FAX 331-9267

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROBERT CARLOW **LONNIE ST. JEAN** **Plaintiffs**	}	
v.	}	**C.A. NO. 02-538ML**
STANLEY J. MRUK **Individually and in his official capacity as Chief of the Anthony Fire District; and, THE ANTHONY FIRE DISTRICT** **Defendants**	}	

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION
TO ADJUDGE DEFENDANT
IN CONTEMPT

The Court's Inherent
Contempt Powers

The District Court has "implied powers… which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." Chambers v. NASCO, 501 U.S. 32, 43, 111 S.Ct. 2123 (1990); U.S. v. Hudson, 7 Cranch. 32, 34 (1812). One of these powers is the power to punish for contempt. Id, at 44. The inherent powers exist even if they may overlap with powers conferred by statute or by the Court's rules of procedure. Chambers, at 43.

Disobedience of the Court's orders, not just disruption of proceedings, is a valid and necessary concern furthered by the contempt powers. Id, at 44. Both

punishment and deterrence are considerations in criminal contempt. U.S. v. Saccoccia, 342 F. Supp.2d 25, 30 (D.R.I. 2004).

Civil contempt proceedings, on the other hand, are primarily concerned with compelling compliance and compensating the opposing party. 342 F. Supp.2d at 30. The state of mind in a civil contempt analysis also differs from that in criminal contempt. In criminal contempt, it must be shown that the act was done “deliberately and with knowledge that it violated a court order rather than inadvertently or negligently.” Saccoccia, at 30. However, the willfulness and knowledge relate to knowing that one is not following the order, not an intent or awareness that one’s conduct is criminal. Id. See also U.S. v. Marquado, 149 F.3d 36, 43, n.4 (1st Cir. 1998).

In civil contempt, the party’s intentions or state of mind are irrelevant. Saccoccia, at 30. Civil contempt may occur even though the failure was done with good intentions. Id, at 31.

The First Circuit has recognized that the different purposes of civil and criminal contempt are not necessarily mutually exclusive. Goya Foods v. Wallack Management, 344 F.3d 16, 20-21 (1st Cir. 2003). The punitive purpose may also be present in a civil contempt proceeding and the “monetary sanction need not be perfectly commensurate, dollar for dollar, with the aggrieved party’s actual loss.” Id, at 21.

Defendant Mruk Had Ample
Notice of What Was Required

Notice of the order is an element that must be found before a party is held in contempt. However, proof of “actual” notice is not required, and “a party to

litigation has a duty to monitor the progress of litigation and to ascertain the terms of any orders entered." Saccoccia, at 31. In the present case, the order under consideration was a consent judgment, signed by counsel for the defendants. In addition, two letters were sent, reminding defendants that the old by-laws still seemed to be extant. Subsequently the very specific Report and Recommendation of Magistrate Judge Martin reminded defendants of what the Consent Judgment required. As a result, there is no question about defendant being on notice of the order.

There is No Doubt that Defendant Mruk
Has Flagrantly Violated this Court's Judgment

The Court must be satisfied that the order was clear and the failure to comply is not a good faith misunderstanding of the requirements of that order.

It is true that there is no explicit requirement in the Consent Judgment that defendants promulgate new by-laws or new amendments to the District's constitution. However, they were specifically "enjoined from further reliance on or enforcement of Article VI, and Article IV, Sec. 1. Furthermore, certain wording in the old version of Article IV, Sec. 1, "shall be deleted." Consent Judgment, paragraph 1.

The first requirement, involving no "further reliance," is operative immediately since no steps are necessary after the Court approved the Consent Judgment on March 17, 2004. The fact that a "final judgment" was not to be entered until resolution of the attorney's fees issue in no way altered the fact that the Consent Judgment entered, by the agreement of the parties. F.R.C.P., Rule 54(b), specifically authorizes judgments and orders which are not dispositive of all issues

in a case, or the claims of all the parties. Nothing in Rule 54(b) states or implies that an interim order or partial judgment, absent a stay, can be ignored by a party. And, as already pointed out, this Court entered a final judgment incorporating the Consent Judgment then over thirteen months old. The definitive act of reliance by defendants on the old by-laws occurred in July 2005. Obviously they were not awaiting final judgment in order to cease reliance on the provisions enjoined by this Court.

