

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION-RIVERSIDE

- - -

HONORABLE VIRGINIA A. PHILLIPS, JUDGE PRESIDING

- - -

WENDY THOMAS; SERVICE EMPLOYEES)
INTERNATIONAL UNION, LOCAL 721,)
Plaintiffs,)

vs.

No. EDCV 10-1846 VAP

COUNTY OF RIVERSIDE SHERIFF'S)
DEPARTMENT, et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Riverside, California

Wednesday, June 29, 2011

2:20 P.M.

PHYLLIS A. PRESTON, CSR 8701
Federal Official Court Reporter
United States District Court
3470 Twelfth Street
Riverside, California 92501
(951) 205-7959
stenojag@aol.com

1 APPEARANCES:

2
3 For the Plaintiffs:

4 WEINBERG, ROGER & ROSENFELD
5 BY: ALAN CROWLEY
6 1001 MARINA VILLAGE PARKWAY, Suite 200
7 ALAMEDA, CALIFORNIA 94501-1091
8

9 For the Defendants:

10 THE ZAPPPIA LAW FIRM
11 BY: EDWARD ZAPPPIA & DAY HADAEKH
12 333 SOUTH HOPE STREET, 35th FLOOR
13 LOS ANGELES, CALIFORNIA 90071
14
15
16
17
18
19
20
21
22
23
24
25

1 WEDNESDAY, JUNE 29, 2011; RIVERSIDE, CALIFORNIA

2 2:20 P.M.

3 -o0o-

4 THE CLERK: EDCV 10-1846 VAP, Wendy Thomas v. The
5 County of Riverside Sheriff's Department.

02:20

6 Counsel, please state your appearance.

7 MR. CROWLEY: Good afternoon, Your Honor. Alan
8 Crowley on behalf of the plaintiffs SEIU and Wendy Thomas.

9 THE COURT: Good afternoon.

10 MR. ZAPPIA: Good afternoon, Your Honor. Edward
11 Zappia on behalf of defendants.

02:21

12 THE COURT: Good afternoon.

13 MS. HADAEGH: Good afternoon. Day Hadaegh on behalf
14 of defendants.

15 THE COURT: Good afternoon. Both sides have had a
16 chance to review the tentative ruling?

02:21

17 MR. ZAPPIA: We have, Your Honor.

18 MR. CROWLEY: Yes.

19 THE COURT: Let me just make a couple of brief
20 comments and then I'll let both sides be heard.

02:21

21 A great deal of space in the papers was spent,
22 especially in the defense papers, on matters that were
23 irrelevant to the resolution probably of this entire case but
24 certainly to the motion. All of the discussion about the
25 negotiations and the history of the negotiations between the

02:22

1 parties is irrelevant to the issues. The state of the County's
2 budget and the deficit is irrelevant to the issue that's before
3 the Court on this motion.

4 It's probably irrelevant to the entire -- to the case
5 that's before this Court because the issue that's before the 02:22
6 Court, certainly on this motion, is an issue that revolves in
7 large part about whether the plaintiff has suffered retaliation
8 for exercising her rights under the First Amendment. So there
9 is no exception that I'm aware of or that has been cited to me
10 that says First Amendment rights of association or speech are 02:23
11 curtailed when there is a deficit in a budget. So there is no
12 relevance to any of the first, I don't know, 10 pages of the 25
13 pages that are allotted to the defense, and yet, to a certain
14 extent, both sides, but again more the defense than the
15 plaintiffs' side, didn't address many issues that should have 02:23
16 been addressed.

17 There were factual assertions that were made by the
18 plaintiff that weren't addressed by the defense. Neither side
19 used the correct standard that the Court is obliged to apply in
20 considering this motion for a preliminary injunction. The 02:24
21 Court explained that in a paragraph in the tentative. The
22 defense frequently cited California principles of law which, of
23 course, under Erie do not apply. And when citing federal law,
24 almost never cited correctly in the format, so I couldn't tell
25 which circuit you were citing to, because you would just cite 02:24

1 F.3d without putting whatever circuit it was. And frequently
2 it wasn't the Ninth Circuit when there was controlling Ninth
3 Circuit precedence. All of those things made it much more
4 difficult.

