

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANN CONVERSO, individually and as)
President of the United American Nurses,)
JOAN CRAFT, individually and as)
Vice-President of the United American Nurses)
and ILLINOIS NURSES ASSOCIATION,)
)
Plaintiffs,)
v.)
)
UNITED AMERICAN NURSES,)
)
Defendant.)

No. 09-cv-7336

JUDGE BLANCHE M. MANNING
MAGISTRATE JUDGE MORTON DENLOW

COMPLAINT FOR INJUNCTIVE, DECLARATORY, and OTHER RELIEF

Plaintiffs Ann Converso, individually and as President of the United American Nurses, Joan Craft, individually and as Vice-President of the United American Nurses and Illinois Nurses Association, for their Complaint against Defendant United American Nurses, allege as follows.

Introduction and Overview

1. A prime purpose of this Complaint is to secure compliance with the terms of the Constitution of the United American Nurses (“UAN”) and, specifically, those provisions of the UAN’s Constitution establishing the procedure for either UAN’s dissolution or, in the alternative, amendment thereof. Driving the need for the immediate filing of this Complaint, is the imminent disappearance and dissolution of the UAN into a union to be newly-formed on December 7, 2009 in a manner which is ultra vires and in violation of specific provisions of UAN’s Constitution. Plaintiffs respectively are the President, Vice-President, and a Constituent Affiliate of the UAN. As things presently stand, beginning December 7, 2009 there is to be a

founding convention of a new national union of Registered Nurses, the National Nurses United (“NNU”), into which the UAN immediately will be merged and disappear. Before the scheduled merger into NNU and resulting dissolution of the UAN occurs, Plaintiffs seek compliance with the governing provisions of the UAN’s Constitution. As set forth below, the Constitution of the UAN requires a 75% majority vote of the entire UAN membership, preceded by a 75% majority vote of the UAN’s National Labor Assembly, in order to dissolve the organization. Alternatively only, the UAN Constitution requires that any amendments be approved by a two-thirds (2/3) majority vote of the National Labor Assembly of the UAN. Neither of these pre-conditions in the UAN Constitution have occurred in connection with the UAN’s forthcoming merger into the NNU followed by its immediate dissolution. Therefore, in their Complaint, Plaintiffs, inter alia, seek to enjoin UAN’s upcoming so-called “merger” into the NNU pending proper compliance with the provisions of UAN’s Constitution. Absent injunctive relief, the merger-dissolution will occur and Plaintiffs and numerous INA Affiliates will suffer irreparable harm, as there can be no effective remedy after the merger – dissolution occurs.

2. This action is being filed now because earlier today proponents of the alleged merger of UAN into the NNU concluded an unauthorized secret mail ballot election of delegates to the UAN’s National Labor Assembly which, they contend, now authorizes the merger to proceed at the NNU’s Founding Convention to be held in Phoenix, Arizona on December 7 and 8, 2009. This Complaint is being filed at the earliest opportunity following today’s tabulation of results of what Plaintiffs’ contend is an unauthorized secret ballot election.

Parties

3. Plaintiff Ann Converso is the duly elected President of the UAN. She is a member of the UAN. Converso is suing in her individual capacity and as President of UAN.

4. Plaintiff Joan Craft is the duly elected Vice-President of the UAN. She is a member of the UAN. Craft is suing in her individual capacity and as Vice-President of UAN.

5. The Illinois Nurses Association (“INA”) is a labor organization representing Registered Nurses in Illinois and is a Constituent Affiliate of the UAN. INA was one of the Founding Affiliates of the UAN when UAN was formed.

6. Defendant UAN is a labor organization representing Registered Nurses throughout the United States. It is composed of 13 Affiliates. Its headquarters are located in Silver Spring, Maryland.

Jurisdiction and Venue

7. This Court has jurisdiction by reason of Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, and 28 U.S.C. § 1331.

8. Venue is proper in this District by reason of 29 U.S.C. § 185(a) and (c) because, *inter alia*, UAN is, in part, engaged in representing or acting for members of its Affiliate, the INA, in this District. The INA, a constituent Affiliate of the UAN, is located here and some of the complained of activities in connection with the challenged merger-dissolution have occurred here. UAN has conducted business in this District.

