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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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WILLIAM LEHMAN,

Plaintiff,

v.

Case No. 22-cv-12790

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE, and
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, and NEIL M. BAROFSKY,

Defendants.

_____ /

**MOTION FOR TRO/PI
BEFORE THE HONORABLE DAVID M. LAWSON
United States District Judge**

Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Tuesday, November 22, 2022

APPEARANCES:

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**For the Defendant:
(UAW)**

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11 **ALSO PRESENT:**

12 **(Amicus)** David A. Gardey
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1 Detroit, Michigan

2 Tuesday, November 22, 2022

3 1:31 p.m.

4

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5 THE CLERK: All rise. The United States District
6 Court for the Eastern District of Michigan is now in session,
7 the Honorable David M. Lawson presiding.

8 THE COURT: You may be seated.

9 THE CLERK: Now calling the case Lehman versus UAW,
10 Case Number 22-12790.

11 THE COURT: Good afternoon, Counsel. May I have an
12 appearance for the Plaintiff, please.

13 MR. LEE: Good afternoon, your Honor. Eric Lee for
14 Will Lehman.

15 THE COURT: Mr. Lee, we stand when you address the
16 court here.

17 MR. LEE: I'm sorry, your Honor.

18 THE COURT: And for the UAW?

19 MR. GRIFFIN: For the UAW Richard Griffin and Abigail
20 Carter, your Honor.

21 THE COURT: Thank you. Good afternoon.

22 And for the Monitor?

23 MR. ROSS: Good afternoon, your Honor. Michael Ross
24 for the Monitor with my colleague, Michael Gordon.

25 THE COURT: All right. Mr. Gardey or Mr. Cares, do

1 you wish to be heard at all today or are you just attending?

2 MR. GARDEY: Good afternoon, your Honor. We're just
3 observing the proceedings.

4 THE COURT: Okay. Very well. Thank you.

5 The Plaintiff, William Lehman, filed a Complaint
6 challenging the procedures that have been used to govern the
7 election of international executive board members and officers
8 that has been implemented following the referendum approving
9 the one-person, one-vote scheme to select union leadership.

10 In the Complaint, as I understand it, the Plaintiff
11 says principally that the notice provisions and ballot
12 distribution provisions that have been used by the union and
13 approved by the Monitor are insufficient to provide adequate
14 notice, that there are some members that don't even know an
15 election is going on, and that there is for that reason a
16 denial of the right of the union membership as a whole in its
17 ability to participate in the election.

18 The Complaint states a couple of items seeking relief,
19 one to extend the deadline for requesting and receiving ballots
20 by 30 days, and the other to require the union to make
21 additional efforts to provide effective notice about the
22 election and the members' right to vote.

23 The Plaintiff also filed a motion for a temporary
24 restraining order and a preliminary injunction. I denied the
25 request for temporary restraining order, but because of the

1 fact that the election is ongoing and deadlines are looming
2 with respect to receipt of ballots and tabulation I ordered
3 expedited briefing and set the matter for a hearing today. The
4 Government was invited to either intervene in the case or file
5 an Amicus brief. They chose to do the latter, and I received
6 that. And I received responses from the union and the Monitor
7 and reviewed all those items.

8 Mr. Lee, it's your motion, so you may address the
9 court.

10 MR. LEE: Your Honor, may I speak from the podium,
11 please?

12 THE COURT: If you can find a podium. We have a
13 lectern.

14 MR. LEE: Okay. Thank you. Okay. Good afternoon,
15 your Honor.

16 THE COURT: Good afternoon.

17 MR. LEE: Will Lehman is here as a Plaintiff because
18 he has standing, and this court has jurisdiction. And he --

19 THE COURT: Is he in the courtroom?

20 MR. LEE: No, he's -- I'm sorry. He's not here in the
21 courtroom. He's at his job right now.

22 THE COURT: All right.

23 MR. LEE: But he's here in this suit, because he has
24 standing as a member of the UAW to participate in an election
25 in which he has a meaningful right to vote. The UAW and the

1 Monitor have denied this meaningful right to vote. This is a
2 pre-election situation, and so as a result it's properly
3 brought we believe under Title 1.

4 THE COURT: Let me ask you about that. I don't see
5 anything in the Complaint that alleges that Mr. Lehman has
6 individually been denied any rights, and he appears to bring
7 his claim as sort of a complaint in gross about the election
8 procedures in general as they might affect all union
9 membership. Is that a fair characterization?

10 MR. LEE: Not exactly, your Honor, and hopefully I can
11 explain. The right that Mr. Lehman has to bring suit here is
12 that his right to cast a vote meaningfully in an election as an
13 individual. So, yes, it is the case that there are all members
14 of the United Auto Workers who have the same right that he
15 does, but as an individual. Despite the fact that he did
16 receive a ballot and despite the fact that he was able to vote,
17 the law in this circuit and the law from the Supreme Court
18 states that that right must be meaningful. The mere naked
19 right to cast a vote, in other words, is insufficient to
20 overcome the assertion that the union and the Monitor conducted
21 the election fairly.