5 A case like this is very important to both sides. It 02:24
6 requires a great deal of attention on the Court's part, which
7 both sides deserve. But given the amount of paper that both
8 sides submitted here, it could have been done far more
9 efficiently and far better if the parties had concentrated on
10 the issue in this case, which is not how to solve the County's 02:25
11 budget deficit. That's not before the Court. And the
12 negotiations between the Union and the County and how to
13 resolve whatever problems there have been in those
14 negotiations, that is not before the Court. So having all of
15 that information contained in the papers instead of arguments 02:25
16 or factual information that should have been there is not
17 helpful, and I hope in future briefings that these errors and
18 omissions will be corrected.

19 I think the thing to focus on today is the scope of
20 the injunction. I've indicated in my tentative that the 02:26
21 injunction should issue as to the issue of transfers at least
22 during the pendency of this case, because I think the
23 plaintiffs have met their burden on that issue.

24 I'm going to allow the plaintiffs' counsel to argue
25 first, if you wish to focus your argument on specific other 02:26

1 relief because the proposed injunction was overbroad. So if
2 you want to focus on specific other injunctive relief that you
3 feel is justified, I would suggest that that would be the most
4 efficient way to proceed.

5 Mr. Crowley.

02:26

6 MR. CROWLEY: Thank you. As you can see, this case
7 is of interest to a lot of people, a lot of members of SEIU.
8 They are all wearing the purple shirts. They are often
9 intimidated by County action, and so they are glad to be here
10 and for you to have spent so much time addressing this with
11 your lengthy, 46-page tentative decision.

02:27

12 Yeah, I think the injunction -- the scope of the
13 injunction should be broadened primarily because of the ability
14 of management to take, traditionally, very small issues and
15 find anything wrong with it; such as in the e-mail issue, the
16 Internal Affairs investigation regarding e-mails.

02:27

17 I briefly looked at the Court's tentative and it
18 seems to me the Court's decision not to limit the Sheriff's
19 Department from engaging in further Internal Affairs
20 investigations --

02:27

21 THE COURT: Well, let me tell you what the problem is
22 with that. First of all, I think the defense met its resulting
23 burden on the issue of Internal Affairs investigations, at
24 least in certain respects, as to the admonitions, which one
25 side calls admonishments and your side calls gag orders. I

02:28

1 think they met their burden as to showing that those are given,
2 that you're not to discuss the -- whoever the subject of the
3 investigation is, shouldn't be discussing it, other than with
4 counsel, and I think that the defense met their burden as to
5 that issue.

02:28

6 But, secondly, as to a proposed injunction that says
7 or that would prevent the County from initiating any
8 investigation in the future, such an order in any case would be
9 overbroad because it would be like writing a blank check to any
10 employee to engage in misconduct, and I'm not suggesting that
11 Ms. Thomas has or will. But you can't just -- you can't just
12 say, well, whatever you do in the future, the County cannot
13 initiate an investigation. If another employee -- to give you
14 a hypothetical so that it's not personal as to Ms. Thomas,
15 let's say that it was a different employee and such an order
16 issued, then another employee feels that she has been sexually
17 harassed by her male supervisor against whom the County is
18 restrained from initiating any kind of investigation, internal
19 investigation, that's untenable.

02:29

02:29

20 MR. CROWLEY: I understand. But I think the dilemma
21 we have here is that we have two Internal Affairs
22 investigations initiated which result in these -- which are
23 lengthy and much beyond the normal standard within the last few
24 months. I mean, you have a very well-recognized, extremely
25 competent employee who then becomes a high profile Union

02:30

02:30

1 representative, and then within a few months she is -- an
2 Internal Affairs investigation is initiated for an e-mail when
3 the established --

4 THE COURT: You know, for a four-hour interrogation
5 on an e-mail, and the County is saying that they are short on 02:30
6 resources, for the County to spend four hours for an employee
7 who sent three e-mails over the course of her career that were
8 personal in nature, I agree. I hardly think that's a wise use
9 of County resources, and it undercuts the, frankly, irrelevant
10 arguments that the County has made that I've already spoken to. 02:31
11 I mean, the Court is not here to resolve the negotiations
12 between these parties, but it does undercut the County's
13 argument that we are so short on resources, this is a time of
14 crisis, and they can spend four hours and all that personnel to
15 interrogate somebody about one -- I can't remember if that was 02:31
16 the dancing baby or the wedding photos. These aren't e-mails
17 where somebody was sending, you know, items of national
18 security.

