UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Gary R. Wall, William Cooksey, Plaintiffs,	:	
	:	CIVIL ACTION NO.
v.	:	3:97-cv-00942 (JCH)
	:	
Construction and General Laborers' Union, Local 230, John Pezzenti, Dominick Lopreato, and Charles LeConche, Defendants.	:	August 31, 2004

RULING RE:
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [DKT. NO. 221]

Defendants Construction and General Laborers' Union, Local 230, John Pezzenti, Dominick Lopreato, and Charles LeConche (collectively "Local 230" or the "Union"), bring this second motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 56(c). Following the August 24, 2000 opinion of the United States Court of Appeals for the Second Circuit concerning Local 230's original motion for summary judgment in Wall v. Constr. & Gen. Laborers' Union, Local 230, the only issues that remain are Gary Wall and William Cooksey's (together "Wall")[1] federal claims under Sections 101 and 609 of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 401 and 529. See 224 F.3d 168,179 (2d Cir. 2000) (Wall II).[2] Wall contends that, having unlawfully terminated plaintiffs' membership in the Union, Local

[1] For simplicity's sake, the court will use the name "Wall" to refer to claims associated with both Wall and Cooksey, unless clarity requires their separate identification.

[2] The Second Circuit upheld the court's prior dismissal of Wall's state law claims as completely preempted by the Labor Management Relations Act ("LMRA"). See Wall II, 224 F.3d at 178-79.

230 improperly denied them readmission and interfered with their ability to obtain employment as laborers. Local 230 contends that the court lacks subject matter jurisdiction over the case at bar; that the statute of limitations for Wall's claims has run and should not be tolled; and that the allegations made by Wall, even if found to be true, are not actionable under the LMRDA. For the reasons that follow, Local 230's motion for summary judgment on Wall's LMRDA claims is **GRANTED IN PART AND DENIED IN PART**.

I. STANDARD

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See, FED.R.CIV.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); White v. ABCO Eng'g Corp., 221 F.3d 293, 300 (2d Cir. 2000). A court must grant summary judgment "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .'" Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). A dispute regarding a material fact is genuine "'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir.) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

When a motion for summary judgment is supported by documentary evidence and

sworn affidavits, the nonmoving party must present "significant probative evidence to create a genuine issue of material fact." Soto v. Meachum, Civ. No. B-90-270 (WWE), 1991 WL 218481, at *6 (D. Conn. Aug. 28, 1991). A party may not rely "on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment." Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 12 (2d Cir. 1986), cert. denied, 480 U.S. 932 (1987).

The court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." Aldrich, 963 F.2d at 523. Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992). A party may not create a genuine issue of material fact by presenting contradictory or unsupported statements. See Securities & Exchange Comm'n v. Research Automation Corp., 585 F.2d 31, 33 (2d Cir. 1978). Nor may he rest on the "mere allegations or denials" contained in his pleadings. Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995). See also Ying Jing Gan v. City of New York, 996 F.2d 522, 532 (2d Cir. 1993) (holding that party may not rely on conclusory statements or an argument that the affidavits in support of the motion for summary judgment are not credible).

