019, Plaintiff's attorney requested the Defendant's attorney to inform the union if the Defendant intended to comply with the Court's most recent Order. By email dated December 30, 2019, counsel for the Defendant responded by indicating that "As to the injunction, we will be filing a stay motion in the Third Circuit shortly." These two emails are attached as Exhibit 1.

11. When the Plaintiff requested arbitration of those issues which are the subject to this Court's status quo order, the Post-Gazette refused to comply with the December 27, 2019, Order and refused to proceed to arbitration averring that:

“On December 27, 2019, Judge Ranjan issued an Order to maintain the status quo absent a stay by the Third Circuit. The Company filed its Motion to Stay Pending Appeal on December 30, 2019. Should the Company's Motion be denied, the Company fully intends to comply with Judge Ranjan's Order. However, whether an arbitrable dispute exists is still very much in question at this time. The Company does not concede the Union's grievance arose under the contract that expired at the end of March 2017.” Exhibit 2 attached. Attached as Exhibit 3 is the union's response.

12. Not only has the defendant refused to revert to the status quo but as of January 1, 2020, they once again unilaterally changed employee's schedules in violation of the collective bargaining agreement. Additionally on December 28, 2019, a number of truckloads of product remained undelivered as a result of insufficient manpower (see Molinero Affidavit attached hereto).

13. The Third Circuit Court of Appeals has not entered a stay and Defendant has not complied with the Court's Order. The Court's original Order was given November 27, 2019, and clarified on December 27, 2019 ordering that Defendant comply immediately absent any stay.

14. Defendant's open and flagrant refusal to abide by the Court's order even after the same has been clarified justifies finding Defendant in contempt. It has been more than 30 days since the Court's original Order and Defendant remains recalcitrant in moving forward in accordance with the Court's Order.

15. For these reasons, Plaintiff respectfully requests that Defendant be held in contempt of court for failure to abide by the November 27, 2019 Order of Court, as further clarified by its Order of December 27, 2019.

16. Plaintiff requests the following relief:

- a. An order finding Defendant in contempt;
- b. An order requiring Defendant to immediately reinstate all employees Defendant laid off in October/November 2019;
- c. An order requiring Defendant to make whole every employee Defendant laid off in October/November 2019 including back pay, health insurance, and other benefits;
- d. An order requiring Defendant to make whole every current employee for lost wages due to improper reductions in the hours of work;
- e. An order requiring Defendant to return all workers to five day schedules as it was before Defendant's unilateral changes instituted in October/ November 2019 which gave rise to Plaintiff's grievance;
- f. An order requiring Defendant to provide health insurance coverage to all of its current employees represented by the Union as well as those Defendant laid off in October/November 2019;
- g. An order requiring Defendant to maintain the status quo under the CBA regarding healthcare coverage, manpower, shift scheduling, wages and layoffs pending the outcome of the contractual grievance process until a final decision on the issues raised by the Union's grievance.
- h. An award of attorneys' fees and costs of bringing this motion;
- i. In the event the Defendant fails to comply, Defendant shall be assessed penalties in the amount of \$10,000.00 per day for the first day following the date of this Order and said amount shall double each day thereafter until Defendant complies with this Court's Order.

j. Any other relief the court deems just and proper.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: /s/ Joseph J. Pass

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Civil Contempt was filed electronically on January 3, 2020. Notice of this filing will be sent to all parties via the Court's electronic filing system. Parties can access this filing through the Court's system.

/s/ Joseph J. Pass

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**AFFIDAVIT OF JOSEPH A. MOLINERO**

I, Joseph A. Molinero, hereby swear and affirm that the following is true and correct to the best of my knowledge and belief:

1. I previously filed an Affidavit in the within-captioned action on behalf of Plaintiff.
2. On January 1, 2020, the employer, without mutual agreement of the union, unilaterally changed all employees schedule in clear violation of the collective bargaining agreement and this Court's Order.
3. The employer's contention that if employees are returned there would be no work is inaccurate. As stated in my previous Affidavit, the reductions in print that occurred at the end of September did not result in any employees being laid off and all those employees laid off at the end of October and beginning of November had sufficient work during the entire month of October.

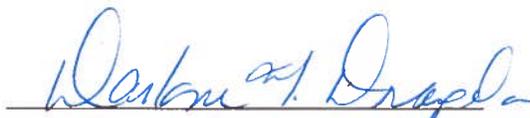
4. On the evening of December 28, 2019, truckloads of product destined for customers remained on the dock undelivered as a result of insufficient manpower to perform the work.
5. Despite the Court's Order of December 27, 2019, the employer has not resorted to the status quo that existed prior to the grievances which were filed on November 4, 2019, and has refused to process the union's November 4, 2019 grievance which dealt with the Post-Gazette's violation of Article III and IV. (Exhibits 2 and 3 attached to the Motion for Contempt are true and correct copies of the correspondence regarding Articles III and IV)

Date: January 3, 2020

  
Joseph A. Molinero, President  
Teamsters Local 211

Sworn to and subscribed before

me this 3<sup>rd</sup> day of January, 2020.

  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Darlene M. Drapela, Notary Public  
Allegheny County  
My commission expires August 17, 2023  
Commission number 1264150  
Member, Pennsylvania Association of Notaries