22 THE COURT: Well, doesn't that have to do with the
23 cases that basically criticize election procedures that overtly
24 discriminate against insular groups?

25 MR. LEE: Not exactly, because even if the violation

1 is facially neutral. If there's an anti-democratic impact,
2 that means that under these conditions an individual can bring
3 rights that although he was able to vote or she was able to
4 vote that the right was not meaningfully given and as a result
5 there was not a fair election.

6 Now, the evidence that's on the record here --

7 THE COURT: If it's not a fair election because of the
8 failure of notice or the failure of ballot distribution,
9 doesn't that properly find its way to the Department of Labor
10 first?

11 MR. LEE: Not under conditions where the relief which
12 a plaintiff is requesting is reasonable. Here all Mr. Lehman
13 is asking for is a 30-day delay. He's asking for reasonable
14 steps be taken to provide ballots.

15 We want to and Mr. Lehman wants to avoid a situation
16 where Title 4 is brought in after an election is conducted,
17 where there is a dark cloud that hangs over the bargaining
18 sessions of 2023. We want to be able to avoid having to upset
19 and upturn the outcome of the election, and we believe that the
20 relief which we're requesting is eminently reasonable.

21 Now, the facts that we have here show and corroborate
22 Mr. Lehman's assertion that right that his right to
23 meaningfully vote is being violated.

24 THE COURT: Well, you have three affiants, right,
25 other than him?

1 MR. LEE: That's correct.

2 THE COURT: And none of them have joined as
3 plaintiffs; correct?

4 MR. LEE: That's correct, your Honor.

5 THE COURT: Is there a reason for that?

6 MR. LEE: No. The reason is that we feel that Mr.
7 Lehman's rights have been violated and that that's sufficient
8 to have standing and to give this court jurisdiction.

9 THE COURT: Can you point to any fact in the Complaint
10 or anything that you could plead if given the opportunity that
11 suggests that Mr. Lehman himself has suffered some sort of
12 discrimination or deficit in his own ability to cast a ballot?

13 MR. LEE: Absolutely, your Honor, and that's because
14 an election does not have the aura of legitimacy if only ten
15 percent of the membership has voted. The reason why members
16 are not voting is not because they don't care. It's because
17 they don't know.

18 THE COURT: What evidence do you have of that?

19 MR. LEE: Well, in the three affidavits there are
20 statements from workers saying there are no posters being put
21 up in their workplaces, that many of their co-workers don't
22 know, that there was no effort by the local unions -- and this
23 is a point which we would respectfully like to underscore
24 doubly, because in the declarations which the Defendants have
25 presented it's clear the local unions are failing to update the

1 LUIS system. There's no -- in the declarations presented by
2 the Monitor, there's no real hard proof that they have actually
3 told the UAW to do anything other than request -- respectfully
4 request that the local unions ask periodically or perhaps once
5 every two or three months.

6 One element of this which is particularly concerning
7 to us, your Honor, is the fact that Frank Stuglin, the
8 secretary/treasurer, has been placed in charge of overseeing
9 this. Mr. Stuglin, as the Monitor's third status report showed
10 in July 19, 2022, had violated federal law, had violated the
11 rules of the union in misusing union funds and resources to
12 purchase backpacks, spending tens of thousands of dollars for
13 his own reelection.

14 THE COURT: Well, I hate to sound like a broken
15 record, but why is that not a Title 4 complaint rather than a
16 Title 1 complaint?

17 MR. LEE: Your Honor, it has everything to do with the
18 relief that's being requested. So in Local 82 there's clearly
19 no -- in the text of the statute in 1959, there's no provision
20 for what to do under conditions where an election is ongoing.
21 That's what the court says, as this court knows.

22 However, the court does lay out there circumstances in
23 which a union member's right to file in district court, like
24 Mr. Lehman has under Title 1, can't be taken away when the
25 relief that he is requesting is reasonable.

1 Now, if I may be permitted to explain why we believe
2 this relief is so reasonable. In the --

3 THE COURT: You should probably do that in the context
4 of the response that talks about the deadlines as having sort
5 of a domino effect, ultimately with the goal of trying not to
6 engage in collective bargaining next spring when -- in the
7 absence of leadership in place.