**Background – The UAN’s Constitution -- Provisions Dealing with
Dissolution or Amendment**

9. Plaintiffs’ Complaint is predicated upon non-compliance with UAN’s Constitution and initially seeks injunctive relief followed by a declaratory judgment regarding compliance with the UAN’s Constitution prior to effectuating a dissolution of the labor union.

10. Article X of the UAN’s Constitution is entitled “**DURATION AND DISSOLUTION.**” (Emphasis in original.) It provides that the duration of the UAN “. . . shall be perpetual or until dissolved as set forth in [Article X] § B . . .”. The UAN Constitution is attached hereto as Exhibit A.

11. Article X. B. 1. of the UAN’s Constitution establishes a very specific procedure for dissolution of the UAN:

X.

* * *

B. Dissolution.

1. The National Labor Assembly, by a seventy-five percent (75%) majority vote, may direct the Executive Council to ballot the membership on the issuance of UAN dissolution, provided that the subject of dissolution is on the Advance Agenda for that National Labor Assembly meeting. Dissolution shall only be approved by a seventy-five percent (75%) majority vote of the membership.

12. Alternatively, the UAN Constitution may be amended only as set forth in Article I. E. as follows:

I.

* * *

- E. This Constitution may be amended, added to, or any part or parts thereof may be repealed by a two-thirds (2/3) majority vote of the

National Labor Assembly at any meeting of the National Labor Assembly, in accordance with the procedures set forth in Article VI. F., provided the NLA Delegates receive ninety (90) days written notice of the proposed action.

13. The UAN Constitution contemplates the growth of the UAN by permitting the entry of subordinate Affiliates into the organization.

14. Article I. D. of the UAN Constitution provides that the UAN's Executive Council is empowered to enter into affiliation agreements subject to expeditious ratification by the National Labor Assembly. The only use of the term affiliate or affiliation in the UAN Constitution arises in the context of subordinate labor organizations, such as State Affiliates, joining into, i.e. becoming affiliated with, the parent UAN.

15. As further set forth below, there has been no attempt to comply with the provisions of either Article X. B. (dissolution) or I. E. (amendment) of the UAN Constitution in connection with the forthcoming merger-dissolution of the UAN.

16. The UAN's seven-member elected Executive Council is defined in Article V of the UAN Constitution. It is comprised of the President, Vice-President, Secretary-Treasurer, and four Directors. In general, the Executive Council is responsible for controlling the affairs of the UAN between meetings of the National Labor Assembly.

17. The National Labor Assembly ("NLA") is defined in Article VI of the UAN Constitution. It is the highest governing body of the UAN and consists of delegates elected or selected by and from UAN's various Affiliates.

Desire to Form a "Super-Union" of RN's

18. In 2009, discussions were had with the goal of forming a nationwide "Super-Union" of Registered Nurses for collective bargaining and other purposes.

19. The three labor organizations most currently involved in those discussions are the California Nurses Association/National Nurses Organizing Committee, the Massachusetts Nurses Association, and the UAN.

20. As a result of these discussions, on July 29, 2009, certain representatives of the UAN, CNA, and MNA, reached an “Agreement of Consolidation and Affiliation United American Nurses, AFL-CIO (“UAN”), California Nurses Association, National Nurses Organizing Committee (“CAN/NNOC”) and Massachusetts Nurses Association (“MASSNA”),” subject to approval by the respective organizations. (Hereinafter “Merger Agreement”.) (Attached hereto as Exhibit B.)

21. Members of the UAN’s Executive Council were not present at negotiations which lead to the drafting of the actual Merger Agreement.

22. On July 31, 2009, UAN’s seven-member Executive Council voted 5-2 to approve the draft of the Merger Agreement. UAN Staff, its General Counsel and certain proponents repeatedly characterized the proposed transaction as a mere “affiliation.”

23. Immediately thereafter, Plaintiffs Converso, President of the UAN, Craft, Vice-President of the UAN, and Executive Council Member Kathleen Gettys, having had a more deliberate opportunity to review the provisions of the Merger Agreement, came to the firm conclusion that it was not an “Affiliation” Agreement as it benignly had been captioned in the Merger Agreement and so described by pro-merger proponents.