II. DISCUSSION

A. Subject Matter Jurisdiction

As this court has noted previously, Local 230's claim that the court lacks subject matter jurisdiction because Wall is not a "member" of the Union lacks merit. See Wall v. Constr. & Gen. Laborers' Union, Local 230, 3:97-cv-942, slip op. at 2 (D.Conn. May 5, 1999) (Wall I). It is true that Wall must be a union member as defined in 20 U.S.C. § 402(o) in order to sue Local 230 under the LMRDA. See Phelan v. Local 305 of the United Ass'n of Journeymen, 973 F.2d 1050, 1057 (2d Cir. 1992). However, it is equally true that "[t]he definition of a 'member' within [section 402(o)] is not limited to those persons who are recognized as members by the organization." Id. (quoting Basilicato v. Int'l Alliance of Theatrical Stage Employees and Moving Picture Mach. Operators of the United States and Canada, 479 F.Supp. 1232, 1242 (D.Conn. 1979), *aff'd*, 628 F.2d 1344 (2d Cir. 1980)). While the court will not repeat the reasoning laid out in its previous ruling on the issue, see Wall I, 3:97-cv-942, slip op. at 2 - 5, it is sufficient to note that a genuine issue of material fact still exists as to whether Wall is a "member" of Local 230. Specifically, "there is a factual dispute over the precise contours of the readmission requirements", and Wall has "presented evidence sufficient to support a jury finding in [his] favor on this issue." Id. at 4-5; see also Wall II, 224 F.3d at 170 n.1 (agreeing that genuine issues of material fact exist concerning Wall's membership status and the readmission process).

Local 230 argues that it has clarified the record to show that there is no genuine issue of material fact as to whether Wall was a member, or surrounding the application of the readmission right. See Mem. Supp. Summ. J. at 42. Local 230's only new arguments

are based primarily on discovery findings that purport to refute the affidavits of Wall's witnesses regarding the workings of the readmission process, and Attorney Luskin's recanting of his previous written opinion that Wall had the right to readmit despite Local 230's claims of a twelve-month time limit. See Mem. Supp. Summ. J. at 46 - 54. However, the affidavits and Attorney Luskin's original letter still exist, and serve as contrary evidence. Attorney Luskin's letter alone would raise a material issue of fact. While Local 230's submissions might constitute compelling evidence that a one-year time limit for readmission actually existed and was consistently applied by Local 230, the job of weighing that evidence and deciding disputes of fact and credibility is indisputably that of the trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979) (it is "the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); see also Patsy's Inc. v. Spinnell, 317 F.3d 209, 215 (2d Cir. 2003) (summary judgment improper if reasonable triers of fact could reach different conclusions). Therefore, Local 230's request for summary judgment based on lack of subject matter jurisdiction is denied.

B. Statute of Limitations and Exhaustion of Internal Remedies

The court also rejects Local 230's attempt to reargue the statute of limitations issue at the summary judgment stage. Local 230 argues that the Second Circuit's holding regarding the statute of limitations does not save plaintiff Cooksey's claims, and that the holding regarding exhaustion of internal remedies saves neither Cooksey nor Wall. See Mem. Supp. Summ. J. at 56-59. First, Local 230 argues that it did not represent any fact upon which Cooksey or Wall could have relied to their detriment in order to justify the

Second Circuit's imposition of equitable estoppel. Id. at 57. Local 230 also works through another time calculation to show that, had the Second Circuit used what Local 230 believes to be the correct dates and findings, it would have found that the statute of limitations had passed in relation to Cooksey by the time he and Wall filed suit. Id. at 56-58. Finally, Local 230 again argues that Wall and Cooksey were not members of Local 230 in late 1995 or early 1996, and therefore could not have been engaged in "exhausting internal remedies" that would have tolled the statute of limitations. Id. at 59. Due to the law-of-the-case doctrine, these arguments are meritless.

Under the law-of-the-case doctrine, "[w]here issues have been 'explicitly or implicitly decided on appeal,' . . . the law-of-the-case doctrine obliges the district court on remand to follow the decision of the court of appeals . . . ." Kerman v. City of New York, 374 F.3d 93, 109 (citation and emphasis omitted). "Where the appellate court has decided a question of law, the lower court on remand lacks discretion to decide the question to the contrary." Id. at 110. In the case at bar, the Second Circuit decided that the evidence was sufficient to invoke the doctrine of equitable estoppel, thereby prohibiting Local 230 from prevailing on its statute of limitations defense on summary judgment. See Wall II, 224 F.3d at 176.

