

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

David W. Noble,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17-cv-01255-DBF
	)	
National Association of Letter Carriers, AFL-CIO,	)	
	)	
Defendant.	)	

**MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT  
AND SUPPORTING MEMORANDUM**

Plaintiff David W. Noble moves the Court to grant him leave to file his second amended complaint (submitted with this motion, along with the redlined version required by paragraph 3(b) of the General Order and Guidelines).

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. Plaintiff, a member of the National Association of Letter Carriers (“NALC” or “the union”), initiated this action pro se in June 2017, alleging several counts relating to communications about two different subjects: the ratification of a proposed collective bargaining agreement and his candidacy for president of the union.

2. While the action was pending, the agreement at issue on the first several counts was ratified and the union successfully moved to dismiss as moot the counts related to the contract ratification process. DN 24.

3. In August 2017, plaintiff asked to be allowed to send union members campaign literature supporting his candidacy for the presidency, using the union’s email list. He amended his complaint in September, 2017, to add Count 6, which alleged a claim under section 401(c) of the Labor-

Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481(c), based on the union's refusal to grant that request. The union only announced on April 3, 2018, how it would handle campaign literature emailing requests such as plaintiff's. Renfroe Affidavit, DN 36, ¶4. It retained the services of an outside vendor to send candidates' campaign email. However, that vendor is using a price schedule that is not only significantly higher than what the plaintiff was charged for sending campaign literature by email when he was a candidate in the 2014 election, but also significantly higher than the standard market price for sending large amounts of email to a list of tens of thousands of email addresses. Proposed Second Amended Complaint, ¶¶ 11-13; DN 36, ¶ 11.

4. Plaintiff believes that the union's actions do not constitute a lawful response to his August 2017 request to be allowed to send campaign email; he has argued in response to NALC's motion to dismiss on mootness grounds that a live controversy remains between plaintiff and defendant. DN 39, at 2. In its reply brief supporting its motion to dismiss, defendant NALC has argued that until a motion for leave to amend has been filed, mootness must be assessed according to the allegations of the original, pro se complaint. DN 40, at 2-3.

5. Plaintiff was previously pro se and was, therefore, entitled to application of the rule that his original, pro se pleadings are to be liberally construed. However, rather than asking the Court to address mootness based on the foregoing arguments, and to ensure that the Court has a concrete controversy on which it can rule, plaintiff seeks leave to file the accompanying proposed second amended complaint. The proposed complaint alleges that Noble asked on April 17 to have his campaign literature distributed using an email vendor whose prices he can afford, and that NALC's denial of his April 17 request, under which his campaign literature can be distributed at a reasonable cost, violates section 401(c) of the Labor-Management Reporting and Disclosure Act of 1959, 29

U.S.C. § 481(c). The proposed amended complaint seeks injunctive and other equitable relief.

6. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, “leave [to amend a complaint] should be freely given unless prejudice or delay is undue.” *Barkley v. U.S. Marshals Serv. ex rel. Hylton*, 766 F.3d 25, 39 (D.C. Cir. 2014) (punctuation omitted); *see also Jiggetts v. Cipullo*, 285 F. Supp. 3d 156, 162 (D.D.C. 2018) (recognizing general rule that leave to amend should be liberally allowed); *Shoreham Hotel Ltd. P’ship v. Wilder*, 866 F. Supp. 1, 3 (D.D.C. 1994) (same). Plaintiff is not responsible for any delay that exists. Rather, it is defendant that has done its best to slow-walk its response to plaintiff’s request that the union honor his well-established right to have his campaign literature emailed to the membership. Once defendant announced its high-priced vendor selection, putting the financially realistic exercise of that right at risk, plaintiff moved promptly to put his legal claims before the court.

7. The parties’ joint status report provided that all amendments would be submitted by March 31. DN 26. However, that same document indicated that no motion to dismiss was pending or anticipated. Given that defendant **has** moved to dismiss, and has argued that the existing pleadings are insufficient to present the controversy now existing between the parties, it is also fair that plaintiff be excused from the March 31 deadline for amending the pleadings.

8. Moreover, plaintiff has now retained counsel to pursue the one remaining issue in the case by amending the complaint to present his claim more concretely and specifically. Counsel should be given the leeway to amend the complaint to ensure orderly processing of plaintiff’s claim and defendant’s response. In the language of Rule 15(a)(2), it is respectfully submitted that “justice so requires” that the motion for leave to amend should be granted.

9. Undersigned counsel Mr. Levy hereby certifies that he conferred with defendant’s counsel

Peter DeChiara about this motion for leave to amend. Defendant does not consent to the motion.

**CONCLUSION**

The motion for leave to amend should be granted. The accompanying proposed Second Amended Complaint should be deemed filed nunc pro tunc. Defendant should be given ten days to answer or otherwise respond to the new complaint.

Respectfully submitted,

/s/ Paul Alan Levy  
Paul Alan Levy (DC Bar No. 946400)  
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April 27, 2018

Attorneys for Plaintiff

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Defendant.	)	

**CERTIFICATE OF SERVICE**

I am filing this Motion for Leave to Amend and accompanying papers using the Court’s ECF system, which will effect service on all counsel.

Respectfully submitted,

/s/ Paul Alan Levy  
Paul Alan Levy

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