24. Since then, Plaintiffs Converso and Craft, and Executive Board Member Gettys repeatedly have attempted to insure compliance with the provisions of the UAN Constitution, i.e. Article X, prior to any attempt to dissolve the UAN under the fiction of the transaction being a

mere “affiliation” which would enable proponents of the merger to bypass the procedures set forth in the UAN Constitution.

25. Plaintiffs’ efforts to secure compliance with the UAN Constitution prior to the imminent dissolution of the UAN have been unsuccessful. Proponents of the Merger Agreement, instead of complying with the aforesaid dissolution provisions of Article X of the UAN’s Constitution or, in the alternative, the provisions for first amending the UAN Constitution to permit the Merger Agreement to go forward, have treated the Merger Agreement as if it were a simple affiliation of a subordinate labor organization into the UAN.

26. The proponents of the Merger Agreement have asserted that the Merger Agreement now will go forward because they contend that on November 23, 2009 a majority of the National Labor Assembly by secret ballot voted for it, instead of following the dissolution provision of Article X. B. of the Constitution or first amending the UAN Constitution pursuant to Article I. E.

The “Merger Agreement” Results in the Dissolution of the UAN

27. The following constitutes the numerous ways in which the Merger Agreement does not constitute an “affiliation” within the meaning of the UAN Constitution and, more significantly, demonstrates that the Merger Agreement if allowed to go forward actually will result in the dissolution of the UAN.

A. Under the Merger Agreement if allowed to proceed, only the California Nurses Association/National Nurses Organizing Committee (“CNA”) and the Massachusetts Nurses Association (“MNA”) will retain their separate identities. For purposes of this litigation, Plaintiffs agree that CNA and MNA may be “affiliating” into

the new NNU. However, nothing in the Merger Agreement in any way bespeaks of the UAN being affiliated into the NNU, as is true for CNA or MNA. The only UAN “affiliations” into the new NNU will be the individual UAN Affiliates, but not the UAN itself.

B. Under the provisions of Article I. A., UAN and CNA/NNOC agree, “to consolidate and affiliate their separate organizations into one national labor organization to be known as National Nurses United . . .”. (Emphasis added.) In contrast, under the provisions of Article I. B. and I. C., MNA and CNA separately are recognized as having affiliat[ed] into the newly created National Nurses United as separate affiliates. There is no such “affiliation” recognized in the Merger Agreement for the UAN. Thus, under the Merger Agreement, the UAN disappears and/or loses its independent existence.

C. Under Article VI. A. of the Merger Agreement, if allowed to proceed, “. . . all existing UAN Affiliates shall become Affiliates of National Nurses United . . .” Therefore, the UAN disappears and/or loses its independent existence because its Affiliates will leave UAN and become affiliated solely with the NNU. As set forth elsewhere in the Merger Agreement, the Affiliates now have a financial obligation and other responsibilities to the new national union but no longer to the UAN.

D. Under Article VII. A. and B. of the Merger Agreement, if allowed to proceed, UAN members now become members of the new NNU and outstanding obligations that are owed to the UAN by UAN members and Affiliates will be satisfied by paying those outstanding obligations to the new NNU.

E. Under Article VIII of the Merger Agreement, if allowed to proceed, entitled “Organizing Principles, UAN Local Affiliates now become beholden to only the new NNU, and no longer to the UAN.

F. Under Article IX of the Merger Agreement, if allowed to proceed, the new NNU not only will receive all dues payments pursuant to check-off provisions in any collective bargaining agreement, it (NNU) becomes the exclusive collective bargaining representative of any bargaining unit currently represented by UAN under a national collective bargaining agreement (such as the Veteran’s Administration). In contrast, pursuant to Article IX. D., entities other than the UAN maintain their bargaining rights. In short, under Article IX of the Merger Agreement, not only does the UAN disappear with respect to any collective bargaining representation which currently it has, its assets and funds will be transferred to and/or under the control of the new entity and no longer property of the UAN.

G. Under Article X of the Merger Agreement, if allowed to proceed, UAN Affiliates now will pay dues not to the UAN but to the new NNU. In addition, all pre-existing financial obligations owed to the UAN by any UAN Affiliate will become obligations to the new NNU. For example, the UAN’s Mobilization Fund, which is in excess of \$2,300,000.00 will be transferred to the new NNU.