The doctrine of equitable estoppel is triggered when a plaintiff shows that "(1) the defendant made a definite misrepresentation of fact, and had reason to believe that the plaintiff would rely on it; and (2) the plaintiff reasonably relied on that misrepresentation to his detriment." Buttry v. Gen. Signal Corp., 68 F.3d 1488, 1493 (2d Cir. 1995). Based upon the record before it, the Second Circuit held that, because Wall and Cooksey reasonably relied on "misleading justifications as to why they could not be readmitted at a

particular time" and delayed bringing suit because of those misrepresentations, Local 230 is equitably estopped from raising a statute of limitations defense at the summary judgment phase. Wall II, 224 F.3d at 176. Specifically, the Second Circuit pointed out that Local 230 misled both Cooksey and Wall by telling them each "that readmission would follow referral to a job." Id. Local 230 made this representation to Cooksey on April 28, 1992 (Letter from Lopreato to Cooksey, April 28, 1992), while it made the representation to Wall on April 26, 1995 (Letter from Pezzenti to Wall, April 26, 1995). These letters made no mention of a one-year time limit, nor did they state that there was any necessary amount of time Wall and Cooksey needed to stay on the job to qualify for readmission. Following some difficulties during which Wall and Cooksey were barred from signing the job referral list, Wall was referred to a job on July 1, 1996. As the Second Circuit noted, when Wall requested a union book, the union steward at the site informed Wall that "the Union would not permit [Wall] to buy a book." See Wall II, 224 F.3d at 172-173. Thus, Local 230 prevented Wall from readmitting despite his having secured employment in the field.

Local 230 uses the April 28, 1992 letter as the beginning point for Cooksey's three year statute of limitations. See Mem. Supp. Summ. J. at 56. Assuming *arguendo* that this is the correct starting point,[3] Cooksey's statute of limitations cannot have run based on the facts currently before the court. As noted above, April 28, 1992 also marks the point on

[3] That April 28, 1992 is the correct date on which to begin Cooksey's statute of limitations clock is far from clear. As the Second Circuit noted, other dates, including December 1995, may in fact be the correct place to start. However, since equitable estoppel makes this determination unnecessary, the court will refrain from making it.

which equitable estoppel began tolling Cooksey's statute of limitations. Because the relied-upon misrepresentation, namely that readmission would follow employment, did not prove itself false until July 1, 1996 at the earliest, Wall and Cooksey's complaint was filed in a timely manner on May 15, 1997, well within the three-year statutory period.[4]

Local 230 denies that it made any misrepresentations of fact upon which Wall relied on to his detriment, but offers nothing more. See Mem. Supp. Summ. J. at 57. It fails to show that the facts are "substantially different" from those relied on by the Second Circuit for its determination on equitable estoppel.[5] See Kerman, 374 F.3d at 110. Local 230's showing is insufficient to overcome the law-of-the-case doctrine as applied here to the doctrine of equitable estoppel. See id. Thus, the Second Circuit's explicit decision on the issue of equitable estoppel is binding on the court. See Id. at 109. Therefore, Local 230's request for summary judgment based on the alleged running of the statute of limitations is denied.

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[4] Not only did Local 230 fail to correct its misrepresentation to Cooksey before denying Wall readmission on July 1, 1996, but it actually reaffirmed it in a second letter denying readmission on March 7, 1995. See Letter from Lopreato to Cooksey, March 7, 1995.

[5] To quote Local 230 in full: "There exists no evidence in the record that suggests in any manner that Defendants made a 'representation of fact' upon which Plaintiffs relied to their detriment that saves them from the applicable statute of limitations." Mem. Supp. Summ. J. at 57. Local 230 makes no other attempt to refute the misrepresentation noted by the Second Circuit, See Wall II, 224 F.3d at 177, and, in fact, begins its statute of limitations clock with the very April 28, 1992 letter from Lopreato to Cooksey that forms its basis. Local 230 moves quickly to a refutation of the Second Circuit's discussion of exhaustion of internal remedies which is irrelevant to the court's equitable estoppel decision.

