

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS and SOUTH CAROLINA
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS,

Plaintiffs,

v.

NIMRATA “NIKKI” HALEY in her official
capacity as GOVERNOR OF SOUTH
CAROLINA, CATHERINE TEMPLETON in
her official capacity as DIRECTOR OF THE
SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION,

Defendants.

CIVIL ACTION NO.

COMPLAINT

NATURE OF THE CASE

1. This suit challenges actions by the Governor of South Carolina and the Director of the South Carolina Department of Labor, Licensing and Regulation (“LLR”) which violate the First and Fourteenth Amendments to the United States Constitution and the National Labor Relations Act, 29 U.S.C. § 151-169 (“NLRA”). The causes of action are brought pursuant to 42 U.S.C. § 1983.

2. Defendants Governor and Director have declared and are maintaining a state policy of opposing workers’ advocacy of and association in unions, and a state policy of opposing the advocacy and associational activity of unions within the state of South Carolina. The Governor and Director are pursuing this policy by unlawfully utilizing “increased regulatory scrutiny” of union activities and threats to immediately activate the “punitive machinery” of state

government against unions and against employees who wish to join or who advocate in favor of unions. *See, Blankenship v. Manchin*, 471 F.3d 523 (4th Cir. 2006). Additionally Defendants declared, and are maintaining and enforcing, the stated policy in retaliation for the activities of Plaintiffs, Plaintiffs' members and their potential members in violation of the First and Fourteenth Amendments to the United States Constitution.

3. Plaintiffs seek a declaration of rights pursuant to 28 U.S.C. § 2201 and 2202 and injunctive relief.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff International Association of Machinists and Aerospace Workers ("IAMAW") is a labor organization headquartered in the State of Maryland. Plaintiff IAMAW is organized into seven territories. South Carolina is one of fourteen states in the IAMAW's Southern Territory, in which territory the Union represents nearly 100,000 members in 21 District Lodges and 200 Local Lodges. At all times referred to herein, Plaintiff IAMAW was engaged in organizing and representational union activities within the state of South Carolina.

5. Plaintiff South Carolina American Federation of Labor and Congress of Industrial Organizations ("South Carolina AFL-CIO") is a state labor federation located in the State of South Carolina and is chartered by the American Federation of Labor and Congress of Industrial Organizations. The South Carolina AFL-CIO acts on behalf of members of affiliated unions through legislative and political advocacy and assists its members and the labor movement in organizing activities.

6. Defendant Nimrata "Nikki" Haley is the Governor of the State of South Carolina. During the time period November 2, 2010, through mid-day January 12, 2011, Defendant Haley was Governor-elect of the State of South Carolina. She was a member of the South Carolina

House of Representatives from 2005 through November 16, 2010. All actions by Defendant Haley alleged herein were under color of state law for purposes of 42 U.S.C. § 1983.

7. Defendant Catherine Templeton is the Director of the South Carolina Department of LLR. All actions by Defendant Templeton alleged herein were under color of state law for purposes of 42 U.S.C. § 1983.

8. Plaintiffs sue Defendants Haley and Templeton in their official capacities.

9. This Court has jurisdiction over this suit under 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1331, in that Plaintiffs' claims arise under the NLRA, 29 U.S.C. § 151-169, and the First and Fourteenth Amendments of the Constitution of the United States, enforceable through 42 U.S.C. § 1983. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202.

10. Venue in the District of South Carolina, Charleston Division, is proper pursuant to 28 U.S.C. § 1391(b) and Rule 3.01 of the Local Civil Rules for the U.S. District Court, District of South Carolina.

FACTS

11. In its role as a labor organization and exclusive bargaining representative, the IAMAW organizes workers, bargains collectively on their behalf, seeks improvements in the wages, hours and working conditions of its members, seeks to obtain job security and seeks redress for workplace violations through grievance handling and the filing of unfair labor practices with the National Labor Relations Board ("NLRB").

12. (a). In the past, the IAMAW was the exclusive bargaining representative of employees in the aerospace industry working within the state of South Carolina, including, specifically, employees at the former Vought aerospace manufacturing facility in North

Charleston. The Boeing Company (“Boeing”) fully acquired the Vought facility in July of 2009.

(b). After an aggressive anti-union campaign, the IAMAW-represented workers voted in September of 2009 to decertify the union at Boeing’s North Charleston plant. The IAMAW continues to be active in advocating for better working conditions and organizing workers at the former Vought facility and other facilities in South Carolina, including those operated by Boeing.