Two additional factors support the conclusion that defendants knowingly contravened the Consent Judgment. In October of 2004, Mruk told the Providence Journal that he had not yet had time to set up a "committee" to review and revise the by-laws. "This can't be done overnight," he claimed. He asserted, however, that the old by-laws no longer existed anyway, having been superseded by the "Standard Operating Procedures" in June, 2002. This argument has been defendants' consistent, and unsuccessful, defense throughout this case.

Contrary to Mruk's October 2004 claims, he later introduced the enjoined By-Laws, in their entirety, at the arbitration hearing in the summer of 2005.

The second factor undermining Mruk's position is that he continued to press the unsuccessful argument that the old By-Laws had been superseded, even after the March 2004 Consent Judgment. It was his principal argument against the attorney's fees motion in the proceeding before Magistrate Judge Martin, and it was rejected. See Report and Recommendation, David L. Martin, United States Magistrate Judge, C.A. 02-538 ML, March 31, 2005, at 12:

> Defendants overlook the fact that Chief Mruk clearly relied on the supposedly "outdated regulations", id, at 4, in his November 15,

> 2002, letters to Plaintiffs. The letters are replete with references to the "Rules" or "Rules and Regulations."
> …Plaintiffs had good reason to expect Chief Mruk to continue to cite to the Bylaws, especially since he had threatened to fire them for "any further misconduct…"

Approximately four months after the Report and Recommendation (adopted in its entirety by the Court on April 22, 2005), Mruk again relied on the supposedly outdated By-Laws, during important labor arbitration proceedings.

Magistrate Judge Martin had reasoned that no Rule 68 offer by defendants could be used to cut off entitlement to attorney's fees because the offer was never as favorable to plaintiffs as the Consent Judgment. Report and Recommendation, at 16. The Consent Judgment, among other things, "orders that the term 'respectfully' be removed" and that the challenged portions of the By-Laws be enjoined. Id, at 16. (emphasis added). Thus, Magistrate Martin's conclusions also served as an additional reminder, albeit unnecessary, as to what the Consent Judgment required.

Defendant's Intent and Bad Faith are Demonstrated by the Attempt at a Coerced Dismissal

Prior to December 2005 the evidence of defendant Mruk's contempt for this Court was already apparent. His disregard for the role of the Court achieved stunning dimensions, however, with the dismissal "agreement" he sought to obtain as a trade-off for a collective bargaining agreement. Rather than risk noncompliance, he wanted to oust this Court from any further jurisdiction over him in the present case as well as another pending matter before Judge Smith. The demanded "release" is all-encompassing. Mruk would amend federal labor law so that an employer could demand that if union officials wish to achieve a collective

bargaining agreement, they renounce access to federal court, even regarding a judgment already obtained.

Mruk's desire for a "dismissal" in this case reveals an awareness that the case still presented an obstacle. If he thought he had fully complied, why the need to negotiate his escape from the Court's authority? The chosen method, conditioning collective bargaining rights on such a waiver, is contempt of the highest, or perhaps the lowest, order.

This Court is not taken seriously by Chief Mruk. He doesn't have the "time." He has laid down a challenge. It is vitally important that this Court respond to his challenge, judiciously, methodically and effectively.

Respectfully submitted,
Plaintiffs,
By their Attorney:

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CERTIFICATION

I hereby certify that on the ___________ day of December, 2005, I mailed and faxed a true copy of this Motion to: Michael W. Carroll, Esq., 72 Pine Street, Providence, RI 02903.

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John W. Dineen