C. Cause of Action Under the LMRDA

Finally, Local 230 claims it is entitled to summary judgment because none of the allegations made by Wall are actionable under LMRDA. See Mem. Supp. Summ. J. at 59. Section 101(a)(5) of the LMRDA, 29 U.S.C. § 401(a)(5), provides that:

> No member of any labor organization may be fined, suspended, expelled, or *otherwise disciplined* except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given reasonable time to prepare his defense; (C) afforded a full and fair hearing.

See 29 U.S.C. § 401(a)(5) (emphasis added). Additionally, Section 609, 29 U.S.C. § 529 provides that:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or *otherwise discipline* any of its members for exercising any right to which he is entitled under the provisions of this chapter . . . .

See 29 U.S.C. § 529 (emphasis added).

Wall claims that Local 230 has engaged in three "schemes" to "otherwise discipline" him in violation of the LMRDA.[6] See Mem. Opp. Summ. J. at 14 n.2. Wall

[6]The Second Circuit noted in Wall II that Wall claimed Local 230 violated LMRDA in four ways: it "(i) refused to admit or readmit [him] into Local 230; (ii) refused and/or interfered with their ability to obtain employment; (iii) refused to provide them with rights afforded to other Local 230 members; and (iv) unlawfully disciplined them." 224 F.3d at 173. The court's review of Wall's Memorandum in Opposition [Dkt. No. 228] leads the court to believe that points (I) and (iii) correspond to what Wall refers to as the "three word scheme", and that point (ii) corresponds to what Wall refers to as the "physically and economically unsafe work environment scheme". Wall appears to consider each of the three "schemes" to be methods used by Local 230 to "otherwise discipline" him [point (iv)]. As the Second Circuit did not discuss the merits of Wall's claims, the court will examine them in the manner in which Wall has now presented them in his Memorandum in Opposition.

refers to the first scheme as the "three word scheme".[7] Wall argues that Local 230 has engaged in this scheme, the substance of which is Local 230's application of its claimed twelve-month rule, to unlawfully prevent him from readmitting, and that in doing so has "disciplined" him in violation of LMRDA. Wall also claims that by means of a second scheme, which Wall calls the "pension/cram down/fraudulent depletion scheme", Local 230 "disciplined" him by refusing to adhere to a prior pension agreement. Finally, Wall claims that Local 230 engaged in a "physically and economically unsafe work environment scheme", which consisted of making allegedly untrue and harmful statements to the Union membership at open meetings, and practicing physical intimidation to keep Wall from working at the trade. Local 230 argues that, even if these allegations are true, they do not prove that Local 230 violated Sections 101(a)(5) and/or 609 of the LMRDA.

(1) The "Three Word Scheme"

Essentially, Wall's "three word scheme" claim charges that, contrary to Local 230's assertions, there is no official, long-standing policy within Local 230 that limits the amount of time a member has to be readmitted to twelve months. See Mem. Opp. Summ. J. at 3. Therefore, Wall claims that Local 230's repeated refusals to readmit Wall violate the LMRDA by depriving him of his rights under Title I of the LMRDA and the Union constitution. Local 230 argues, citing Breininger v. Sheet Metal Workers Int'l Ass'n, Local Union No. 6, 493 U.S. 67 (1989), that the LMRDA does not protect Wall because 1) Wall is not a member of Local 230, and 2) none of Local 230's actions constitute "discipline"

[7]The name apparently refers to Judge Winter's noting in Wall II that "the Union's correspondence appears at times to use 'readmission,' 'reinitiation,' and 'initiation' interchangeably". See 224 F.3d at 175.

under the LMRDA. See Mem. Supp. Summ. J. at 59 - 60. As the court noted earlier, the question of whether or not Wall is a member of Local 230 involves issues to be decided by a trier of fact. However, if the court found that none of Local 230's alleged actions regarding the "three word scheme" constituted "discipline," summary judgment on this claim would be appropriate.