13. The South Carolina AFL-CIO is active in advocating for workers in South Carolina, for better working conditions and for their organizing in labor unions. It also assists its constituent members in organizing workers, representing workers and advocating for workers in South Carolina. The South Carolina AFL-CIO actively and publicly participated in the campaign to retain IAMAW as the representative of workers at Boeing’s facility in North Charleston.

14. In response to the above-described activities of Plaintiffs, their members and their associates, defendant Haley announced and has established, maintained and enforced the State’s policy and practice to suppress and to actively discourage and oppose workers’ efforts to join a union or support unions. Haley announced this state policy hostile to unions and union activity in South Carolina because of the viewpoints held and expressed by unions and workers supporting unions through their speech and associational activity.

15. In order to carry out the State’s anti-union policy announced and established by Haley, she further announced that the stated policy would be carried out through the South Carolina Department of LLR.

16. Defendant Haley made it clear that she was threatening unions, and plaintiff IAMAW particular, with hostile state action by the Department of LLR, and that the Department of LLR would have a large role in fighting unions, particularly at Boeing.

17. Upon information and belief, by this statement, Defendant Haley was referring to her plans to thwart any efforts by plaintiff IAMAW to organize the formerly-unionized employees at the Boeing plant and new workers added to the plant as a result of Boeing's development of a second "787" assembly facility

18. Further, to carry out the State's anti-union policy announced and established by Defendant Haley, she announced that the person she was appointing as the head of the Department of LLR to lead these anti-union activities described above was Defendant Templeton. Defendant Haley stated that she selected Defendant Templeton to help her in carrying out the state anti-union policy, and that she selected Defendant Templeton to head the Department of LLR in its anti-union activities precisely because of Defendant Templeton's previous experience in fighting unions. Defendant Haley said Defendant Templeton's background made her well-suited to implement the state policy of fighting unions.

19. Among the occasions on which Defendant Haley has announced this state anti-union policy was a press conference she held on December 8, 2010. Among the statements she made in that press conference are the following:

LLR is going to have a large role over the next couple of years, one being with the unions, and that is the fact that we think we are going to have a big union fight, as we go forward, with Boeing, and you are right now looking at the only female in the nation that has fought the largest UAW push that we've been through, and so she is ready for that, she is ready for the challenge, she knows what it takes to take it on, and she understands that it's going to be a partnership level that we cannot lose.

We are going to fight the unions, and I needed a partner to help me do it; [Templeton is] the right person to help me do it.

20. Attached as Exhibit 1 is a true and correct copy of the recording of Defendant Haley's press conference to announce her choice of Defendant Templeton for LLR which was posted on Youtube.com at <http://www.youtube.com/watch?v=D0XHeUTdEoU>. Defendant Haley's statements were widely reported in the media. True and correct copies of published articles discussing her statements are attached as Exhibit 2.

21. Following the press conference, the Department of LLR posted a release on its website about Defendant Templeton. The release touted Defendant Templeton's "union avoidance" experience. The news release posted on the State's website read in part:

Templeton has been involved in union avoidance for the past 14 years. She has extensive experience in national labor campaigns against the UAW, IBEW and Teamsters. In fact, her first campaign was the most notorious UAW campaign in decades. She is currently on Ogletree's EFCA Team providing extensive training throughout the country on the Employee Free Choice Act. In addition to her experience with the larger and older labor unions, she has specific knowledge about the various labor organizations actively targeting the healthcare industry.

22. As soon as Defendant Haley was sworn in as Governor, she moved to enforce the state policy she had announced and established by nominating Defendant Templeton to be Director of LLR. Defendant Templeton was confirmed on January 13, 2011, Defendant Haley's first full day in the Governor's office.

23. In addition to the website statement confirming that Defendant Templeton was selected by Defendant Haley to help the Department of LLR carry out the Governor's stated anti-union policy, Defendant Templeton on information and belief also made statements at her confirmation hearing that were consistent with Defendant Haley's threats against unions.

24. Defendants' statements and actions are no idle threats or mere rhetoric. Defendant Haley, Defendant Templeton, and the Department of LLR have enormous power to

wield the full weight of state law and the state government against plaintiffs, their members and associates.

25. As Chief Executive of the State of South Carolina, Defendant Haley, as Governor, has broad authority to implement and direct state policy and law. That authority includes the power to carry out her threats using the punitive machinery of the state government to carry out the anti-union and anti-worker policy.

