

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

SECOND AMENDED COMPLAINT

1. In this action, a member of a national labor union who is running for union office seeks to enforce his legal right to communicate to his fellow members about his candidacy by having the union disseminate his campaign literature, at his own expense. Several months after plaintiff first asked to be allowed to use the email list, defendant hired a vendor for that purpose, but that vendor charges prices well in excess of the charges customarily paid for that service. Accordingly, the member has chosen his own preferred email vendor, whose prices are significantly lower, and asked to have the union's database of email addresses provided to that vendor so that his emails could be sent by that method. Because that is a reasonable request, and because the union has not been willing to grant the request, plaintiff now sues to require the union to allow him to distribute his campaign literature by email that way.

2. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 481(c). The Court has venue under 28 U.S.C. § 1391 and 29 U.S.C. § 481(c).

PARTIES

3. Defendant National Association of Letter Carriers, AFL-CIO ("NALC") is the exclusive bargaining agent for city letter-carriers employed by the United States Postal Service ("USPS"), and

is headquartered in Washington, D.C.

4. Defendant NALC is a labor organization within the meaning of 29 U.S.C. § 402(i).

5. Plaintiff David W. Noble is a member of NALC. Plaintiff Noble lives in and is a citizen of Maryland. Noble is a retired letter carrier.

FACTS

6. NALC will soon be holding its quadrennial election of national officers. Noble seeks to run for the position of president, which is an “officer” of NALC within the meaning of 29 U.S.C. § 402(n). Noble expects to run on a slate of other candidates, although the full slate has not yet been identified. Ballots in that election will be mailed in September, 2018. Retired members are eligible to vote and to run for office.

7. The working members of NALC work out of roughly 13,000 letter carrier stations, distributed among roughly two thousand local branches throughout the United States. Thus, it is impracticable to hand-deliver campaign literature to each work site. Moreover, a mailing of printed campaign literature to the entire union membership would be extremely expensive. For example, the cost of printing a single sheet of paper on both sides, stuffing it into an envelope, and mailing it to the entire membership by first-class mail would cost more than \$200,000.

8. NALC sends emails to its members, and has accumulated approximately 80,000 member email addresses.

9. In support of his candidacy, Noble wants to be able to have his campaign literature distributed to the union membership using the union’s email list. He wants to be able to have his literature distributed on multiple occasions, and he anticipates that the slate of candidates will also want to have literature distributed. In addition, he wants to be able to send his emails to segments

of the list, such as all retired members.

10. On August 3, 2017, Noble first requested the right to send campaign literature to the union membership by email. The union responded that it would address this issue “sometime in 2018.”

11. In April, 2018, NALC announced that it will allow candidates to send emailed campaign literature to members of the union electorate, but only using a vendor that charges \$488 per email plus two-and-a-half cents (\$.025) per email address, for an estimated cost per email of \$2488 if the mailing is sent to the entire list of 80,000 members. NALC’s announcement indicated that emails could be segmented by region, but did not provide for any other form of segmentation.

12. On April 17, 2018, Noble asked NALC to be allowed to have his campaign literature distributed to the membership using MailChimp, a third-party provider that allows individuals and organizations to upload databases of email addresses and have emails directed to lists of email addresses drawn from those databases. Under MailChimp’s system, Noble would be able to send multiple emails to the membership for as little as four one-hundredths of a cent (\$.0004) per email address and per email.

13. Noble is informed, and believes, that a per-email-address cost of significantly less than a penny per email address, as charged by MailChimp, is in the same range as the prices paid by non-profit organizations to send large amounts of email to their supporters and potential supporters.

14. Noble understands that NALC is concerned that allowing distribution of email via the MailChimp platform would allow him to gain access to the database of email addresses itself, and that he might abuse that access by either looking at or copying the list of addresses. To avoid that possibility, Noble has arranged to retain the services of an independent intermediary who would hold

the MailChimp account and transmit Noble's campaign communications, while denying Noble any access to the list itself.

15. In the alternative, NALC could itself establish a MailChimp account and transmit the emailed campaign literature upon specific requests from Noble. Using that approach, the union could enable all sides in the election to enjoy the low rates that Noble has arranged for his own campaign, without providing even an independent intermediary with access to its email list.

16. Through its counsel, NALC has denied Noble's request.

CLAIM FOR RELIEF

17. Section 401(c) of the Labor Management Reporting and Disclosure Act of 1959, ("LMRDA"), 29 U.S.C. § 481(c), requires unions to comply with all reasonable requests from members to distribute their campaign literature to all members by mail or otherwise.

18. Noble's April 17 request that his campaign literature be distributed using the MailChimp platform was reasonable. By refusing to grant the request, NALC violated section 401(c) of the LMRDA.

19. The violation of the LMRDA caused irreparable injury to plaintiff by preventing him from timely communicating, inexpensively and effectively, with a significant segment of the union electorate.

WHEREFORE, Plaintiff prays the Court to enter a judgment as follows:

A. Ordering defendant to provide its email database to MailChimp so that plaintiff's campaign literature may be distributed, at plaintiff's reasonable expense, to its entire list of email addresses, and such segments of the email list as may reasonably be segregated;

B. Requiring defendant to inform plaintiff of the categories by which its email list(s) may

readily be broken down;

- C. Awarding plaintiff his reasonable attorney fees and costs; and
- D. Awarding such other relief as may be just and proper.

Respectfully submitted,

/s/ Paul Alan Levy
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April 27, 2018

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the allegations in the foregoing complaint are true and correct. Executed on April 26, 2018.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a thin horizontal line.