19 MR. CROWLEY: The second part I was going to get to,
20 Your Honor, was that what results is not only the elevation of 02:31
21 -- frankly, most work places are political. If there is
22 someone a manager doesn't like, they can find something wrong
23 and they can elevate it. My concern is that that's going to
24 happen. We're going to have the lead negotiator negotiation.
25 They will scrutinize her and put her under a microscope and IA 02:31

1 her for anything, which I think this e-mail is an example of.

2 THE COURT: You need to speak more slowly.

3 MR. CROWLEY: Okay. Okay. And then, I mean this
4 Monday, two days ago, in the middle of bargaining, all day
5 bargaining, they gave her -- interrupted the bargaining for an 02:32
6 hour and a half to give her a 44-page, single-spaced report
7 about that IA investigation. You think four hours was a waste
8 of time? This report is 44 pages, not including 22 tabs of
9 exhibits, this was brought to the negotiations.

10 THE COURT: On that e-mail? 02:32

11 MR. CROWLEY: On the e-mail. IA brought to the
12 negotiations in front of the negotiators, this is a written
13 warning where the Sheriff's Department is imposing this. You'd
14 think in the most sanctified bargaining, MOU bargaining,
15 between the 12 representatives for the Union and the 02:32
16 representatives from the County, they interrupt that. They
17 could have e-mailed it to her.

18 THE COURT: Slow down.

19 MR. CROWLEY: Okay. So I think that the problem is,
20 is not only are they elevating an incredibly minor incident 02:32
21 into an IA, but then it's used to pummel the Union. It's used
22 to say, anybody does anything, steps out of line, we're going
23 to show you in a very public manner that you'll be written up
24 and that this will affect your career. So that's why I think
25 the concern of somehow limiting, and I understand the idea of 02:33

1 not writing a blank check, but of somehow limiting or
2 increasing the scope of the injunction.

3 THE COURT: Well, how would you propose that that be
4 worded?

5 MR. CROWLEY: Well, that there be no Internal Affairs 02:33
6 investigations that are beyond what is typically done by
7 Internal Affairs.

8 THE COURT: And that is too vague to be enforceable.
9 The issue is, that to be enforceable an injunction -- since the
10 remedy for violation is contempt of court, the case law is very 02:33
11 clear that the wording of the injunction has to be very
12 specific, and I don't think that proposal is going to make that
13 standard.

14 MR. CROWLEY: Yeah. Right. Well, the handicap that
15 we operate under is that not having been able to conduct the 02:34
16 discovery yet, because we're still waiting for documents, even
17 though what is a typical routine for these IAs, and that will,
18 of course, be an area of discovery is, when do they normally IA
19 people? And we did note --

20 THE COURT: I share the concern that internal 02:34
21 investigations should not -- Internal Affairs investigations
22 should not be used as the tool -- as a punitive tool or to
23 retaliate, but I don't know that you'll ever, even through
24 discovery, find out what is a normal basis for conducting one
25 because, you know, the scope of human conduct is pretty broad 02:34

1 and so -- or conduct or misconduct or allegations about it, you
2 know, that's a pretty broad subject. So I can't really limit
3 what they could investigate about, because who knows --