8 MR. LEE: Right, your Honor, but Title 4 is not going
9 to resolve that. And, in fact, bringing in Title 4 under
10 conditions where there's a bargaining session taking place --

11 THE COURT: Well, wait a minute now. Whether it does
12 or doesn't is not really a question of reasonableness, is it?

13 MR. LEE: I'm sorry. Would the court rephrase the
14 question, please?

15 THE COURT: No. I'm very content with my question.

16 MR. LEE: Okay. Well, it's reasonable to bring it in
17 under Title 1 where the relief requested is not to throw the
18 whole process up into question. And the Monitor and the
19 consent decree say that a leadership must be duly elected, it
20 must be elected as a result --

21 In fact, there is a provision of the rules which make
22 the specific point that consistent with American democratic
23 traditions the right of every qualified member of the
24 electorate to vote in this election will be protected. And
25 then it says this specific point, which is so critical and at

1 heart of why we believe this is Title --

2 THE COURT: Tell me what you're quoting from?

3 MR. LEE: I'm quoting from the rules at four -- the
4 fourth page of the rules for the 2022 UAW direct elections.

5 THE COURT: Oh, okay. Go ahead.

6 MR. LEE: I'm sorry, your Honor. And it says that
7 "this principle mandates the improvement of membership mailing
8 information to ensure the enfranchisement of as many members as
9 possible, the broad education of members on the fact of the
10 2022 election to facilitate as broadly as possible their
11 participation in it."

12 Now, we know that 900,000 members have not voted. We
13 know that the affidavits, which Mr. Lehman have submitted, show
14 that workers who have sworn under penalty of perjury say no
15 posters are being posted, that they're not receiving ballots
16 even after requesting them. We know that there have been 4,000
17 calls to the Monitor -- to the vendor, I'm sorry, asking for
18 ballots, asking for help. We know that this has not produced
19 an increase substantially in the turnout of this election.

20 And so if I may get back to the question that this
21 court asked about the bargaining sessions in 2023, the turnout
22 in the 2019 General Motors contract was 89 percent to ratify or
23 turn down.

24 THE COURT: That's a ratification election?

25 MR. LEE: That's correct.

1 THE COURT: Well, that's something altogether
2 different, isn't it?

3 MR. LEE: That's correct. And I'm not trying to draw
4 an exact equal sign, but what I am trying to say is that in the
5 context of the 2023 CBA you could have a situation if this
6 court does not allow jurisdiction under Title 1 where the vast
7 majority of the members who are deciding whether to ratify a
8 contract or not did not even know that there was a presidential
9 election taking place. And under those conditions there's no
10 argument that can be made really, no bona fide argument, that
11 is, that Title 1 is going to upend the election process, but
12 the Title 4 will not.

13 THE COURT: Did you take a look at the Monitor's
14 response, particularly the part that described what -- well,
15 the Monitor's and the union's response about what has been done
16 to publicize the election so far?

17 MR. LEE: Well, the problem with that, your Honor --

18 THE COURT: My question is did you look at it?

19 MR. LEE: Yes, I did, your Honor.

20 THE COURT: All right. What more would you have them
21 do?

22 MR. LEE: There's a number of very reasonable steps
23 which they could take. They could, for example, distribute
24 ballots at local union halls. They could distribute ballots at
25 work sites, at lunch breaks, at shift changes. They could take

1 any number of measures, which in the span of 30 days this is an
2 organization after all which has 1.5, 1.6 billion dollars in
3 assets. It's able to draw dues out of its entire active
4 membership on a monthly basis without a problem. And so we
5 feel -- Mr. Lehman feels very strongly that the reason why the
6 local unions are not updating their information --

7 And, yes, in the Monitor's response and in the UAW's
8 response they couch their language about the steps that have
9 been taken to provide notice very interestingly. They do not
10 say that they can confirm that the local unions are actually
11 taking steps according to the requests which they make. And
12 the Monitor has essentially delegated to the locals, and
13 they're attempting in a way -- and the UAW Defendants does the
14 same thing, to put the blame on the locals and say, well, we
15 can't help them update their voter list, we can't help the fact
16 that only ten percent of the UAW membership has an E-mail on
17 record so that we can communicate with them.

18 But the UAW's locals are the UAW. They are the
19 Defendants. And the Monitor has an obligation under the rules
20 and under the consent decree to take action beyond friendly
21 requests to individuals who it has found already to have
22 violated the federal laws in the course of this election, to
23 have violated the rules of the election.

24 And, in fact, the incumbent president of the UAW in
25 the UAW's submission, I believe it is at Exhibit 1, attachment

1 2, the current president of the UAW said in the Detroit News,
2 "The right to vote is only meaningful if ballots get to
3 members." And he said, "If turnout is at 14 percent, we must
4 do better. No matter which candidate a member supports, we can
5 all agree that the future of our great union is too important
6 for just 20 percent of our membership to decide."

7 So I can't find a reason why Defendant UAW opposes
8 this now. We're at half of 20 percent. And that's what the
9 president of the union said, double that would not even be
10 sufficient to conduct a meaningful election.