H. Under Article XI of the Merger Agreement, all current UAN employees will be offered comparable employment with the new NNU, “under such terms and conditions as shall be established by the National Executive Director (of the new NNU)

...”. In short, UAN no longer will have any staff if the Merger Agreement is allowed to proceed.

I. Under Article XII of the Merger Agreement, the new NNU will seek a charter from the National AFL-CIO which charter will “supercede the Charters currently held by the [UAN . . .].”

J. Most significantly, pursuant to Article XIII. A. of the Merger Agreement UAN, “. . . **shall terminate its separate existence** . . .” and “. . . will continue its existence solely as necessary to effectuate the Merger Agreement and conclude an orderly consolidation . . .”. (Emphasis added.)

K. Pursuant to Article XIII. B., all of UAN’s property, rights, etc. are transferred to the new NNU.

28. In short, the above provisions of the Merger Agreement, if allowed to proceed, require the dissolution of the UAN without compliance with the provisions of Article X. B. of the UAN Constitution.

NNU’s Proposed Constitution Establishes the Dissolution of the UAN

29. Separate from the aforesaid provisions of the Merger Agreement which spell the demise-dissolution of the UAN, the proposed Constitution of the National Nurses United, AFL-CIO, which is attached as Exhibit A to the Merger Agreement, also demonstrates that this is not an affiliation but rather a complete dissolution of the UAN.

30. The following provisions of the proposed Constitution of the National Nurses United, AFL-CIO demonstrate the intent to dissolve UAN and bring about its demise.

A. Under Article II. A. of the proposed Constitution, UAN members and UAN Affiliates become members of the new NNU. All financial obligations run in favor of the new NNU. Former UAN Members will no longer have their dues paid to the UAN.

B. Pursuant to Article III. A. of the Constitution, the various Affiliates of the NNU are defined. Under Article III. A. the UAN is not defined as an affiliate. The UAN does not have any rights as an NNU affiliate under that proposed Constitution. Instead, UAN's former Local Affiliates now become affiliated with the new NNU and no longer bear any affiliation with the UAN.

C. Pursuant to Article III. B., former UAN Affiliates now submit copies of their collective bargaining agreements to the new NNU Executive Council and must insure that their members are members of the new NNU but not the UAN.

D. Pursuant to Article VII. A., B. and C., Affiliates must transmit dues to the new NNU. Local Affiliates are now financially beholden only to the new NNU and no longer to the UAN.

31. The aforesaid provisions of the proposed NNU Constitution, which is expected to become effective on or around December 7, 2009 demonstrate the end of the UAN's existence and the loss of all UAN affiliation.

Events Leading to Secret Mail Ballot Election

32. Notwithstanding the repeated objections of Plaintiffs and a majority of UAN Affiliates to this being considered a benign "affiliation," and notwithstanding the desires of the Plaintiffs to secure compliance under Article X of the UAN Constitution before proceeding with

this as a Merger Agreement, a meeting of the National Labor Assembly was scheduled for November 2, 2009 in Orlando, Florida to approve the Merger Agreement.

33. It was the intent of the proponents of the Merger Agreement to approve it by a simple majority of NLA Delegates.

34. The November 2, 2009 NLA meeting failed due to a lack of quorum.

35. First, UAN President Ann Converso declared a lack of quorum under Article VI.G.1 due to an insufficient number of State Affiliates being in attendance. She then left the meeting declaring that it lacked a quorum.

36. Next, Vice-President Joan Craft also declared that the NLA meeting lacked a quorum of Affiliates and declared it over. Vice-President Craft then left.

37. The NLA Parliamentarian agreed that the NLA meeting lacked a quorum and that no official business could be conducted.

38. Nevertheless, the pro-merger members of the Executive Council and pro-merger NLA Delegates in attendance at the November 2, 2009 meeting purported to continue doing business.

39. Shortly thereafter, Plaintiffs learned that the American Arbitration Association out of its New York, New York office, was going to conduct a secret mail ballot election of all NLA Delegates.

40. Neither President Converso nor Vice-President Craft knew of any decision in which UAN authorized AAA to conduct a secret mail ballot election, nor are they aware of any Executive Council meeting which authorized the expenditure of funds for AAA to proceed with a secret mail ballot.