4 MR. CROWLEY: I do have an idea.

5 THE COURT: All right.

02:35

6 MR. CROWLEY: And that is that -- I mean our concern
7 was that the IAs coupled with the gag orders coupled with the
8 IA interviews where interviewers tended to expand the scope of
9 the investigation and expand the scope of the admonishment
10 letter, our concern was that Ms. Thomas, in being the lead
11 negotiator, at bargaining would say things that would violate
12 the scope of the investigation. So, perhaps, if we could
13 broaden the injunction such that if there is any further gag
14 order or further investigation that it be very clear that it's
15 not limiting the Union or Ms. Thomas in any way from discussing
16 anything that's discussed in bargaining, which is often all the
17 terms and conditions of employment. And since she works in the
18 Sheriff's Department, she knows those policies so well. So our
19 fear is that they would use it as a gotcha every time. And so
20 maybe there is a way of wording an injunction so that -- you
21 know, we don't want any investigations, but if there ever is,
22 that it be very clear that the admonishment cannot preclude
23 SEIU or Ms. Thomas or whoever is the subject of it from
24 discussing in bargaining the issues that are normally --

02:35

02:35

02:36

25 THE COURT: The issues, not her own particular --

02:36

1 MR. CROWLEY: Right, the issues.

2 THE COURT: All right. That makes sense. I think I
3 understand that issue.

4 MR. CROWLEY: So that's all that we would, you know,
5 with respect to broadening the injunction, specify. I'm not
6 going to go into the merits. You said to just deal with the
7 scope.

8 THE COURT: All right. Mr. Zappia.

9 MR. ZAPPIA: Thank you, Your Honor.

10 We also appreciate the extensive opinion and we
11 primarily would concur with the tentative. There is too many
12 issues to address one by one, but there are several points that
13 I would respond to.

14 THE COURT: All right.

15 MR. ZAPPIA: In the original injunction, two points,
16 there is two plaintiffs in this case, Wendy Thomas and SEIU,
17 and the original injunction also sought an order to stop all
18 retaliation against all union members. And the Steve Matthew's
19 initial declaration did indeed discuss collective bargaining
20 and the history of bargaining and the current bargaining. Now,
21 I concur with the Court that I believe that's irrelevant, but
22 that was far more compelling to us to address than each of
23 whether Wendy Thomas is on the Uniform Committee or not or
24 whether she is on day shift or night shift, so we did spend
25 time on that because there was a substantial amount of time

02:36

02:36

02:37

02:37

02:37

1 spent in the moving papers on SEIU and collective bargaining.
2 So, that being said, when I concur with the Court that that
3 doesn't belong here, I concur.

4 On the individual matters, the only response I would
5 have, again, I concur with the tentative except, for example, 02:38
6 on the one reassignment to day shift. The Court noted she was
7 reassigned to day shift after she had requested collective
8 bargaining at night, and I think the basic --

9 THE COURT: Well, on that issue, actually, I thought
10 that was a -- you know, I thought that was a rather close call 02:38
11 because I don't -- and again, you know, everybody has their own
12 style in terms of writing and so forth, but oftentimes I think
13 the more adjectives I see, the less persuaded I am. And to
14 characterize that issue about asking for the bargaining
15 sessions to begin at 8:00 at night as absurd, I just do not 02:39
16 find that persuasive.

17 The amount of overheated rhetoric in the papers here,
18 I'm thinking about changing the page limits downward, because
19 if you exclude the rhetoric where one side, you know, were
20 referring to thugs and so forth and you just kept to the facts, 02:39
21 I would be reading a lot less and a lot better.

22 But on the issue of whether or not the transfer was
23 related to a request or a demand that the negotiation sessions
24 begin at 8:00, to call that absurd, I don't see why that's
25 absurd on its face. You know, most people -- I mean not 02:40

1 necessarily people in law enforcement because that's a 24-hour
2 need that the community has, but many people work a day shift.
3 So to start a negotiating session at 8:00, and most people are
4 aware that union negotiating sessions last all hours through
5 the day and night, so it doesn't on its face seem like such an 02:40
6 absurd request. So I view the whole -- just to wrap up my
7 thought -- I view the whole issue about the shift time
8 transfer, because there was a couple of different transfer
9 issues here, as a fairly close call as to whether or not that
10 was retaliatory. 02:41

11 MR. ZAPPPIA: What if Ms. Thomas had requested this
12 hearing occur at 10:00 tonight?

13 THE COURT: I don't answer questions. You're
14 supposed to be persuading me. Is that a rhetorical question?

15 MR. ZAPPPIA: It's a rhetorical question because that 02:41
16 was in effect -- the management works during the day,
17 collective bargaining doesn't.