11 This is all taking place, as the court well knows, in
12 the context of years of corruption in which the entire past
13 leadership of the UAW, or a substantial portion of it rather,
14 including two past presidents. Many people who placed the
15 current leadership in power have been thrown in jail for
16 robbing rank-and-file members like Will Lehman of his dues
17 money, for accepting bribes from the corporations, for agreeing
18 to collective bargaining agreements that are of highly dubious
19 legal character in terms of contract law and their
20 enforceability.

21 This court has requested that we address a question of
22 how the election can be given an aura of integrity. There is
23 no aura of integrity that can possibly take place under
24 conditions where the Monitor's own report says that they had
25 and the Department of Justice had to threaten to criminally

1 prosecute the current president of the United Auto Workers on
2 the basis of the fact that they were systematically violating
3 the consent decree, and at the same time to place them in
4 charge of making sure that workers are aware that an election
5 is taking place.

6 Now, when you place all of this together -- and I
7 respectfully understand what your Honor is saying about three
8 affidavits. This is done on a relatively rapid basis, and we
9 did submit in Exhibit B the statements by a number of workers
10 who had complained to the Monitor either on their own or
11 through Mr. Lehman of the fact that they were not able to vote,
12 and those are myriad. And so in this context when the relief
13 especially is so reasonable.

14 The UAW and the Monitor in their responses to the TRO
15 and to the Complaint say it would violate the rights of UAW
16 members if we extended the right to vote. That is a completely
17 absurd position to take to say that allowing more workers to
18 vote, to say that giving out more ballots would restrict the
19 rights of UAW members to vote.

20 The fact of the matter is, your Honor, that that's an
21 extremely concerning position. It should be the case that the
22 Defendants and that the Government are helping to expand the
23 right to vote or helping to ensure that as many workers as
24 possible in this first election in the history of the UAW under
25 conditions where an entrenched leadership has been in power for

1 75 years without ever having to face a direct election vote.

2 THE COURT: Let's get back to the merits. Do you
3 agree that your Complaint rises and falls on whether the claim
4 is construed as one brought under Title 1 versus Title 4?

5 MR. LEE: I would agree with that, but we would also
6 say that it does fall under Title 1.

7 THE COURT: No, it's clear what your position is on
8 that. If it does fall under Title 4, then your remedy is
9 administrative, at least it's a start before you resort to the
10 courts; correct?

11 MR. LEE: That's correct.

12 THE COURT: All right. On a different note, what's
13 the legal basis for you joining the Monitor as a defendant in
14 the case? Because the Monitor, of course, is appointed by the
15 court. I've made a determination in other cases that he is
16 essentially an instrumentality of the court.

17 If there are complaints about process, generally those
18 are first presented to the Monitor, and then under the
19 procedure laid out in the consent decree they would go to an
20 adjudications officer, and then under the auspices of that
21 consent decree come to me by way of motion. We have had other
22 individuals proceed in that way in terms of complaints over
23 candidacy and so forth. You may be familiar with that.

24 Why did you choose to do this and name them as an
25 actual defendant in the case?

1 MR. LEE: Right, your Honor. Simply because we're
2 asking for injunctive relief, because we feel that as a remedy
3 it is required that the Monitor be ordered to take action to
4 oversee action by the UAW.

5 THE COURT: So why didn't you proceed through the
6 initial case filing instead of file a new case and ask for that
7 relief?

8 MR. LEE: Because of the timing, your Honor, because
9 of the fact that there's such a small amount of time remaining
10 before -- and the votes are --

11 THE COURT: Then why didn't ask sooner?

12 MR. LEE: Because the turnout was not apparently as
13 low as it was until fairly recently. And also, your Honor, I
14 will say the Mancilla complaint did reference Mr. Barofsky as a
15 defendant. We followed that decision as well. It didn't seem
16 to be, unless I missed it, an issue for Judge Leitman.

17 However, because it's injunctive relief, I respect
18 your concerns about this matter, but if it was anything other
19 than injunctive relief we wouldn't feel that it would be
20 necessary.

21 THE COURT: All right. Thank you. Mr. Lee, anything
22 else? I think I understand your argument.

23 MR. LEE: Okay. Thank you, your Honor.

24 THE COURT: All right. Mr. Griffin, let's hear from
25 the UAW, please.

1 MR. GRIFFIN: Thank you, your Honor. In light of the
2 Plaintiff's focus on the meaningful right to vote, I want to
3 start by talking about the cases that he cites with respect to
4 that and go to the point that your Honor made about how a
5 ratification vote is a completely different matter than a vote
6 for union officer election. And the reason that it's different
7 is because Title 4 only applies to union officer elections.
8 There's only a jurisdictional issue with respect to Title 1
9 claims for union officer elections.