Sections 101(a)(5) and 609 prohibit a union from taking "punitive actions [that] diminish[] [a member's] membership rights . . . ." Breininger, 493 U.S. at 90. The term "otherwise discipline" does not include "all acts that deter[] the exercise of rights protected under the LMRDA, but rather mean[s] . . . only punishment authorized by the union as a collective entity to enforce its rules." Id. at 91. "The term refers only to actions 'undertaken under color of the union's right to control member's conduct in order to protect the interests of the union or its membership.'" Id. (citation omitted).

Were the actions allegedly taken against Wall authorized by the Union to enforce one of its rules? Local 230 itself provides the answer. First, it claims that there is, in fact, an official rule that places a twelve month time limit on readmission. See Mem. Supp. Summ. J. at 46. It is on this basis that readmission was denied. Additionally, Local 230 repeatedly refers to the readmission attempts of both Wall and Cooksey, and states that they were "denied by letter." Mem. Supp. Summ. J. at 54, 56-57. Did these letters reflect the actions of individuals or the Union? The answer can be found by quickly examining the language used by Local 230 in describing these denials. On page 54 of its Memorandum in Support, Local 230 explicitly notes "*Local 230's* repeated refusal to 'readmit' Plaintiffs since 1992." Mem. Supp. Summ. J. at 54 (emphasis added). Local 230 made the

decision to deny readmission and communicated that decision to Wall. These were the acts of a union to enforce what it claims to be one of its rules. The question remains whether its actions diminished Wall's "membership rights."

Title I of the LMRDA, otherwise known as the Bill of Rights of Members of Labor Organizations, 29 U.S.C. §§ 411 *et seq.*, guarantees equal rights and privileges to all members of a labor organization. See 29 U.S.C. § 411(a)(1). These rights include, *inter alia*, the right to nominate candidates, vote in elections, attend membership meetings, assemble freely with other members, and exercise freedom of speech, "subject to reasonable rules and regulations in such organization's constitution and bylaws." 29 U.S.C. §§ 411(a)(1) and (2). In order to exercise these fundamental rights, Wall must be a member in good standing according to the Union's constitution and bylaws. See LIUNA Uniform Local Constitution ("Constitution"), art. VIII, § 7.[8] In fact, persons in arrears of their dues, the state of default that Local 230 claims initially cost Wall his full membership rights, see Mem. Supp. Summ. J. at 8, have no rights under the Constitution *except the right to readmission*. See Constitution, art. VIII, § 7. Therefore, all Title I rights flow from a correct application of a member's readmission right. This makes it clear that the right to readmission found in Art. VIII, § 7 is a basic "membership right" within the meaning of Breininger.[9]

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[8]While Local 230 makes much of Cooksey's alleged disability, and hence his apparent inability to work, a review of the plain language of the LIUNA Constitution shows that this does not appear to be a requirement for readmission. While "working at the calling" appears to be a requirement for admission under Article III, § 1(a), the readmission provision (Article VIII, § 7) makes no mention of it as a requirement.

[9]This conclusion is reinforced by the listing of "readmission" as a membership right under Article III of the LIUNA Constitution. See Constitution, art. III, § 2(e).

As noted by the Second Circuit in Wall II, Local 230 concedes that the twelve month time limit does not expressly appear in the Constitution. See 224 F.3d at 175. If Local 230 violated the terms of its own Constitution in order to keep Wall from being readmitted and becoming a member in good standing once more, and therefore kept him from exercising the rights enumerated in the Bill of Rights, a reasonable trier of fact could find that Local 230's official actions constituted "punitive actions [that] diminish[ed] [Wall's] membership rights . . . ." See Breininger, 493 U.S. at 90. In other words, a trier of fact could find that Local 230 unlawfully "disciplined" Wall within the meaning of Sections 101(a)(5) and 609.