26. Defendant Templeton likewise has broad authority to implement state policy and law. As Director of LLR, she is responsible for administering and enforcing the state right-to-work law and numerous other state labor and employment laws and regulations that can directly or indirectly affect workers' choice about whether to join or support a labor union. Her authority extends to major law enforcement functions including entering work sites, and investigating and prosecuting claims or violations.

27. In light of the state policy announced and established as stated above, the aforesaid powers of the Defendants and the Department of LLR are and will be utilized to oppose unions, the association of workers in unions, and advocacy in favor of unionization. Defendant Haley has committed the State to wielding its regulatory, investigative and enforcement authority against speech and associational activities favoring unions carried out by workers and union organizers in the state of South Carolina.

28. Additionally, Defendant Haley declared a governmental policy to side with employers, and Boeing in particular, in labor organizing campaigns and labor disputes. Defendant Haley declared a governmental policy to refrain from neutrality as to labor management relations in the state of South Carolina. She declared a governmental policy to deliberately refuse to protect the rights of workers to join or support unions as required by state

and federal law. Defendant Haley declared and will pursue a governmental policy that threatens reprisal against those who seek to associate together in a union. That reprisal will be carried out through adverse government action and heightened scrutiny of the workplace and of organizing activities by the LLR, and other avenues of state governmental interference. The declaration of these policies hostile to workers' constitutional and federal statutory rights, as well as their enforcement, would be, and is coercive and intimidating to the ordinary worker of reasonable firmness and to union organizers of reasonable firmness.

29. Defendant Haley's threat of an imminent "fight" with the IAMAW and other unions in South Carolina has frustrated, and will continue to frustrate, efforts by the IAMAW and the South Carolina AFL-CIO to achieve their missions as described above, including fulfilling the NLRA's promise of "full freedom of association, self-organization and designation of representatives of their own choosing." 29 U.S.C. § 151.

30. The harm to workers who are members or potential members of Plaintiffs is extreme. The Defendants' actions, including the explicit and well-publicized threats and the announcement of the reasons for Templeton's appointment, would have, and have had a chilling effect on constitutionally and statutorily protected speech and associational activity of employees of reasonable firmness.

31. Defendant Haley's widely-disseminated declaration that she, the Department of LLR and Templeton will fight the IAMAW at Boeing is a public announcement of state policy that has and will violate the rights of employees at Boeing plants, and elsewhere in South Carolina, to organize, join a union, bargain collectively, and engage in other protected concerted activity.

32. Defendants' acts have also chilled the speech and associational activities of members and potential members and allies of Plaintiffs and other labor unions everywhere within the state of South Carolina. Employees of reasonable firmness have been increasingly reluctant to talk to and meet with each other or with union representatives about working conditions and union association. This has proved to be the case in IAMAW's organizing efforts at Boeing, its organizing efforts with regard to employees of companies other than Boeing, and with South Carolina AFL-CIO member-unions other than IAMAW who have been seeking to meet with or organize workers in this state. In short, Defendants' conduct has had the foreseeable effect of creating a pervasive chill on protected activity by people of reasonable firmness.

32. The direct harm to Plaintiffs IAMAW and South Carolina AFL-CIO is also heavy. Defendants' past and threatened future interference with union organizational and representational activities will cause Plaintiffs to devote significant resources to identify and counteract the anti-union policies and practices Haley and Templeton have effectuated and will effectuate. Defendants' conduct will result in a reduction in union membership, organizational harm to both the IAMAW and the South Carolina AFL-CIO, and economic harm to them through a loss of union dues and/or other financial contributions by workers.

33. Defendants intentionally established a policy of hostility to and retaliation for the speech and associational activities of the Plaintiffs, their members and potential members is not justified by any state interest.

34. The acts of Defendants were, and are, being undertaken in reckless or willful disregard for, and indifference to plaintiffs' and their members' and potential member's rights, privileges and immunities protected by the NLRA and the First and Fourteenth Amendments.

FIRST CLAIM FOR RELIEF
(Violation of 29 U.S.C § 157-169)

35. Plaintiffs repeat and re-allege every allegation above as if fully set forth herein.

36. The National Labor Relations Act, 29 U.S.C. § 151-169, regulates most private sector labor-management relations in the United States. Section 7 of the NLRA, 29 U.S.C. § 157, guarantees the rights of employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also the right to refrain from any or all such activities. In Section 1 of the NLRA, 29 U.S.C. § 151, Congress declared the associational rights protected by the Act as a matter of national policy:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

These federal statutes preempt the anti-union and anti-worker policy established by Defendants described above.