41. There is no provision in the UAN Constitution which authorizes or approves of NLA Delegates being permitted to vote by a secret mail ballot. Article VI. H. 2 requires that, at a minimum, “All voting other than in elections shall be by voice vote, except that a standing vote shall be taken of the request of any member of the National Labor Assembly.”

42. Voting at all prior meetings of both the UAN’s Executive Council and NLA either were public or the position of the voters easily could be ascertained.

43. Notwithstanding protests by President Converso and Vice-President Craft, AAA has proceeded with conducting this alleged secret mail ballot election.

44. On Monday, November 23, 2009 AAA tallied the results of the secret mail ballot election.

45. The results tallied by AAA were 40 in favor of the alleged Merger Agreement and 22 Delegates voting “no”.

46. Based solely on the results of this unauthorized secret mail ballot election, proponents of the Merger Agreement now are moving forward to attend the Founding Convention of the new NNU beginning December 7, 2009 thereby committing UAN to its dissolution.

47. Of the 13 UAN Affiliates, at least nine (9) are supportive of this litigation.

The Need for Declaratory and Injunctive Relief

48. Plaintiffs have insisted upon compliance with the provisions of either Article X (Dissolution) or, in the alternative, Article I. E. (Amendment) of the UAN Constitution prior to the dissolution of the UAN.

49. If the Merger Agreement is allowed to proceed, as set forth above, the UAN will disappear and the various Affiliates and individual members of the UAN will not have had any opportunity to exercise their rights under the UAN Constitution.

50. The selection of the date for the Founding Convention of the new NNU, December 7, 2009 is not compelled by any external force, statute, or other compelling business need. Rather, that date appears solely to have been a consensual date reached by negotiators representing the various parties who are forming the new NNU.

51. The members of the UAN and its various Affiliates will suffer great and irreparable harm if the Merger Agreement is allowed to proceed as anticipated on December 7, 2009 without compliance with the provisions of the UAN's Constitution. UAN members and Affiliates will be deprived of their representation by their existing affiliation with the UAN and, instead, will be forced to join and participate in a new labor union, the NNU, not of their own choosing and upon which they never have had an opportunity to vote.

52. Great and irreparable harm will occur if the merger is allowed to proceed without prior compliance with the UAN Constitution. All of the assets of the UAN will be commingled into a new labor union, one which has not been properly selected. Dues from UAN Affiliates and their members henceforth will be directed into this new labor union, over the objections of a majority of UAN Affiliates. UAN Affiliates and their members will no longer have collective bargaining representation by and support of the UAN. The majority of UAN Affiliates and the members represented by those Affiliates will be forced to accept representation by a new labor union not of their choosing.

53. Absent immediate injunctive relief the Court will not be able to fashion an effective remedy if the Merger Agreement is allowed to proceed. The UAN will have disappeared.

54. Plaintiffs have demonstrated a clear legal right to relief, which will be thwarted if the Merger Agreement is allowed to proceed.

55. Plaintiffs have filed this litigation as soon as it ripened into a concrete case. With the announcement today of the purported election results by the AAA, the pro-merger faction is now moving forward, claiming authorization simply by reason of an alleged majority vote of NLA Delegates which was by an unauthorized secret mail ballot election.

56. The balance of equities favors Plaintiffs.

57. The public interest is best served by securing compliance with the Constitution of a labor organization before it is irrevocably dissolved.

WHEREFORE, Plaintiffs pray for relief as follows:

A. Issuance of an injunction, both temporary and permanent, enjoining the United American Nurses, and anybody acting in concert with it, from proceeding with any merger or affiliation into a newly-formed National Nurses United until proper compliance with the provisions of the UAN Constitution have been honored;

B. For declaratory relief that the proposed Merger Agreement is in reality an agreement which will result in the dissolution of the UAN and its demise;

C. Declaratory judgment that before effectuating the dissolution of the United American Nurses, that all UAN members, Affiliates, and persons acting in concert with them must comply with the provisions of Article X of the UAN Constitution;

- D. For attorney's fees and costs; and
- E. For such other and further relief as may be just and necessary.

Respectfully submitted,

**ANN CONVERSO, individually and as
President of the United American Nurses, JOAN
CRAFT, individually and as Vice-President of
the United American Nurses and ILLINOIS
NURSES ASSOCIATION**

Dated: November 23, 2009

/s/Stanley Eisenstein
Stanley Eisenstein

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