18 THE COURT: Well, if management works during the day,
19 doesn't it make all the more sense to hold the session at 8:00
20 at night? 02:41

21 MR. ZAPPPIA: They negotiate on duty when they're
22 paid. That's how they always do it.

23 THE COURT: Well, you know, your question really
24 reveals a great deal about perhaps -- I guess what you're
25 suggesting by your question is that management sets the times 02:41

1 and conditions and so forth for when negotiations take place.
2 It's not parties of equal bargaining power.

3 MR. ZAPPPIA: The times are mutually agreed on.

4 THE COURT: Exactly.

5 MR. ZAPPPIA: In her e-mail they request times when
6 everyone is available.

02:41

7 THE COURT: And so your question suggests that it's
8 more convenient for management not to do it at 8:00 at night
9 and that's the end of the story.

10 MR. ZAPPPIA: It's more convenient for all.

02:42

11 THE COURT: No, you're saying it's convenient for
12 management.

13 MR. ZAPPPIA: I'm saying it's more convenient for both
14 bargaining teams.

15 THE COURT: Well, wouldn't it be up to the Union to
16 say what's convenient for them?

02:42

17 MR. ZAPPPIA: Certainly.

18 THE COURT: And isn't Ms. Thomas the spokesperson for
19 the Union on that issue?

20 MR. ZAPPPIA: She is the lead negotiator for these
21 negotiations.

02:42

22 THE COURT: So she's making the suggestion on behalf
23 of SEIU.

24 MR. ZAPPPIA: I mean, to us it's not one of the most
25 significant issues. To us it's illustrative of the request.

02:42

1 But, as we said, you know, if we go point by point, we
2 generally concur with you that the bargaining doesn't belong
3 before the Court and that the parties dispute --

4 THE COURT: The bargaining doesn't.

5 MR. ZAPPPIA: Right.

02:42

6 THE COURT: But these issues and whether it's a
7 Uniform Committee, all of these things I tend to agree. When
8 you look at them one by one, they are very small, but not all
9 of them are very small. Some of them sound small one by one.
10 But, for example, a transfer of someone's working hours from a
11 graveyard shift to a daytime shift or vice versa, depending on
12 that person's personal situation, is not small.

02:43

13 MR. ZAPPPIA: Well, I don't know that it's small to
14 her, but to the Department and affecting collective bargaining
15 was exactly why it was done. I mean, you said it was a close
16 call. Obviously managements' position, as they stated, was
17 everybody bargains during the day. So putting her on day
18 facilitated collective bargaining for everyone. They didn't
19 have one member of their team submit a declaration stating we
20 prefer to do it at night. But, you know, listen, like I said,
21 lest we go off on an insignificant issue, I generally concur
22 with you. We addressed the issues we did because we had bigger
23 concerns about collective bargaining and the state of the
24 budget and where collective bargaining is going to go, and
25 that's not to minimize the issues that we've addressed here.

02:43

02:43

02:44

1 Overall then, I mean not that we don't dispute some
2 of the points that were against us, but management stated its
3 positions in response to some of the reassignments. But, for
4 the most part, given the Court's position and direction that
5 way, we concur and we will limit it to those very specific
6 items.

02:44

7 THE COURT: All right. So as to the proposal, I
8 think the proposal as to any current or future -- let's see.
9 As to current IA investigations and as to any future ones, that
10 they cannot and should not be interpreted to prevent plaintiff
11 from negotiating on any issues which might be covered within
12 the scope of any admonishment letter. I will ask plaintiffs'
13 counsel to draft up a paragraph to that effect, show it to
14 defense counsel and see if you can agree on the language. If
15 you can't agree on the language then you can notify the Court
16 that you're unable to agree on the language and you can submit
17 your objection or your proposed language and then submit that
18 to me forthwith.