As the court found earlier, the existence of the twelve-month rule regarding readmission is a question of fact to be decided by the trier of fact. The answer to that question is one key to answering the question of whether Local 230's actions constituted "discipline." Therefore, material issues of fact remain in dispute on this point. Local 230's request for summary judgment on this basis is denied.

(2) The "Pension/Cram Down/Fraudulent Depletion Scheme"

Wall claims that Local 230 failed to live up to the terms of a pension agreement by not fully funding or crediting Wall with the correct amount of money or number of years towards his pension, and that this failure constituted "discipline" under LMRDA. See Mem. Opp. Summ. J. at 13. Wall claims that Local 230 undertook this "pension/cram down/fraudulent depletion scheme" as part of a broader set of interlocking schemes in order to prevent Wall from being readmitted to full membership, thereby preventing Wall from "questioning union expenditures at union meetings and in so doing set an example to

the membership of what happens if you question anything." Id. at 14, n.2. Local 230 argues that any allegedly unlawful activities related to Wall's pension are not cognizable under the LMRDA. See Mem. Supp. Summ. J. at 77.

The alleged pension "scheme" does not constitute "discipline" under either Sections 101(a)(5) or 609. These sections prohibit the union from taking certain "punitive actions [that] diminish[] [a member's] membership rights . . . ." Breininger, 493 U.S. at 90. The term "otherwise discipline" does not include "all acts that deter[] the exercise of rights protected under the LMRDA, but rather mean[s] . . . only punishment authorized by the union as a collective entity to enforce its rules." Id. at 91. "Congress envisioned that 'discipline' would entail the imposition of punishment by a union acting in its official capacity." Id. at 93. (citation omitted) "The term refers only to actions 'undertaken under color of the union's right to control member's conduct in order to protect the interests of the union or its membership.'" Id. at 91. (citation omitted).

The LMRDA Bill of Rights "guarantees 'to [union] members equal rights and freedom of speech in the conduct of union affairs.'" Phelan v. Local 305 of the United Ass'n of Journeymen, and Apprentices of the Plumbing & Pipefitting Indus. of the United States and Canada, 973 F.2d 1050, 1055 (2d Cir. 1992) (emphasis omitted). These rights include a member's right to free speech, right to assemble, and a right to participate in the governance of the union by voting in elections, attending membership meetings, and participating in the deliberations and voting on issues raised at membership meetings. See 29 U.S.C. §§ 101(a)(1) & (2). However, "Congress did not intend Title I of the LMRDA to create a panoply of rights to which all persons injured in some way relating to a

union may turn when seeking redress." Phelan, 1050 F.2d at 1055. Title I "'regulates only the relationship between the union and its members.'" Id. at 1056 (citation omitted).

Wall's allegations under this scheme are that plaintiffs had a January 15, 1992 pension agreement with Local 230, and Local 230 broke that agreement by underfunding and undercrediting plaintiffs' pension accounts. See Mem. Opp. Summ. J. at 7, 8-13. While, if true, the allegations may very well give rise to some form of a cause of action[10], they do not violate Title I. The breaking of an agreement does not involve the suppression of a member's right to free speech, right to assemble, or violate a member's equal right to participate in the governance of the union by voting in elections, attending membership meetings, or participating in the deliberations and voting on issues raised at membership meetings. See 29 U.S.C. §§ 101(a)(1) & (2). Therefore, while the alleged breach of agreement may have caused Wall an injury "in a way relating to a union," it did not directly effect a membership right. See Phelan, 1050 F.2d at 1055. If Local 230's actions did not diminish a membership right, then Local 230 actions did not "discipline" Wall. See Breininger, 493 U.S. at 90. Local 230's request for summary judgment on this claim is granted.