10 And, if you look at every single case that he cited
11 for the meaningful right to vote and the court's intervention
12 in the union processes to achieve the meaningful right to vote,
13 every single one of those cases was a contract ratification
14 vote, it was a bylaw amendment vote, it was a vote on something
15 within the union's internal process that didn't involve a union
16 officer election and didn't raise the jurisdictional issue that
17 comes when Congress determined that Title 4 was the remedy that
18 should be pursued. So that's the first point I'd like to make.

19 THE COURT: What's the reason do you believe that the
20 turnout is so low so far?

21 MR. GRIFFIN: We don't necessarily have a good answer
22 for that, your Honor. The turnout is approximately equivalent
23 to the turnout that has been gotten in the Teamster
24 international elections, which are mail ballot elections.

25 THE COURT: Yeah, I saw that. That's a direct

1 election --

2 MR. GRIFFIN: Yeah, it is a direct election. It was
3 originally pursuant to consent decree. It was originally run
4 by a court-appointed monitor. The election vendor involved in
5 this case has been involved -- in this election has been
6 involved in those elections for more than 20 years.

7 THE COURT: Well, that's not necessarily a great
8 endorsement if you're only getting about ten percent; right?

9 MR. GRIFFIN: I think the Teamsters got 14 percent and
10 had -- in the most recent election. And I would note, although
11 it's outside the record evidence, but I think it's capable of
12 judicial notice that the group that won in the Teamster
13 election was an insurgent group. It was a coalition. It was
14 not the group that was endorsed by the incumbents.

15 So the notion that somehow the low turnout necessarily
16 means that the incumbents will prevail or that there's some
17 conspiracy to depress turnout is belied by all of the
18 information that's in the Monitor's response, including the
19 declaration of Glen McGorty about all of the actions that have
20 been taken to notify the membership of both the election, all
21 the actions taken by both his office, the UAW and the election
22 vendor to get ballots out.

23 And the key point there, your Honor, is with respect
24 to the election notice. There's no question that the election
25 notice was legally sufficient under the provisions of the

1 Landrum-Griffin Act and the regulations. It was sent out more
2 than 15 days in advance of the vote.

3 And to the extent that the -- in this circuit the
4 burden that Plaintiff must carry to get a preliminary
5 injunction is very high, more stringent than a summary judgment
6 motion. If the notice was illegally sufficient, there's simply
7 no way they can make their likelihood of success on the merits
8 with respect to the notice.

9 THE COURT: Are you satisfied with the way the notice
10 of the election was distributed?

11 MR. GRIFFIN: Yes, your Honor. There's about --

12 THE COURT: Let me ask you this. Could you have done
13 better?

14 MR. GRIFFIN: It's theoretically possible that more
15 efforts could have been made, your Honor, but --

16 THE COURT: Would you agree that there are some people
17 that aren't aware of the election, some union members that
18 aren't aware of the election?

19 MR. GRIFFIN: Well, there certainly -- it's certainly
20 possible, your Honor, that some members are not aware of the
21 election. However, the relief that is sought here is not the
22 type of narrow relief that under the Supreme Court's Crowley
23 decision is allowable in this context. Crowley says when
24 you're this close to the end of the election Title 4 is the
25 remedy unless there is narrow targeted relief along the lines

1 of mailing ballots to certain individual members.

2 And one of the things that if you review the
3 declarations here you'll see that of the individuals who are
4 named in Plaintiff's Complaint, who had contacted the Monitor,
5 the Fitch declaration indicates that all of those people were
6 mailed ballots. So to the extent that the contacted the
7 Monitor any claim to get Crowley type narrow targeted relief is
8 mooted. It's already happened.

9 And so anything more, for example, the notion that
10 what should be done is distributed -- distribute packages of
11 ballots to various local unions where they could be picked up,
12 that notion gives rise to all kinds of ballot security issues,
13 to chain of custody issues, to questions about whether or not
14 the candidates were entitled to have observers present, would
15 be able to have people at all of the local unions where these
16 ballots would be available. It would require the court to
17 essentially order and police a complete redoing of the way the
18 Monitor has set up the election. And that is Title 4 relief,
19 your Honor.

20 THE COURT: Right. Aren't ballots mailed
21 automatically to members who have current information in the
22 LUIS --

23 MR. GRIFFIN: Yes. The ballots were mailed out to the
24 LUIS system and then, as described in the McGorty Declaration
25 attached to the Monitor's report and as described in the Fitch

1 declaration, there have been attempts to make sure to get
2 ballots to people who didn't receive them. And there is, in
3 fact, a provision in the rules that contemplates that some
4 people might not get a ballot and that they should ask for a
5 new ballot or a replacement ballot.

6 Moreover, your Honor, just one other point on the LUIS
7 system. The referendum which set up this election specifically
8 had pursuant to the provisions of the consent decree
9 involvement by the Office of Labor Management Standards from
10 the labor department.