02:45

02:45

19 MR. ZAPPIA: I'll show that to my client. I don't
20 expect that the Department -- I'll show that to them, but I
21 don't expect they would object to that because the current
22 admonishment doesn't do that anyway. The current admonishment
23 limits an employee from talking about the scope of an
24 investigation.

02:45

25 THE COURT: Well, let's just make sure. All right.

02:46

1 Let's just make sure the language is clear and precise so that
2 it doesn't become an issue down the road.

3 MR. ZAPPIA: Thank you.

4 THE COURT: Anything else?

5 MR. CROWLEY: Well, the only other concern I have is
6 that I think you had said previously that July 8th was the
7 deadline to amend the complaint, so I would presumably amend
8 the complaint to include new allegations.

02:46

9 THE COURT: Well, which new allegations?

10 MR. CROWLEY: New things that have happened since we
11 filed the complaint December 9th.

02:46

12 THE COURT: Actually, if it's a new occurrence, then
13 that would be a supplemental complaint. Anything that's
14 occurred since the filing date of the action is a supplemental
15 complaint, so it would be an amended and supplemental
16 complaint.

02:46

17 MR. CROWLEY: Okay.

18 THE COURT: It's one document. But if you're
19 alleging things that have occurred since the filing of the
20 action, that's supplemental.

02:46

21 MR. CROWLEY: As opposed to a first amendment.

22 THE COURT: Exactly.

23 MR. CROWLEY: The other thing is, I'm concerned
24 because last time we were before you back in May you asked us
25 to see if we could put our heads together, the County and

02:47

1 plaintiffs, to agree upon some protective order so that we
2 wouldn't --

3 THE COURT: Regarding the e-mails.

4 MR. CROWLEY: E-mails or any documents so that, you
5 know, so that we would agree they're confidential and so that 02:47
6 there doesn't have to be a long delay in producing them or big
7 fights in viewing them. As you might have gleaned from some of
8 our papers --

9 THE COURT: You have not been successful in doing
10 that. 02:47

11 MR. CROWLEY: No. So if you have a suggestion or --

12 THE COURT: All right. Here is my suggestion: This
13 case is Judge Bristow's, the discovery judge on this case. My
14 suggestion is that you -- Ms. Taylor is his courtroom deputy
15 clerk, and I think she is here today, so go down to the clerk's 02:47
16 office and inquire of her of a date when you can have a status
17 conference in front of Judge Bristow to try to work out the
18 terms of a protective order. I don't want to make his life
19 worse, but he is very accommodating. Don't take advantage of
20 that. I'm sure he will arrange a status conference for you 02:48
21 very shortly and that might save both of your clients the
22 expense of filing a motion. See if he can assist you in
23 getting something done right away so you can continue with your
24 discovery.

25 MR. CROWLEY: Okay. 02:48

1 THE COURT: That's Deborah Taylor.

2 MR. CROWLEY: Deborah Taylor. All right.

3 THE COURT: They may be in court. I don't know if
4 he's got criminal duty this afternoon.

5 MR. CROWLEY: Do you know what department?

02:48

6 THE COURT: We don't have departments. We have
7 courtrooms.

8 MR. CROWLEY: Or what courtroom?

9 THE COURT: The three magistrate judges share the two
10 courtrooms upstairs, so he would be in one of those. But she's
11 probably in the clerk's office if they're not on duty.

02:49

12 MR. CROWLEY: Okay. So we submit by this Friday I
13 think the language on the proposed --

14 THE COURT: Certainly. As soon as you do, I will get
15 the order out.

02:49

16 MR. CROWLEY: Thank you, Your Honor.

17 THE COURT: All right. Thank you very much.

18 (Proceedings concluded)

19 -o0o-

20

21

22

23

24

25

C E R T I F I C A T E

DOCKET NO. EDCV 10-1846 VAP

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
accurate transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the regulations
of the Judicial Conference of the United States.

/S/ Phyllis A. Preston DATED: July 12, 2011

Federal Official Court Reporter

License No. 8701