37. In addition to those NLRA rights explicitly set forth in Section 7, the NLRA also protects employee and employer rights to resort to peaceful means of pressure on each other to facilitate collective bargaining free of governmental regulation and interference. Defendants' actions threaten the IAMAW, the South Carolina AFL-CIO and its affiliates, and union members and potential members by informing them that Defendants will use their public offices and state resources, under color of state law, to take hostile governmental action and heightened scrutiny

of employees' activities by the LLR to interfere with rights expressly and implicitly conferred upon workers by the NLRA.

38. By publicly declaring the State of South Carolina's policy and plan to oppose workers' efforts to organize unions and to advocate for better terms and conditions of work in association with other workers, and by appointing Templeton as the LLR Director to help her "fight the unions," Defendants Haley and Templeton are acting under color of state law to interfere with rights of unions, union members and potential union members guaranteed by the NLRA. This declared policy to "fight unions" is preempted by the NLRA.

39. Defendants' disregard for Plaintiffs' and Plaintiffs' members' rights as set forth above occurred under color of state law and has caused and is causing the Plaintiffs and their members and potential members to be deprived of their rights, privileges and immunities secured by the NLRA.

SECOND CLAIM FOR RELIEF

(Violation of First Amendment of the U.S. Constitution – Free Speech and Association)

40. Plaintiffs repeat and re-allege every allegation above as if fully set forth herein.

41. Employees and their associations enjoy protection from state infringement of their First Amendment rights to associate for mutual aid and protection and to promote unionization, self-organization and designation of a collective bargaining representative.

42. Attendance and discussion at meetings, speeches, and discussions among workers about the advantages and disadvantages of forming or joining a labor organization are all forms of association and speech entitled to protection under the First and Fourteenth Amendments of the U.S. Constitution.

43. Defendants' threats and announced state policy to subject to heightened scrutiny speech and association activities that favor unions is threatening, coercive and intimidating to

union leaders and organizers, and to represented and non-represented workers, including those employed by Boeing, who wish to associate together as a union and who wish to advocate for better working conditions through association with other workers.

44. Defendants' conduct described above did, does, and would, chill the free speech and free association rights of a reasonable employee of ordinary firmness, including Boeing workers, who were targeted by Defendant Haley.

45. Defendants' conduct has chilled, and will continue to chill, protected First Amendment activity. Defendants' actions, set forth above, violated and continue to violate the free speech and association rights guaranteed by the First Amendment to the United States Constitution to Plaintiffs, their members and their potential members. Defendants' conduct has chilled reasonably firm employees' willingness to assert their rights to organize, to bargain collectively, and to discuss and associate with one another and with union organizers about their terms and conditions of employment, including their interest in self-organization.

46. Defendants' violation of the rights of Plaintiffs, Plaintiffs' members and potential members protected by the First Amendment occurred under color of state law and has caused, and is causing, the Plaintiffs and their members and potential members to be deprived of their First Amendment rights of free speech and association.

THIRD CLAIM FOR RELIEF
(Retaliation for First Amendment Activity)

47. Plaintiffs repeat and re-allege every allegation above as if fully set forth herein.

48. Plaintiffs, Plaintiffs' members and potential members have First Amendment rights to speak in favor of unions and to associate together in unions and in support of unions. Defendants have retaliated against Plaintiff IMAAW because of its representation of workers at Boeing Company and because of its efforts to organize workers in South Carolina. Defendants

retaliated against Plaintiff South Carolina AFL-CIO because of its activities in support of its constituent unions, including at Boeing, and because of its staunch support for the organizing and collective bargaining activities of the workers of South Carolina.

49. Defendants' intentional retaliation for Plaintiffs' and Plaintiffs' members' rights as set forth above occurred and is occurring under color of state law and has caused the Plaintiffs and their members and potential members to be deprived of their liberties protected by the First and Fourteenth Amendments.

FOURTH CLAIM FOR RELIEF
(Violation of Fourteenth Amendment of the U.S. Constitution – Equal Protection)

50. Plaintiffs repeat and re-allege every allegation above as if fully set forth herein.

51. Plaintiffs IAMAW and South Carolina AFL-CIO are unincorporated associations which concern themselves with wages, hours and working conditions. Defendants intentionally established a policy of hostility to and retaliation for the speech and associational activities of the Plaintiffs and their members because of the viewpoint they espouse. Other similar associations and businesses which engage in speech and associational activities concerning wages, hours and working conditions exist in South Carolina. Those associations and businesses have not been targeted for hostile treatment as a matter of South Carolina's policy and practice.

52. Defendants' disparate and adverse treatment of Plaintiffs and Plaintiffs' members is occurring under color of state law and has caused the Plaintiffs and their members and potential members to be deprived of their right to equal protection under the Fourteenth Amendment.

FIFTH CLAIM FOR RELIEF
(Violation of Fourteenth Amendment of the U.S. Constitution – Due Process/Liberty)

53. Plaintiffs repeat and re-allege every allegation above as if fully set forth herein.

54. The Fourteenth Amendment guarantees that “no State shall...deprive any person of life, liberty, or property, without due process of law.” The Fourteenth Amendment’s Due Process Clause prevents government officials from abusing their power, or employing it as an instrument of oppression.

55. A primary purpose of the LLR Director’s job is to enforce state labor statutes such as the right-to-work law. Under S.C. Code § 41-7-75, Defendant Templeton “shall” ensure compliance with the law. This law prohibits persons from “compel[ling] any person to...refrain from joining or supporting any labor organization.” S.C. Code § 41-7-70. This statute defines a liberty interest of all workers in South Carolina.

56. Defendants’ actions alleged herein, taken under color of state law, intimidate and coerce workers so that they are compelled to refrain from joining or supporting labor organizations. These actions deny the liberty of South Carolina workers without due process. Defendants’ actions have and will continue to deprive South Carolina workers of their liberty to join and/or support unions as mandated in South Carolina’s Right To Work Act, S.C. Code § 41-7-10 and § 41-7-70, a liberty interest protected by the Fourteenth Amendment to the United States Constitution.

IRREPARABLE HARM

57. As a direct and proximate result of Defendants’ threats and actions alleged herein, the Plaintiffs, Plaintiffs members and potential members are suffering irreparable harm in violation of their Constitutional and federal statutory rights and will continue to suffer that harm unless and until granted the relief requested in this Complaint.

58. Plaintiffs have no adequate remedy at law for the violations alleged herein.

REQUEST FOR RELIEF

59. WHEREFORE, Plaintiffs pray that this Court award the following relief:

1. A judgment pursuant to 28 U.S.C. § 2201 and 2202 declaring that the policies, practices and acts complained of herein are illegal and unconstitutional. Specifically, Plaintiffs seek a declaration by the Court that:

Threats to “fight unions,” the execution of a policy hostile to free association in unions, acts which subject unions and workers who seek to associate by joining a labor organization to heightened scrutiny of those organizational and representational activities through the agencies of state government, and retaliation against unions because of their advocacy and associational activities and against workers because of their support for unions violate the First and Fourteenth Amendments to the United States Constitution, violate the Plaintiffs’ and their members’ and potential members’ express and implied statutory rights under the NLRA, and deprive the Plaintiffs and union-represented and non-represented workers who are potential union members of equal protection of the law, and of liberty without due process in violation of the Fourteenth Amendment to the U.S. Constitution.

2. An order enjoining Defendants from interfering in any manner with the exercise by Plaintiffs, their members or their potential members, of rights secured by the NLRA, and by the First and Fourteenth Amendments to the United States Constitution.

3. An order requiring Defendants Haley and Templeton to execute an undertaking in which they commit:

- a. to refrain, and to direct LLR to refrain, from violating the statutory and constitutional rights of workers in South Carolina to form, join and assist labor unions, and to engage in other concerted activities for the purpose of mutual aid or protection;
- b. to remain neutral, and to direct LLR to remain neutral, in enforcing all state labor and employment laws;
- c. to remain neutral, and to direct LLR to remain neutral, regarding labor-management relations between employers, workers and unions within the state of South Carolina, including but not limited to, organizing

campaigns, petitions for certification of a union, petitions for decertification of a union, grievances and unfair labor practices; and

- d. to remain neutral, and to direct LLR to remain neutral, regarding collective bargaining negotiations.
4. An award of costs, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988(b).
5. Other and further relief as the Court deems proper.

DATED this 20th day of January, 2011.

s/Armand Derfner
Armand Derfner
Derfner Altman & Wilborn
575 King Street, Ste. B (29403)
Charleston, S.C. 29402
843-723-9804
843-696-7935 cell
aderfner@dawlegal.com

Christopher Corson, General Counsel
International Association of Machinists
& Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687
(301) 967-4500
ccorson@iamaw.org

Kathleen Phair Barnard
Schwerin Campbell Barnard Iglitzin & Lavitt LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
(206) 285-2828 (phone)
(206) 378-4132 (fax)
barnard@workerlaw.com