11 And the consent decree said the reason the Office of
12 Labor Management Standards was supposed to be involved was to
13 assure that the referendum election was conducted in compliance
14 with the rules for union officer elections under Title 4 and
15 that after the -- the rules were supposed to be approved by
16 OLMS. And then after the election was -- the referendum was
17 conducted the Monitor was to submit a report to OLMS, and then
18 OLMS was to approve the report, and then it was submitted to
19 you for your approval.

20 The LUIS system that is now being criticized was the
21 system that was used during the referendum. It was updated
22 during the referendum with best efforts. OLMS signed off on
23 the referendum using that mailing list, and then your Honor
24 approved the referendum, which was conducted using that mailing
25 list.

1 Subsequently, as demonstrated in the declarations we
2 submitted and that the Monitor submitted, there have been
3 continuous ongoing efforts to make the LUIS list better and
4 more accurate, and it is better and more accurate than the list
5 that was used in the referendum. So at this point to say it's
6 not a good enough list, in light of the fact that the
7 referendum vote was approved using a less good list, strikes us
8 as something that just won't fly. And it certainly --

9 THE COURT: You have to admit there was no complaint
10 about that during the referendum election; correct?

11 MR. GRIFFIN: There was no complaint brought to your
12 attention under the consent decree concerning that?

13 THE COURT: Brought to anyone's attention, was there?

14 MR. GRIFFIN: Well, there were a number of people who
15 were requesting ballots. There was an issue about whether or
16 not the mailing list was adequate. OLMS and the Monitor
17 reported the results of the election as being compliant with
18 the requirements of Title 4, which include --

19 THE COURT: You said that there was some question
20 about the list being adequate. Who raised the concern?

21 MR. GRIFFIN: During the course of the election, it's
22 in the Monitor's report, there was a concern about whether --

23 THE COURT: Raised by whom?

24 MR. GRIFFIN: By the people who were conducting the
25 election, the Monitor's office.

1 THE COURT: The Monitor?

2 MR. GRIFFIN: Yeah.

3 THE COURT: All right. What's your bottom line
4 position?

5 MR. GRIFFIN: Our bottom line position here is, A,
6 this is a Title 4 case and the court doesn't have jurisdiction.
7 B, to the point that I haven't addressed, but that your Honor
8 asked a number of questions of Plaintiff's counsel, this
9 Plaintiff does not have standing, because he has no
10 individualized injury with respect to the Title 1 claims that
11 he raises.

12 THE COURT: How do you -- you know I'm going to
13 interrupt you; right?

14 MR. GRIFFIN: That's what I'm here for.

15 THE COURT: All right. How do you address the
16 argument that is Title 1 injury has to do not so much with his
17 own personal right or ability to vote, but his right to
18 participate in a meaningful election when his compatriots are
19 not given adequate notice?

20 MR. GRIFFIN: Your Honor, that's why I started with
21 the Title 1, Title 4 issue. I respond to that by saying all of
22 those meaningful right-to-vote cases are in the context of
23 other types of votes where the Title 4 remedy is not available
24 and not required under the statute as the way people should
25 proceed.

1 THE COURT: Because the election was for a different
2 reason?

3 MR. GRIFFIN: It was for contract ratification, it was
4 a bylaw amendment, it was whether or not there was going to be
5 a trusteeship. There are a number of cases. None of them are
6 cases that involve union officer elections.

7 THE COURT: All right. Now, I asked you your bottom
8 line position and you got through A and B, and then do you have
9 a C and D?

10 MR. GRIFFIN: I have a C with subparts.

11 THE COURT: All right. Okay.

12 MR. GRIFFIN: So C --

13 THE COURT: It's not interrogatories you mean?

14 MR. GRIFFIN: I'll try and be as straightforward and
15 not go into multiple subparts, your Honor.

16 THE COURT: All right.

17 MR. GRIFFIN: But essentially our view is that even if
18 you had jurisdiction, even if the Plaintiff had standing, when
19 you get to the preliminary injunction standards he doesn't have
20 likelihood of success on the merits because of the reason that
21 I said. There was adequate notice, and there's been efforts --
22 the ballots have been sent out pursuant to a -- the type of
23 mailing list that is allowed under the regulations, the LMRDA
24 regulations. So he doesn't have likelihood of success on the
25 merits.

1 Number 2, his harm is not irreparable, because he can
2 go to the Secretary of Labor and pursue a remedy under Title 4.
3 And that is, in fact, the way that Congress intended that union
4 elections should misconduct or alleged misconduct during them
5 should be addressed.

6 And the equities, your Honor mentioned earlier the
7 concern about the collective bargaining -- leadership being in
8 place for the collective bargaining negotiations. There are
9 five candidates for international president. There's a
10 requirement that if one candidate doesn't get a majority --

11 THE COURT: You've made that point very well about the
12 concern about a runoff and the time it will take and so forth.

13 MR. GRIFFIN: Okay. That's not too many subparts,
14 your Honor.

15 THE COURT: All right. Anything else you need to tell
16 me?

17 MR. GRIFFIN: That's it.

18 THE COURT: Thank you, sir.

19 Mr. Ross.

20 MR. ROSS: Thank you, your Honor. Good afternoon,
21 your Honor. Michael Ross for the Monitor.

22 We will largely rest on our written submission, your
23 Honor, but I'll briefly summarize the main points of the
24 Monitor's response.

25 As a bottom line matter, the Monitor believes the

1 injunction should be denied and the Complaint dismissed for a
2 few independent reasons. First, as we've talked about today,
3 Plaintiff doesn't have standing to pursue the claims he's
4 pleaded. Plaintiff's a candidate for elected office and does
5 not claim that he personally did not receive notice of the
6 election or that he personally did not receive the ballot.

7 Second, there's no subject matter jurisdiction. I
8 think there's been extended discussion about the Title 4, Title
9 1 issue today.

10 Third, with regard to the Monitor specifically as a
11 defendant, as a judicial officer, the Monitor is not a proper
12 defendant under the LMRDA for the reasons set forth in the
13 Monitor's brief, which concerns the relationship between a
14 union and the union's members. And for the reasons stated in
15 the brief, the Monitor isn't a proper defendant as an
16 instrument of the court.

17 And then last on the merits, your Honor, sufficient
18 notice was provided to union members through the mailing of
19 ballots as a regulatory matter.

20 THE COURT: Does the Monitor have any concerns about
21 the nature of the response that they're sort of perhaps an
22 anemic turnout among the members and as to why that might be?

23 MR. ROSS: So, your Honor, there isn't a record here
24 that speaks to that specifically other than there is, you know,
25 in the record the comparator of the Teamsters being 14 percent

1 and a comparably-sized union as far as direct election of
2 international officers.

3 There's obviously the referendum, which is another
4 data point. And so those are the two data points in the record
5 with regard to the --

6 THE COURT: Right. And that of itself should cause
7 some concern, shouldn't it, or is it just a question of apathy,
8 voter apathy?

9 MR. ROSS: I don't think there's a basis in the record
10 to conclude that it's a matter of concern that the number is
11 unduly low in this context.

12 THE COURT: Well, I'm talking about the context. You
13 have the Teamster election. I have no idea if there was a
14 notice issue there. And, if that notice was perfect, then that
15 would be a very helpful data point. You have the context of
16 the referendum. And the Monitor indicated that there were
17 problems with notice because of the deficits in the LUIS system
18 that needed to be improved.

19 So when you talk about context and using it as a --
20 using those elections as comparators, I would think that the
21 Monitor would at least have some question about it, if not a
22 concern.

23 MR. ROSS: Well, and, your Honor, with regard to the
24 issues with the LUIS system, as context for that the comments
25 that have been referred to today in the early reporting of the

1 Monitor related to the fact that that system was not
2 established as a mechanism originally for direct election, and
3 so substantial work needed to be put in from the outset of the
4 monitorship to improve that as a tool. And that work has been
5 done for a period of a year and a half.

6 THE COURT: What was it used for originally?

7 MR. ROSS: It's a mechanism for communication between
8 the local unions and the international. And certainly Mr.
9 Griffin can speak to it further, but --

10 THE COURT: Isn't it primarily to -- oh. It's not
11 primarily then to get information out to the individual
12 members?

13 MR. ROSS: The point, your Honor, to be clear is that
14 it's not -- it wasn't -- it's a mechanism -- because the union
15 is now first implementing a direct election system, it was used
16 in the referendum for the first time for that purpose is the
17 point I was making.

18 THE COURT: Oh, okay. And what was it used for
19 before? You said -- I thought you had mentioned something
20 about improving communication or facilitating communication
21 between the International Union and the locals, which kind of
22 cut out the membership.

23 MR. ROSS: Sorry. What I meant to say is as set forth
24 in the record the LUIS system has information about all the
25 members that is inputted through the local unions. There's 600

1 plus local unions that input the information about members.

2 THE COURT: Before the direct election, before the
3 referendum, was it ever used as a method of contacting the
4 membership to provide any information individually?

5 MR. ROSS: I don't have information on that, but I
6 could confer with a colleague about that specific question.

7 THE COURT: I think I would be interested in that
8 answer if you'd like to take a moment.

9 MR. ROSS: I will. Excuse me, your Honor.

10 (At 2:11 p.m., briefly off the record.)

11 MR. ROSS: I just wanted to clarify, your Honor. So,
12 yes, the system was historically used as a method of
13 communicating with members, for example, to communicate the
14 Solidarity magazine that's referenced in the papers.

15 Your Honor, just to finish summarizing the points, you
16 know, with regard to notice, again sufficient notice was
17 provided under the regulations in addition to numerous
18 additional measures, which are set forth in the briefing,
19 including in the McGorty declaration.

20 With regard to ballot distribution, your Honor, the
21 Monitor set up --

22 THE COURT: I'm sorry, Mr. Ross, to interrupt you.
23 Sometimes these questions just emerge, you know. Let me ask
24 you this. Was the LUIS system ever used to either distribute
25 ballots, notification or information in terms of ratification

1 of votes?

2 MR. ROSS: That's not a question I have the answer to,
3 but I don't believe so. But again, if that's a question on
4 which the court would like me to confer, I can do that as well.

5 THE COURT: The other question that I'm sure you don't
6 have the answer to is how was information distributed to
7 membership for ratification votes? Do you have any idea about
8 that?

9 MR. ROSS: Ratification vote specifically in --

10 THE COURT: Contract ratification.

11 MR. ROSS: Again, your Honor, I'd have to confer on
12 that specific question with the union.

13 THE COURT: Mr. Griffin, are you able to provide any
14 information on that?

15 MR. GRIFFIN: Your Honor, I'm not at this point. I
16 would say, though, that depending on what contract ratification
17 vote was involved, in some instances local union in-person
18 membership meetings ratify contracts. Whether the Big 3
19 contracts are ratified consistently across the membership by
20 mail ballot versus by in-person ratification, we're in the
21 process of checking it to give you an accurate answer.

22 THE COURT: All right. Thank you.

23 I'm sorry, Mr. Ross, to interrupt you. I guess I'm
24 not sorry, but I did interrupt you. You may proceed.

25 MR. ROSS: Understood, your Honor. With regard to

1 ballot distribution, I think that issue has been addressed
2 here. And, your Honor, with respect to that we'll refer your
3 Honor to the papers as well as the McGorty and other
4 declarations.

5 For the reasons, you know, set forth in the briefing,
6 the Monitor's position has been set out. We'd be happy to
7 answer further questions that the court may have.

8 THE COURT: Well, the only other questions I'd like
9 you to answer are the ones I've asked. If you can furnish that
10 information to me promptly, it would be very helpful.

11 MR. ROSS: Yes, your Honor. The --

12 THE COURT: I'm talking about a supplemental filing.
13 I don't mean --

14 MR. ROSS: Well, your Honor, the court's questions,
15 I'm sorry, were answered specifically in the filing of the
16 Monitor yesterday, the six questions that were answered.

17 THE COURT: No. I'm talking about the questions I
18 just asked you.

19 MR. ROSS: Oh, I'm sorry. Of course, your Honor.

20 THE COURT: Yeah, right. Okay. Anything else then,
21 Mr. Ross?

22 MR. ROSS: No, nothing further.

23 THE COURT: Thank you for your presentation.

24 MR. ROSS: Thank you very much.

25 THE COURT: Mr. Lee, any follow-up.

1 MR. LEE: No, your Honor. If you have further
2 questions for me, I'd be happy to answer them.

3 THE COURT: No, I don't have any -- well, do you have
4 any answers to the questions I asked Mr. Ross?

5 MR. LEE: Your Honor, in the 75-year history of the
6 UAW, there's no history of providing direct elections. The
7 contract ratification --

8 THE COURT: Right. But individual members do vote on
9 contract ratifications?

10 MR. LEE: Correct, your Honor. And those tend to
11 happen in large mass meetings where ballots are distributed at
12 union halls. That would be a very easy and reasonable remedy,
13 which this court could adopt here.

14 THE COURT: Okay. Thank you very much.

15 MR. LEE: Thank you, your Honor.

16 THE COURT: All right. I understand your positions.
17 I'm going to give you a written decision promptly, I hope. If
18 you could furnish me that information by close of business
19 today or first thing in the morning, that would be helpful. I
20 will devote my immediate attention to this, because I
21 understand that time is of the essence.

22 Thank you for your presentations. You may recess
23 court, Mr. Shaffer.

24 THE CLERK: All rise. Court is in recess.
25

1 (The proceedings were concluded at 2:15 p.m.)

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7 CERTIFICATE OF COURT REPORTER

8
9 I, Sheila D. Rice, Official Court Reporter of the
10 United States District Court, Eastern District of Michigan,
11 appointed pursuant to the provisions of Title 28, United States
12 Code, Section 753, do hereby certify that the foregoing pages
13 is a correct transcript from the record of proceedings in the
14 above-entitled matter.

15
16
17 s/Sheila D. Rice

18 Sheila D. Rice, CSR-4163, RPR, RMR
19 Federal Official Court Reporter
United States District Court
Eastern District of Michigan

20 Date: 11/23/2022
21 Detroit, Michigan