

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

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

Plaintiff, )

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

Judge J. Nicholas Ranjan

vs. )

***ELECTRONICALLY FILED***

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

Defendant. )

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CIVIL CONTEMPT**

Plaintiff, Newspaper, Newsprint, Magazine, and Film Delivery Drivers, Helpers, and Handlers, International Brotherhood of Teamsters, Local Union No. 211, (hereinafter “Union” or “Local 211”) files this Memorandum of Law in Support of its Motion for Civil Contempt.

The Union respectfully urges the Court to grant Plaintiff’s Motion for Civil Contempt because Defendant has openly and brazenly defied the Court’s order. A finding of civil contempt requires the following three elements: (1) the existence of a valid court order; (2) which Defendant knew about; and (3) which Defendant disobeyed. *John T. v. Delaware County Intermediate Unit*, 318 F. 3d. 545, 552 (3d. Cir. 2003); citing *Harris v. City of Philadelphia*, 47 F.3d. 1311, 1326 (3d. Cir. 1995).

Defendant’s conduct in this case easily satisfies each of these three requisite elements. A valid court order existed because the Court issued a Memorandum Opinion [ECF No. 19] and Order of Court [ECF No. 20] on November 27, 2019 granting Plaintiff’s Motion for Preliminary

Injunction [ECF No. 2] and denying Defendant's Motion to Dismiss [ECF No. 14]. That Order required Defendant to "maintain the status quo under the CBA regarding healthcare coverage, manpower, shift scheduling, wages and layoffs pending the outcome of the contractual grievance process until a final decision" on the issues raised by the Union's grievance. [ECF No. 20]. By its terms, the Order did not become effective until Plaintiff deposited security with the Court. [ECF No. 20]. The Union deposited the required security with the Court on November 27, 2019 [ECF No. 21], and the Order thus became effective on that day. On December 2, 2019, Defendant filed a Motion to Stay the District Court's Order pending its appeal to the Third Circuit. On December 17, 2019, Plaintiff filed a Motion for Civil Contempt contending that the Defendant refused to abide this Court's Order to restore the status quo.

In response to Plaintiff's Motion for Contempt [ECF No. 29] Defendant contended the scope of this court's order was unclear. By Order dated December 27, 2019, this Honorable Court denied Defendant's application for stay pending appeal as well as Plaintiff's Motion for Contempt opining that although the Order was clear, the Court favored the Defendant with the benefit of any doubt asserting that there "may have been some confusion" and therefore it clarified its Order. In its Memorandum Opinion of December 27, 2019, the Court made it crystal clear that "With this clarification and unless the Third Circuit stays this Court's present decision, the Court expects immediate and full compliance with its injunctive order." [ECF No. 37].

Although Defendant has filed a Motion for Stay to the US Court of Appeals for the Third Circuit, that Court has not granted such stay and Defendant remains recalcitrant in refusing to abide by this Court's Order. It is axiomatic that unless a stay is granted to this Court's decision, this Court's decision is undiminished by the pendency of any appeal. Unless the stay is granted the defendant must abide by the District Court's decision. *See Deering Milliken, Inc. v. Federal Trade Com.*, 647 F.2d 1124, 1129 n.11 (D.C. Cir. 1978) ("[I]f it awards an injunction, the

injunction is effective unless stayed; if it refuses an injunction, the prevailing party may engage in the conduct that was sought to be restrained unless an injunction pending appeal is obtained . . . .”) (citing *Hovey v. McDonald*, 109 U.S. 150, 161 (1883) (“an appeal from a decree granting, refusing or dissolving an injunction does not disturb its operative effects”)); *see also Mylan Labs v. Leavitt* 484 F. Supp. 2d 109 (D.D.C. 2007). As evidenced by Exhibits 1 and 2 attached to the Motion for Civil Contempt, as well as Molinero Affidavit, it is clear beyond peradventure that Defendant has refused to reinstate the status quo and abide by this Court’s Order while it attempts to obtain the stay from the Court of Appeals. Moreover, when Plaintiff attempted to process the grievance to arbitration dealing with the issues that are required to be restored by this Court’s Order of December 27, 2019, the Defendant made it clear that it will not be proceeding to arbitration let alone restoring the status quo. (Exhibits 1 and 2 attached to Plaintiff’s Motion for Civil Contempt)

Adding insult to injury it is most remarkable that not only has the Defendant refused to reinstate the status quo dealing with the changing of employee schedules but unilaterally changed all employee schedules effective January 1, 2020, in clear and blatant violation of the parties agreement as well as this Court’s Order. (See Molinero Affidavit submitted herewith)

This woeful and blatant violation of the Court’s latest Order deserves a finding of contempt with overwhelming sanctions and Plaintiff respectfully requests that Defendant be held in contempt of court for its failure to obey the December 27, 2019, Order of Court.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: /s/ Joseph J. Pass  
Joseph J. Pass, Esquire  
Pa. I.D. #00044  
jjp@jpilaw.com

*/s/ Patrick K. Lemon*

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Patrick K. Lemon, Esquire

Pa. I.D. # 316438

pkl@jpilaw.com

219 Fort Pitt Boulevard

Pittsburgh, PA 15222

Phone: 412-281-3850

Fax: 412-281-1985

Pa. Firm #: 141

**CERTIFICATE OF SERVICE**

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

/s/ Joseph J. Pass