

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SARAH M. WILLIAMS,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-944-SLR
)
 NATIONAL AMERICAN POSTAL)
 WORKERS UNION, AFL-CIO, et al.,)
)
 Defendants.)

Sarah M. Williams, Wilmington, Delaware. Plaintiff appearing pro se.

Perry F. Goldlust, Esquire, of Aber, Goldlust, Baker & Over, Wilmington, Delaware and Daniel B. Smith, Esquire, O'Donnell, Schwartz & Anderson, P.C., Washington, D.C.. Counsel for Defendants American Postal Workers Union, AFL-CIO, William Burrus, Robert Tunstall, Greg Bell, C.J. Guffey, James Lingberg, Robert C. Pritchard, Raydell Moore, and Barbara Prothro.

MEMORANDUM OPINION

Dated: April 27, 2005
Wilmington, Delaware


ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Sarah Williams, appearing pro se, filed this action against American Postal Workers Union, AFL-CIO¹ ("APWU"), seven present and former officers of the APWU², and Barbara Prothro, the former trustee of the Wilmington, Delaware/Malcolm T. Smith Area Local of the APWU ("Local") (collectively "defendants"). (D.I. 2, 22, 29) Defendants filed a motion for a more definite statement and plaintiff subsequently filed a response to defendants' motion, which this court treated as an amended complaint. (D.I. 21, 22, 31) In her amended complaint, plaintiff alleges that defendants violated the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. §§ 411-531 (2003), and various articles of the Constitution and Bylaws of the American Postal Workers Union by placing the Local into trusteeship, by denying plaintiff due process relating to her suspension from her position with the Local as Director of

¹ According to defendants, plaintiff's complaint incorrectly names the American Postal Workers Union, AFL-CIO, as the National American Postal Workers Union, AFL-CIO. (D.I. 29)

² Also named as defendants in plaintiff's amended complaint are the President of the APWU, William Burrus; former Secretary-Treasurer of the APWU, Robert Tunstall; Director of Industrial Relations of the APWU, Greg Bell; Executive Vice-President of the APWU, C.J. Guffey; former Director, APWU Maintenance Division, James Lingberg; Director of the APWU Motor Vehicle Services Division, Robert C. Pritchard; former Western Regional Coordinator, Raydell Moore; APWU Eastern Regional Coordinator, James Burke; and the late Moe Biller, former President of the APWU.

Industrial Relations, and by failing to properly process her claims against the former Treasurer and President of the Local. (D.I. 2, 22) Moreover, plaintiff alleges that defendants caused her extreme emotional distress and violated her right to freedom of speech and assembly under the LMRDA by amending the Local's Constitution and Bylaws without first consulting plaintiff. This court has jurisdiction over plaintiff's suit pursuant to 29 U.S.C. § 412³. Procedurally, the court is faced with defendants' motion to dismiss⁴. (D.I. 28) For the reasons that follow, defendants' motion to dismiss is granted.

II. BACKGROUND

In September of 1999⁵, plaintiff was elected Director of Industrial Relations of Local 152, a local subdivision of the

³ 29 U.S.C. § 412 states, in relevant part, "[a]ny person whose rights secured by the provisions of this title [29 U.S.C. §§ 411 et seq.] have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

⁴ Defendants have also moved the court for summary judgment. Because plaintiff's complaint fails to state a claim upon which relief can be granted, this court need not address defendants' summary judgment motion.

⁵ As is required under a motion to dismiss pursuant to Rule 12(b)(6), the court gathers the facts solely from plaintiff's amended complaint. Samuels v. Cunningham, 2003 U.S. Dist. LEXIS 14479 (D. Del. August 14, 2003). While the foregoing facts were derived from the plaintiff's pro se complaint, this court was forced to rely on defendants' memorandum in support of its motion to dismiss in order to decipher plaintiff's complaint and place the relevant facts in sequential order.

APWU. (D.I. 22) Along with Local President Christine Simmons and Treasurer John Melnick, plaintiff's term as a union officer was for three years. (D.I. 22)

Shortly after the election, plaintiff discovered several unauthorized payments made by newly elected President Simmons and Treasurer Melnick. (D.I. 22) On April 2, 2000, plaintiff and several other Local members filed 39 charges with the Local against Simmons, Melnick, Gwen Lane and Tosha Bryant. (D.I. 22) These charges included allegations that Simmons failed to file required federal reports or pay payroll taxes; failed to hold required Trustee, Executive Board and membership meetings; that she exceeded her spending authority and misused the Local's funds; that she commingled union funds with other non-union funds; that she paid Local funds into her personal account; and that she improperly spent Local funds for non-union purposes. (D.I. 22, 29, Ex. 8) The Local's Secretary, Darlene Demby, determined that a fair hearing within the Local was unlikely because most of the Local Executive Board either filed charges or were being charged with wrongdoing. (D.I. 22, 29, Ex. 8) Demby forwarded the charges to NEB Secretary-Treasurer Robert Tunstall. (D.I. 22)

The NEB appointed National Business Agent Robert Bloomer to hear the charges against Christine Simmons and the other Local members alleged to have mismanaged the Local's funds. (D.I. 22,

29) Hearings were held in the matter between December 7, 2000 and January 17, 2001. (D.I. 22, 29) Bloomer then filed a report with the NEB, recommending the actions he felt the NEB should take. (D.I. 29) This report was not delivered to the charging parties, including plaintiff. (D.I. 22, 29) The NEB adopted Bloomer's recommendations and found Simmons guilty of 16 of the 39 charges filed against her and required her to repay \$6,981.00 to the Local. (D.I. 22, 29) Plaintiff and the other charging parties appealed the Bloomer decision to the National Convention Appeals Committee⁶, arguing that Simmons should be found guilty of the remaining 23 charges and that she should be forced to repay the Local \$124,000 in misappropriated funds. (D.I. 22, 29) Simmons also appealed the decision of the NEB that required her to repay \$6,981.00 to the Local. (D.I. 29) Although finding

⁶ The APWU's Constitution and Bylaws, Section 4, states that:

Any person or body, against whom disciplinary action has been taken or whose charges have been dismissed in whole or in part, shall have the right to appeal as follows . . .

(b) From the disciplinary action of or dismissal of charges by a local union, (1) to the President, (2) to the National Executive Board, and (3) to the National Convention.

(c) From the disciplinary action of or dismissal of the charges by the National Executive Board to the National Convention.

(d) From the disciplinary action of the President (1) to the National Executive Board to the National Convention.

The National Convention Appeals Committee met during the APWU National Convention in Minneapolis, Minnesota during the week of August 12 to 16, 2002 to hear the appeal in this matter. (D.I. 29)

that Simmons breached her fiduciary duty to the Local's members by failing to "make sure that necessary reports are filed with the Department of Labor, that payroll taxes are properly deducted and paid to the government and tax returns filed" that resulted in close to \$100,000 in penalties from state and local tax authorities, the National Convention Appeals Committee nevertheless found that Simmons' conduct was not embezzlement which would have "justif[ied] the harshest penalty." (D.I. 29) The appeals board issued a report, adopted by the National Convention, that sustained the decision of the NEB and rejected the appeals of plaintiff and Simmons.⁷ (D.I. 22, 29)

In response to the charges brought by plaintiff against Simmons, a letter was sent on September 7, 2001 from the Local's CPA to Robert Tunstall, Secretary-Treasurer of the APWU's National Executive Board ("NEB") and a named defendant. (D.I. 22, 29) Penelope Howe, the accountant who was hired by the Local to prepare income tax and payroll returns, stated in the September 7, 2001 letter that she was terminating all of her services to the Local based on "concrete evidence" indicating that the Local's serious financial condition was based on misappropriation of funds and "severe mismanagement" by the

⁷ Simmons was banned from holding a board position with the Local for three years and forced to repay \$6,981 to the Local. (D.I. 29)

Local's officers. (D.I. 22, 29, ex. 3) Basing his decision on Howe's letter, APWU President Moe Biller informed Robert Tunstall that Biller was suspending the Local and decided further that an "immediate imposition of a trusteeship [was] warranted." (D.I. 29, Ex. 2) Biller, in an attempt to "prevent the theft, misappropriation, or embezzlement of the funds, assets or properties of the Local" (D.I. 29, Ex. 2), referenced Article 15, Section 2(a)-(b) of the Constitution and Bylaws of the APWU in carrying out the suspension of the Local and in appointing APWU National Business Agent Barbara Prothro as the temporary trustee on October 9, 2001.⁸ (D.I. 29, Ex. 2)

The next day Trustee Prothro suspended all of the Local's officers, including plaintiff. In early November, a three member trial board, consisting of three of the twelve members of the

⁸ Section 2(a)-(b) of the Constitution and Bylaws of the APWU states:

(a) Except in case of suspension or expulsion for non-payment of dues or per capita, the President may initiate suspension proceedings against a subordinate body upon a finding of: (1) a willful and substantial commission of an offense prohibited by Section 1 of this Article, and may suspend a subordinate body upon a finding; (2) that such suspension is necessary to prevent the theft, misappropriation, or embezzlement of the funds, assets or properties of the subordinate body. Any such finding and suspension shall be made, in writing, setting forth the basis therefor [sic], and shall be effective upon delivery to the subordinate body.

(b) Where a subordinate body is suspended under Section 2(a)(2) above, the President may appoint a trustee immediately to assume management of the affairs and business of the subordinate body.

APWU NEB, was appointed and a hearing was held concerning the continued validity of the trusteeship. (D.I. 22, 29) After hearing testimony from various members of the Local, including plaintiff, the three member trial board issued a report and concluded that the trusteeship should be continued. (D.I. 22, 29, Ex. 4) Christine Simmons appealed the decision of the trial board, but the NEB rejected her appeal. (D.I. 29, Ex.5, 6) Not satisfied, Simmons appealed to the APWU National Convention Appeals Committee. (D.I. 22, 29) The National Convention Appeals Committee⁹, however, issued a report that adopted the findings of the NEB trial board. (D.I. 22, 29, Ex. 7) Subsequently, the convention adopted a resolution accepting the report of the appeals committee and rejecting Simmons' appeal from the imposition of the trusteeship. (D.I. 29)

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint

⁹ The committee was composed of Paul Mendrick, Chairperson of the Denver Metro Area Local; Tyrone Hewitt of the East Bay Area Local; and Robert Mero of the Charleston, South Carolina Area Local. (D.I. 22, 29, Ex. 7)

should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

A. Establishment of the Trusteeship and Trial Board

The first series of allegations in plaintiff's complaint challenge the imposition of the trusteeship by the NEB of the APWU. Specifically, plaintiff alleges that the defendants "failed to follow the [LMRDA and the] Constitution and Bylaws of the American Postal Workers Union AFL-CIO as amended July 2000." (D.I. 22) Initially, Section 302 of the Landrum-Griffin Act (formally, the Labor-Management Reporting and Disclosure Act of

1959) envisions "a parent union imposing a trusteeship only on a 'subordinate body' of that parent and only in conformity with the parent's constitution or bylaws." Tile, Marble, etc. v. Tile, Marble, etc. Local 32, 896 F.2d 1404, 1410-1411 (3rd Cir. 1990); see also 29 U.S.C. § 462 (1982). Contrary to plaintiff's own complaint, however, the APWU's President followed the APWU's Constitution and Bylaws to the letter and, absent any facts in plaintiff's complaint that support her claim that the imposition of the trusteeship was improper, her claim must fail.

The APWU's Constitution and Bylaws, referred to and relied on by plaintiff in her complaint, clearly state that the President of the APWU may suspend the officers of a Local and appoint a trustee to assume the management affairs of the Local upon a finding that the suspension "is necessary to prevent the theft, misappropriation, or embezzlement of the funds, assets or properties of the subordinate body." (D.I. 29, Ex. 1) Article 15, Section 2(b) further states that the President's finding must set forth the basis for the suspension. (D.I. 29, Ex. 1) In accordance with the APWU's Constitution and Bylaws, NEB President Moe Biller sent a letter to the APWU's Secretary-Treasurer Robert Tunstall setting forth his reasons for imposing the trusteeship.¹⁰ (D.I. 29, Ex. 2) In the absence of any factual

¹⁰ As stated earlier, the primary reason for the imposition of the trusteeship was the letter from the Local's CPA, Penelope Howe, stating that evidence showed that the Local mishandled

assertion to the contrary, the letter from the Local's CPA, which alluded to "severe mismanagement" and "concrete evidence of misappropriation of funds", satisfies the notice requirements of Article 15, § 2(b) of the APWU's Constitution. Furthermore, plaintiff's assertion that the defendants established the trusteeship for "improper" or "false" reasons, is insufficient to withstand defendants' motion to dismiss.¹¹ "[L]egal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3rd Cir. 1997).

Moreover, Section 2 of the APWU's Constitution and Bylaws mandates that a three-member trial board, elected by the NEB, be appointed to determine the continued validity of the trusteeship. (D.I. 29, Ex. 1) In accordance with the above provision of the APWU Constitution and Bylaws, the three-member panel held open hearings and concluded that the trusteeship should be continued. (D.I. 22, 29) Plaintiff not only acknowledges that this hearing

funds.

¹¹ Rule 8(a) of the Federal Rules of Civil Procedure sets forth the applicable standard for analyzing plaintiff's complaint. Rule 8 states in relevant part: "A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends... (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8.

took place, but she readily admits that she participated in the hearing. (D.I. 22 at ¶ 69) Absent any factual assertion to the contrary, plaintiff's general averment that defendants "failed to follow the Constitution and Bylaws" is insufficient to show that plaintiff is entitled to the relief requested. (D.I. 22)

Furthermore, plaintiff alleges that defendants improperly established the trusteeship without properly serving her or the Local with charges and without providing notice of the trusteeship. (D.I. 22 at ¶¶ 1,75,76,116,48-51,49) Again, however, the APWU Constitution, relied on by plaintiff in her complaint, clearly sets forth the requirements for establishing a trusteeship and the serving of charges. (D.I. 29, Ex. 2) Plaintiff herself admits to being "hand deliver [sic] the notice placing Local 152 under trusteeship." (D.I. 22 at ¶ 49) Because this court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss, In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir. 1997) (quoting Glassman v. Computervision Corp., 90 F.3d 617, 628 (1st Cir. 1996)), the plaintiff's allegations concerning service of charges and failure of proper notice must be dismissed.

Plaintiff also alleges that defendants violated the LMRDA and the APWU's Constitution and Bylaws by failing to act impartially on charges she filed against Christine Simmons and

other officers in the Local. (D.I. 22 at ¶¶ 20-40, 78-80) Like the above allegations, plaintiff's own complaint belies the allegation that a hearing was not held. (D.I. 22 at ¶¶ 20-40) Further, plaintiff has failed to assert any facts that would indicate that Robert Bloomer, the hearing officer appointed by the NEB to hear the charges brought by plaintiff, was anything but impartial. In fact, apart from the plaintiff generally disagreeing with the measure of punishment levied against Christine Simmons, the end result of this hearing was the punishment of the Local's President and the establishment of the trusteeship to remedy the financial mismanagement by the Local's managing board, the very "root of [p]laintiff's charges against President Simmons." (D.I. 29)

Lastly, plaintiff asserts in her amended complaint that defendants "interfered in the [p]laintiff's re-election process of Local 152 during the 2002 election" and "caused irrestible (sic) harm to members of Local 152 when the defendants interfered in the [p]laintiff's re-election process." (D.I. 22 at ¶¶ 71,95) Although this assertion differs from the others in that it is not directly rebutted by the facts alleged in plaintiff's complaint or by the Constitution and Bylaws relied on by plaintiff, claims "rel[ying] on vague and conclusory allegations do[] not provide 'fair notice' and will not survive a motion to dismiss." United States v. City of Philadelphia, 644 F.2d 187, 204 (3rd Cir.

1980). Without any facts relating to how the defendants might have interfered with the election process, this court cannot allow such a claim to continue.

While plaintiff's complaint routinely cites to the procedural requirements set forth by the APWU's Constitution and Bylaws that relate to the imposition of a trusteeship, plaintiff fails to assert any factual basis for her allegations that the defendants violated any provision of the APWU's Constitution or Bylaws. Nor does plaintiff cite to any specific provision in the APWU's Constitution or Bylaws which were allegedly violated. Even in light of the liberal reading pro se complaints are afforded, the court concludes that plaintiff has failed to carry her burden of alleging any set of facts that entitle her to any of the relief requested. Accordingly, plaintiff's allegation that the defendants improperly appointed a trustee to oversee the Local and failed to act on plaintiff's charges must be dismissed.

B. Suspension of Plaintiff from Local's Board

Plaintiff's complaint also alleges that defendants violated her "due process rights" in suspending her from her office because: (1) she was denied a hearing or appeal rights (D.I. 22 at ¶¶ 66,98); (2) she was denied notice on the "charges" against her and a subsequent opportunity to prepare defenses (D.I. 22 at ¶¶ 97,98); (3) she was denied the case number in the letter that informed her of the suspension from office (D.I. 22 at ¶¶ 51,

53); and (4) defendants interfered with the grievance process by denying plaintiff due process under the collective bargaining agreement (D.I. 22 at ¶ 87).

Plaintiff's allegations with regard to her suspension are without merit. Nothing in the APWU's Constitution or Bylaws provides plaintiff with any rights or remedies with regard to the establishment of a trusteeship. In fact, Article 15, Section 2(e) of the APWU Constitution provides that "[t]he trustee, so appointed, shall be authorized and empowered to suspend any or all the officers from office . . . for the duration of his/her trusteeship, and to take such other actions as in his/her judgment are necessary for the preservation of the subordinate body, all subject to the direction, instructions and approval of the National Executive Board." The APWU's Constitution and Bylaws have no provision that allows a Local Board member to appeal a suspension in the event the imposition of a trusteeship is approved by the NEB. In this case, the NEB trial board approved the imposition of Barbara Prothro as trustee of the Local in question. (D.I. 29, Ex.7) There is no requirement that the charging parties be provided a "case number" along with notice of suspension. Accordingly, plaintiff's complaint with respect to her assertion that she was denied due process must be dismissed.

C. Defamatory Statements Allegedly Made by Defendants

Plaintiff's claims of defamation are barred by the applicable statute of limitations. Because plaintiff alleges that the defamation occurred in and around October 2001, the defendants are correct in noting that any claim of defamation stemming from posted notices from October of 2001 would in fact be time barred under Delaware law. See Shearin v. E.F. Hutton Group, Inc., 652 A.2d 578 (Del. Ch. 1994) (2-year statute of limitations period proscribed by Section 8119 of Title 10 of the Delaware Code is applicable to actions asserting claims of defamation);¹² see also Carr v. Town of Dewey Beach, 730 F.Supp. 591, 599 (D. Del. 1990). Plaintiff does state, in ¶ 124 of her amended complaint, that the defendants defamed the plaintiff "[i]n October 2001, and in the months thereafter." Tort claims, however, accrue at the time of the injury. Nardo v. Guido DeAscanis & Sons, Inc., Del.Super., 254 A.2d 254 (1969). Accordingly, because plaintiff brought this suit on July 26,

¹² Plaintiff also claims defendants intentionally inflicted emotional distress by posting the defamatory statements. Like the claims for defamation, the Delaware statute of limitations concerning personal injury provides that "no action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of [two] years from the date upon which it is claimed that such alleged injuries were sustained." 10 Del. C. § 8119 (2003). "Personal injuries" include emotional injuries for statute of limitation purposes. See Wright v. ICI Americas Inc., 813 F. Supp. 1083 (D. Del. 1993). Accordingly, under Delaware law, a two-year limitations period applies to claims for emotional distress and plaintiff's claims for intentional infliction of emotional distress must be dismissed.

2004, and the accrual date for the statute of limitations is October of 2001, plaintiff's claims of defamation by defendant Prothro must be dismissed.

D. Violation of Freedom of Speech and Assembly Under LMRDA

Lastly, plaintiff claims that defendants violated her right to freedom of speech and assembly by adopting an amended version of the Local's Constitution and Bylaws without first seeking her counsel. (D.I. 22 at ¶¶ 130-34) Echoing earlier statements made concerning the authority of the appointed trustee under the APWU Constitution and Bylaws to "take such other actions as in his/her judgment are necessary for the preservation of the subordinate body, all subject to the direction, instructions and approval of the National Executive Board" (D.I. 29, Ex. 1), plaintiff's complaint and amended complaint lack any support for the proposition that Barbara Prothro was not authorized to make such changes to the Local's Constitution and Bylaws without plaintiff's approval.

V. CONCLUSION

For the reasons set forth above, the court grants defendants' motion to dismiss plaintiff's complaint and amended complaint. An appropriate order shall issue.