(3) "Physically and Economically Unsafe Work Environment Scheme"

Wall bases his third claimed "scheme" on allegations that officers and representatives of Local 230, including, *inter alia*, Dominick Lopreato, Leonard Granell, and Charles LeConche, made fraudulent allegations against Wall in letters and in various

[10]The court takes no position with regards to the merits of Wall's pension claims outside of the LMRDA setting.

fora, and either read the letters or repeated the fraudulent allegations before the Union membership. See Mem. Opp. Summ. J. at 14 - 15, 35 - 36. Wall appears to charge that the officers and representatives told the Union membership at Union meetings that Wall and Cooksey had, *inter alia*, tried to run Lopreato off the road, had attacked Messrs. Paul Tigno and Luigi Torcia, had fought with Granell, and had "baseball-batted" John Pezzenti. See Id. at 19 - 20. Wall charges that these actions were designed to "to stop plaintiffs from getting a job . . . with any signatory contractors." Id. at 32. Local 230 denies that it in any way interfered with Wall's attempts to find employment and argues that, even if officers and representatives of Local 230 did interfere, this interference is not actionable under the LMRDA. See Mem. Supp. Summ. J. at 60.

As noted earlier, Breininger holds that the term "otherwise discipline" does not include "all acts that deter[] the exercise of rights protected under the LMRDA, but rather mean[s] . . . only punishment authorized by the union as a collective entity to enforce its rules." 493 U.S. at 91. "The term refers only to actions 'undertaken under color of the union's right to control member's conduct in order to protect the interests of the union or its membership.'" Id. (citation omitted). "[A]d hoc retaliation by individual union officers" does not qualify as discipline. Id. at 91-92. As the Supreme Court clearly stated in Breininger, Congress did not intend to include individuals' use of force, violence, or economic reprisal to coerce, intimidate, or restrain a member from exercising his union rights as "discipline" by a labor organization under the LMRDA . See Id. at 93-94.

In the case at bar, as in Breininger, the plaintiffs were not "punished by any tribunal, nor [were they] the subject of any proceedings convened by the [union]" in relation to the

allegedly false statements made by officers and representatives of Local 230. Id. at 94. Wall claims that, because of the statements made before hundreds of Union members, and their repetition to employers, Wall could neither find suitable employment nor work safely at such a job. However, even if true, prejudicial statements made in front of the Union's membership that advance a vendetta, rather than, for example, announce a union tribunal's holding against Wall, do not constitute "discipline" by Local 230 under Sections 101(a)(5) or 609. See Maddalone v. Local 17, United Brotherhood of Carpenters & Joiners of America, 152 F.3d 178, 185 (2d Cir. 1998). Once again, the court takes no position as to the question of whether these actions might give rise to liability on someone's part under another cause of action.

However, because Wall's claim under the third scheme does not support a cause of action under Sections 101(a)(5) and 609 of the LMRDA, Local 230's request for summary judgment on this basis is granted.

III. CONCLUSION

In summation, evidence exists on both sides regarding the existence of the twelve-month rule on readmission to Local 230. It is not the court's place to decide upon the weight or credibility of the evidence beyond a determination of minimal sufficiency. This is properly left to a trier of fact. Therefore, summary judgment cannot be granted on the LMRDA claim that Local 230 wrongfully denied Wall and Cooksey readmission to the Union using what Wall refers to as the "three word scheme", and thus is **DENIED IN PART**.

However, controlling decisions have made clear that not all claims of harm can be

brought by plaintiffs under the LMRDA, nor can the *ad hoc* actions of individual union officers be correctly classified as "discipline." Therefore, in accordance with the reasoning above, Local 230's motion for summary judgment is hereby **GRANTED IN PART** on the remaining bases.

Thus, trial will proceed on Wall and Cooksey's remaining LMRDA claim concerning Local 230's denial of their right to readmission, referred to by plaintiffs as the "three word scheme." A pretrial order in keeping with this ruling will issue shortly.

SO ORDERED.

Dated Bridgeport, Connecticut this 31st day of August, 2004.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge