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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 PATRICIA KANE, et al.,  
4 Plaintiffs,

5 v. 11 Civ. 6505 (RJS)

6 NEW YORK STATE NURSES  
ASSOCIATION, et al.,  
7 Defendants.  
8 -----x

Argument

9  
10 New York, N.Y.  
October 26, 2011  
11 4:00 p.m.

12 Before:

13 HON. RICHARD J. SULLIVAN

14 District Judge

15 APPEARANCES

16  
17 COHEN, WEISS AND SIMON LLP  
18 Attorneys for Plaintiffs  
BY: RICHARD M. SELTZER  
19 SUSAN DAVIS  
BRUCE S. LEVINE  
20

21 SPIVAK LIPTON LLP  
Attorneys for Defendants  
22 BY: DENIS P. DUFFEY, JR.  
ELIZABETH ORFAN  
23  
24  
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1 (Case called)

2 THE CLERK: Appearing for the plaintiffs?

3 MR. LEVINE: Good afternoon, your Honor. Bruce Levine  
4 from Cohen, Weiss & Simon, with my partners Richard Seltzer and  
5 Susan Davis.

6 THE COURT: I don't think Mr. Seltzer is on the docket  
7 sheet. Ms. Davis is. Mr. Seltzer?

8 MR. SELTZER: I'm not going to be speaking I don't  
9 think, your Honor.

10 THE COURT: All right. For the defendants?

11 MR. DUFFEY: Denis Duffey, Spivack Lipton, and  
12 Elizabeth Orfan. We filed a notice of appearance for Ms. Orfan  
13 this morning.

14 THE COURT: It hasn't worked its way to me yet.

15 MR. DUFFEY: It was filed under my ECF, so it came up  
16 on the docket sheet as an appearance by me. But it is a firm  
17 appearance. There is not an ECF password for Ms. Orfan.

18 THE COURT: Those normally go to the orders and  
19 judgments clerk and then eventually get to me. Who is going to  
20 be carrying the ball today?

21 MR. DUFFEY: I think I will be, but there may be some  
22 points that Ms. Orfan may chime in on.

23 THE COURT: All right. To recap where we have been in  
24 this thing, I issued an order as part of an opinion on October  
25 13th granting plaintiff's application for injunctive relief and

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1 ordering the defendants to declare the winners of the election  
2 and to seat the winning candidates. The defendants have since  
3 appealed, which is fine, but nobody has complied with my order  
4 at this point, right, unless something has changed within the  
5 last few hours?

6 MR. DUFFEY: In our opinion, the defendants have  
7 complied diligently, made diligent and reasonable efforts to  
8 comply with the order.

9 THE COURT: You have complied with my order?

10 MR. DUFFEY: Yes, with the order.

11 THE COURT: In what way?

12 MR. DUFFEY: Let me draw attention to one point the  
13 plaintiffs note. The plaintiffs maintain that the board of  
14 directors has no authority under the bylaws to declare winners,  
15 and the other defendants --

16 THE COURT: Who has the authority to declare a winner?

17 MR. DUFFEY: That's the question that defendants were  
18 faced with. Their, in our opinion, reasonable and diligent  
19 effort was to call a meeting of the board of directors. If the  
20 board of directors doesn't have the authority to comply with  
21 the Court's order, it was not clear to defendants who did.

22 The bylaws don't refer to declaration of winners and  
23 the election protest procedure, which the board of directors  
24 and other defendants, with a couple of exceptions, were bound  
25 by, was ongoing. So, pending the determination through the

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1 election protest procedure, there were no winners to declare.

2 That procedure has now concluded, as referenced in the  
3 declaration submitted this morning, and the conclusion of that  
4 procedure was to certify the results for the ANA house of  
5 delegates election, and those results have been publicized.

6 THE COURT: To extend the terms of incumbent officers,  
7 right?

8 MR. DUFFEY: The bylaws provide that new board members  
9 shall take their seats at the conclusion of the convention at  
10 which they were elected -- that did not happen here -- or until  
11 their successors are elected. Those successors have been  
12 elected. So, under the bylaws there is no choice but for the  
13 incumbent board of directors to continue in office.

14 THE COURT: Under this theory, I guess the election  
15 committee can just decide to make the incumbent board officers  
16 for life?

17 MR. DUFFEY: No.

18 THE COURT: And there would be no recourse, right?

19 MR. DUFFEY: No.

20 THE COURT: Why not?

21 MR. DUFFEY: There are a couple of reasons why not.  
22 One, the election committee has the authority to direct  
23 remedies. Here they have in fact directed a rerun election.

24 THE COURT: Wait. You're talking about the election  
25 committee, the authority of the election committee has, which

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1 is not part of the bylaws, right?

2 MR. DUFFEY: The election committee procedure is not  
3 incorporated in the bylaws, but it was created under the bylaws  
4 pursuant to the board of directors' authority thereunder.

5 THE COURT: The election committee doesn't have any  
6 authority that the board didn't have in it first place, right?  
7 They can't confer authority they didn't have, can they?

8 MR. DUFFEY: The board of directors was compelled by  
9 the LMRDA to create election safeguards and election protest  
10 procedures, and it has done so since 2008. Let me note that  
11 the election protest procedure has been in place since 2008.  
12 The current members of the election committee have held their  
13 seats since before this election began. So it was not a case  
14 in which this election committee was invented or appointed.

15 THE COURT: Under section 3 of article 4 it says the  
16 board of directors, among its functions are the establishment  
17 of special committees as needed.

18 MR. DUFFEY: Right.

19 THE COURT: Are you suggesting that the board has the  
20 authority to create a special committee that has powers that go  
21 beyond what the board has in the first place?

22 MR. DUFFEY: No.

23 THE COURT: OK.

24 MR. DUFFEY: But once those powers have been  
25 delegated, the board cannot willy-nilly revoke their authority,

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1 especially when it comes to something like election protests.

2 THE COURT: What authority did the board have under  
3 the bylaws to extend its own term of office?

4 MR. DUFFEY: The bylaws specifically provide that the  
5 newly elected board members shall take their seats at the  
6 conclusion of the annual convention or at such time as their  
7 successors are elected.

8 THE COURT: No, no. What it says is that the terms of  
9 all officers, director, and the nominating committee shall  
10 commence at the adjournment of the annual membership meeting at  
11 which they were elected and shall continue for the term  
12 specified on until their successors are elected.

13 MR. DUFFEY: That's correct, yes. That's the accurate  
14 quote. The incumbent board members took their seats at the  
15 conclusion of the convention at which they were elected, and  
16 their terms are continuing until their successors are elected.  
17 No successors have been elected.

18 THE COURT: By that reasoning, no successors might  
19 ever be elected. You're saying that that would be consistent  
20 with the powers of the election committee and the bylaws?

21 MR. DUFFEY: Well, no.

22 THE COURT: Why not?

23 MR. DUFFEY: I would say that the election committee  
24 has directed a rerun election, and the LMRDA limits the terms  
25 of union officers to 3 years. So, if there was a situation in

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1 which anybody was serving for more than 3 years, that would  
2 place an outside limit on it. But the election protest  
3 procedures provide for remedies, including reruns.

4 THE COURT: What the bylaws say is that the results of  
5 the secret mail ballot shall be announced at the annual  
6 meeting.

7 MR. DUFFEY: Right.

8 THE COURT: That didn't happen. Then it says the  
9 nominees who receive the highest number of votes shall be  
10 declared elected.

11 MR. DUFFEY: Right.

12 THE COURT: Then it says, section 7, that the terms of  
13 all officers shall commence at the adjournment of the annual  
14 membership meeting at which they were elected and shall  
15 continue for the term specified or until their successors are  
16 elected.

17 MR. DUFFEY: Right.

18 THE COURT: I don't see where the election committee  
19 has the authority to extend terms beyond what is specified in  
20 the bylaws or to just not announce the winner at the annual  
21 meeting. Where does that authority come from?

22 MR. DUFFEY: It doesn't say that the declaration of  
23 elections shall occur at the end of the meeting.

24 THE COURT: It says the results shall be announced at  
25 the annual meeting. That didn't happen, right?

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1 MR. DUFFEY: No, that did not happen.

2 THE COURT: Then it says the nominees who receive the  
3 highest number of votes shall be declared elected.

4 MR. DUFFEY: Correct.

5 THE COURT: That didn't happen either.

6 MR. DUFFEY: That's correct.

7 THE COURT: Right.

8 MR. DUFFEY: We have gone over this before. Let me  
9 reiterate that the results of the ballot were announced prior  
10 to the convention. They were not re-announced. The  
11 declaration of election ordinarily occurs at the annual  
12 meeting, when the election committee makes a report at the  
13 convention stating that the results are X, there are no pending  
14 protests, we certify these results. Insofar as the bylaws  
15 provides for any declaration of winners or in this case  
16 declaration of --

17 THE COURT: Insofar as it does? It does. I just read  
18 it.

19 MR. DUFFEY: Well, it provides for a declaration of an  
20 election, who shall be declared elected, but it doesn't require  
21 that to occur at the annual meeting.

22 THE COURT: It doesn't?

23 MR. DUFFEY: The defendants have concluded that they  
24 are bound by the election protest committee and that until the  
25 election protest committee certifies the results, no one can be

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1 declared elected. That's been our position throughout. I  
2 understand that not everyone agrees with it, but that is the  
3 basis and the limitations on the authority that the board and  
4 the defendants have and that is their understanding of the  
5 authority that they have. So, when faced with the order, they  
6 acted on that basis as diligently as possible.

7 THE COURT: The request for a stay pending appeal is  
8 denied, and the request for sanctions --

9 MR. DUFFEY: Your Honor --

10 THE COURT: -- for noncompliance with the order is  
11 granted. I'm going to sanction the defendants --

12 MR. DUFFEY: Your Honor --

13 THE COURT: -- going forward at the rate of \$5,000 a  
14 day. It is now late in the day Wednesday. So Friday is when  
15 that will start.

16 MR. DUFFEY: Your Honor, may I ask a couple of  
17 questions?

18 THE COURT: You're going to ask me some questions?  
19 Sure.

20 MR. DUFFEY: Yes. My first request would be that  
21 prior to the imposition or entry of any contempt order or  
22 sanctions, the defendants be given a hearing at which oral  
23 evidence can be taken.

24 THE COURT: Oral evidence about what?

25 MR. DUFFEY: Local Rule 83.7 provides for such a

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1 hearing.

2 THE COURT: What are the disputed issues of fact here?

3 MR. DUFFEY: The disputed issues of fact, first of  
4 all, are the issues of what happened yesterday have not been  
5 briefed. They just happened. They haven't been argued.

6 THE COURT: What happened yesterday doesn't change the  
7 fact that the order hasn't been complied with, does it? Am I  
8 missing something? Am I in the twilight zone?

9 MR. DUFFEY: There are defenses to contempt, including  
10 impossibility, and there are also questions of the ability of  
11 defendants to pay that need to be considered. The contempt  
12 order was filed on the basis of the noticing of the meeting  
13 rather than doing some other acts, which it is not even clear  
14 that any of the defendants have the power to do.

15 THE COURT: I issued an order on the 13th. It was  
16 very explicit as to what should take place. I don't care who  
17 wins this election. I have no intention of running a union  
18 election, I have no intention of running a union. I don't care  
19 whether Donald Duck wins this election, I really don't. What  
20 happens is, however, once the defendants live up to the bylaws  
21 and declare a winner, as they are obliged to do, then the other  
22 remedies that we spent a lot of time talking about last time  
23 kick in.

24 If plaintiffs slate wins the election, then it seems  
25 to me that others can challenge that election through the

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1 Department of Labor. If your slate wins the election, then the  
2 plaintiffs can challenge that election. It all takes place  
3 outside of my courtroom unless the Department of Labor brings  
4 it here.

5 I'm not looking to run an election or tell anybody how  
6 to run a union, but I really can't be in a situation where I  
7 have issued an order and I'm basically being told to pound  
8 sand. I can't have that.

9 MR. DUFFEY: No. What the defendants would like to  
10 know is which of the defendants have the power to accomplish  
11 the order and how. Karen Ballard is no longer a member of the  
12 board of directors, so I don't know what authority she has and  
13 on what basis any contempt and sanctions can be imposed upon  
14 her. Tina Gerardi is the CEO. She has never declared an  
15 election and has no authority to do so. Plaintiffs have  
16 conceded that the board of directors has no authority under the  
17 bylaws to declare anybody elected.

18 THE COURT: Contrary to what the plaintiffs have asked  
19 for, I'm perfectly happy to impose the sanction on the  
20 association. Whoever collectively or individually is capable  
21 of doing this, certainly the corporate defendant can. That I'm  
22 going to do at least. We could, I suppose, have some  
23 discussion as to which of the individual defendants should  
24 perhaps not be sanctioned.

25 MR. DUFFEY: Certainly as to the individual defendants

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1 and certainly as to any sanction, we would think that a hearing  
2 is necessary.

3 THE COURT: What are you going to tell me at a  
4 hearing? What am I going to learn at a hearing that I haven't  
5 already heard and seen through declarations or argument? I  
6 just don't see what are the disputed facts here.

7 MR. DUFFEY: There is the disputed fact as to whether  
8 any of the individual defendants have the power to comply with  
9 the order in ways other than they already did. There is no  
10 showing that that's true. Indeed plaintiffs have never  
11 established or even argued that any individual defendant by  
12 themselves could do anything, and they have conceded that the  
13 board of directors can't declare anybody elected. So it's a  
14 question mark as to how anything other than what has already  
15 been done could be done or could have been done.

16 THE COURT: I'm not sure I agree with that.

17 MR. DUFFEY: I feel like this is a case that is  
18 similar in that regard to the Longshoremen's case, the Supreme  
19 Court Longshoremen's case, and also this Court's decision in  
20 Chao v. Gotham Registry. This is a novel situation. How to do  
21 what the order directed is not clear, even to plaintiffs.

22 They know what the result they want would be and they  
23 issued a number of demands related to that, but how to get to  
24 that result, it's not obvious. I understand that it may seem  
25 clear, but who can do it and how they can do it and when they

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1 can do it are all questions that have to be answered before, I  
2 would submit, anybody could be held in contempt, including the  
3 association.

4 THE COURT: Including the association?

5 MR. DUFFEY: Yes. If plaintiffs are maintaining that  
6 the board of directors does not have the authority to declare  
7 anyone elected, then who is going to perform this act?

8 THE COURT: If the board of directors has conveyed  
9 this authority to an election committee, then I think the  
10 election committee could do this. I'm not sure what the  
11 election committee was doing between August and late September.

12 MR. DUFFEY: The election committee is not a full-time  
13 body. They are rank and file.

14 THE COURT: That may be, but they probably know, if  
15 they read the bylaws, that they need to declare winners by the  
16 annual meeting. It seems to me very clear that their whole  
17 goal was to not do that at the annual meeting but to delay this  
18 as long as possible, and it wasn't until I got involved that  
19 anything started happening.

20 MR. DUFFEY: I respectfully disagree. The election  
21 committee met on September 16th. It was scheduled to and did  
22 meet on October 14th, and that was scheduled prior to the  
23 filing of this action. The appeals committee met in the  
24 intervening period between October 14th and now. Would this  
25 case never have come up perhaps if the election committee had

1 done all of its work prior to the convention? I don't know.

2 THE COURT: This is like the Electoral College  
3 deciding they are not going to vote before January.

4 MR. DUFFEY: There is nothing in the bylaws or the  
5 labor law or anything that makes it impossible or inappropriate  
6 for a union to have internal election protest procedures.

7 THE COURT: Wait. The bylaws make it very clear how  
8 elections are declared. There is nothing in the bylaws that  
9 says you get to decide not to do it, that you get to have an  
10 election and not decide a winner and extend the terms of the  
11 incumbents. There is nothing in here that says that.

12 MR. DUFFEY: There is also nothing in the bylaws that  
13 says when or who can declare an election. There is nothing in  
14 the bylaws that says when or how the declaration of the  
15 election has to occur.

16 THE COURT: The bylaws make it very clear that the  
17 officers are for said terms and the elections are for certain  
18 officers.

19 MR. DUFFEY: It makes it equally clear that the people  
20 who have been elected at the convention serve until their  
21 successors for the term specified or. There is no limitation  
22 to the term specified. It's or until their successors  
23 reelected. It expressly provides for a situation like this  
24 where, for whatever reason, an election has not occurred at the  
25 end of the officers' terms.

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1 THE COURT: Again, that interpretation would allow for  
2 the board or a special election committee or whoever to just  
3 not hold elections. Right? Or just to keep not declaring  
4 winners of elections.

5 MR. DUFFEY: They have to issue a remedy and declare a  
6 remedy, and they have done so.

7 THE COURT: But that is not a bylaw. Again, if  
8 somebody wanted to amend the bylaws to say this is what we are  
9 going to do to ensure fair elections and a succession when  
10 elections are contested, they could have done that. What you  
11 have provided as the election protest procedure doesn't rise to  
12 that level. Right? That's not a bylaw.

13 MR. DUFFEY: It's not a bylaw, but it is, I would say,  
14 equivalent to what many unions have.

15 THE COURT: Equivalent to what?

16 MR. DUFFEY: NYSNA is an unusual organization based on  
17 its history and its formation, in that it has instead of a  
18 constitution and bylaws, it has bylaws and policies. The labor  
19 law, including the regulations, provide that election protest  
20 procedures must be followed regardless of whether or not they  
21 are in the constitution and bylaws.

22 THE COURT: Are you suggesting that they say that  
23 those policies have to be followed in violation of the bylaws  
24 with the result being that the incumbents never leave office?

25 MR. DUFFEY: No. That has not happened here. We

1 don't believe it will happen here.

2 THE COURT: It could happen.

3 MR. DUFFEY: Yes, there are many things that could  
4 happen. You can always come up with hypotheticals based on any  
5 document. But I don't think there is any reason that that  
6 would happen. Moreover, I would just say that there is a  
7 reason --

8 THE COURT: Wait. I think you and I are off on the  
9 wrong foot here. You seem to think that this is a conversation  
10 in which you get to interrupt me --

11 MR. DUFFEY: Very good. Sorry.

12 THE COURT: -- or talk over me, and it doesn't really  
13 work that way. We're talking about the bylaws which are  
14 treated like a constitution for the organization, right? There  
15 is no constitution, there is just this.

16 MR. DUFFEY: Correct.

17 THE COURT: These have to be interpreted the way one  
18 would interpret a statute or a constitution. What I'm saying  
19 is your interpretation would allow for a complete end run  
20 around elections and a complete end run around explicit  
21 provisions of the bylaws in perpetuity because the election  
22 committee that was created by the board and not by the  
23 organization, and it does not rise to the level of the bylaws,  
24 would allow for them to again and again declare that there is  
25 no winner.

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1           MR. DUFFEY: The bylaws and the policies which, as I  
2 was trying to say before -- and let me apologize for speaking  
3 over you and interrupting. I apologize for that. The policies  
4 are binding on the board. The board does not believe, and I  
5 don't think it is accurate or been held or ruled or  
6 established, that the election protest procedure has been  
7 abolished or is unlawful.

8           THE COURT: The problem with the election protest  
9 procedure is that it leaves to the election committee the  
10 authority to take whatever remedial action they deem  
11 appropriate, even if that means no more elections, they are too  
12 much trouble, we've got a great president where we are, let's  
13 just keep him or her in place.

14           MR. DUFFEY: My response to that would be, if I may,  
15 that the bylaws, the policies, and all of it, particularly the  
16 election protest policy, was adopted in the context of the  
17 LMRDA in an effort to comply with the LMRDA. The LMRDA  
18 regulates union officer elections, too. People who served  
19 beyond 3 years, that is unlawful under the LMRDA. That has not  
20 happened here.

21           THE COURT: But the point is if there is not going to  
22 be an election or if the elections are just not going to have  
23 winners, then you're going to just keep citing the language  
24 that you claim section 7 has that allows you to just say, well,  
25 until their successors are elected, they get to stay.

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1           MR. DUFFEY: As we have argued, an election has been  
2 concluded here at the conclusion of the balloting. Now that  
3 the election protest procedure is concluded, there is even a  
4 more clear conclusion of this election process, and we would  
5 submit now that the jurisdictional argument we made before is  
6 even stronger and that is an even stronger basis for a stay  
7 pending appeal or at the very least a stay pending our  
8 application to the Second Circuit for a stay, which we are  
9 going to make but we have not made since you have not yet  
10 ruled.

11           THE COURT: Right. But again the point is although  
12 the bylaws are pretty clear when the winner has to be declared,  
13 the election committee, which has no more authority than the  
14 board, has decided no, we don't have to comply with that part  
15 of the bylaws, we're going to just have another election, and  
16 if this one doesn't work out, maybe we'll have another  
17 election.

18           MR. DUFFEY: It is not at all clear to the board or  
19 the defendants that the bylaws require in every instance for  
20 the declaration of elections to occur at the annual meeting,  
21 especially when there are pending protests being considered.

22           THE COURT: "The results of the secret mail ballot  
23 shall be announced at the annual meeting." That's pretty  
24 explicit. It just didn't happen.

25           MR. DUFFEY: The results of the secret mail ballot had

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1 already been announced.

2 THE COURT: The point is that at the annual meeting is  
3 when it has to be announced and the person that got the highest  
4 number of votes declared elected.

5 MR. DUFFEY: That's not what the bylaws say.

6 THE COURT: Wait a minute. Again, is this going to be  
7 statutory interpretation or linguistic interpretation? Section  
8 4 says, "The results shall be announced at the annual meeting."  
9 Section 5 says, "The nominees who receive the highest number of  
10 votes shall be declared elected." Section 7 says, "The winners  
11 will commence their term at the adjournment of the annual  
12 meeting at which they were elected." I don't see how anybody  
13 could read that and say, oh, no, no, it allows for the  
14 elections to not have winners declared for several months after  
15 the annual meeting. We have talked about this before.

16 MR. DUFFEY: Right.

17 THE COURT: I think that is completely unsupportable  
18 interpretation of those consecutive sections in article 14.

19 MR. DUFFEY: If I may, just to indulge in my own  
20 hypothetical, if it had become clear that the secret ballot  
21 results had been concluded as a result of fraud, the election  
22 protest procedure could be disregarded and the people who were  
23 declared the highest vote getters would have to be declared  
24 elected and seated regardless of the LMRDA adequate safeguards,  
25 regardless of requirement and regardless of the election

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1 protest procedure that was adopted to deal with those kinds of  
2 problems?

3 THE COURT: I think the point is that you have to deal  
4 with this within a confined time period, just like the  
5 Electoral College has to meet before the date certain on which  
6 the President of the United States takes office. They can't  
7 just decide we're not going to do it. In bush v. Gore there  
8 was a deadline that was going to be met and nobody was going to  
9 get to say we just still haven't worked it out, so in the  
10 interim we will continue with the old president. No, Bill  
11 Clinton wasn't going to get to stay on. Different  
12 constitution, different language, but the same point.

13 According to what the association has made its ruling  
14 bylaws, you've got to do this before the annual meeting.  
15 Presumably, when you have an election in the summer, you can  
16 get it done before the annual meeting. In this case it wasn't  
17 done. I don't know why. But you don't get to just keep this  
18 going and say we're going to stick with the status quo. I  
19 don't think the language of the bylaws allows you to do that.

20 I'm not going to run the election, I'm not looking to  
21 run a union, but I do think that under Crowley and under the  
22 labor law courts do have a role to play with respect to the  
23 bylaws.

24 MR. DUFFEY: Returning to my question, we would like  
25 some clarification, if possible, as to how this is to be done

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1 and how it is to be accomplished. We would also like a hearing  
2 relative to the contempt.

3 THE COURT: It is very clear your clients have no  
4 intention of complying with my order, right?

5 MR. DUFFEY: No, that is not true at all.

6 THE COURT: Listen to me. What they intend to do is  
7 run a new election with perhaps new candidates, right?

8 MR. DUFFEY: No. The election committee procedure  
9 expressly provides that the nominees shall be the same, the  
10 election committee report rather. It will be a rerun of the  
11 same election.

12 THE COURT: That's not complying with my order, right?  
13 You can't do that and say you're complying with my order.

14 MR. DUFFEY: The only way in which winners can be  
15 declared under the bylaws and the policy is following the rerun  
16 under the board's --

17 THE COURT: Wait a minute. What you are saying is  
18 that the election committee has chosen a remedy that is  
19 inconsistent with my order and so I had better adapt. That's  
20 really what you are telling me, that they have decided to, in  
21 essence, by their choice of a remedy strip me of jurisdiction.

22 MR. DUFFEY: Not at all, your Honor.

23 THE COURT: I issued my order before they issued their  
24 remedy.

25 MR. DUFFEY: That's right.

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1 THE COURT: Their remedy is completely inconsistent  
2 with my order. I don't see how you can suggest that you could  
3 comply with this order and comply with the remedy that the  
4 election committee has endorsed. Go ahead.

5 MR. DUFFEY: The order was issued against defendants.  
6 Defendants have certain powers, they don't have other powers.  
7 There was no power for the board of directors to declare people  
8 elected. As plaintiffs have conceded in their papers, and in  
9 view of the election protest procedure, no declaration of  
10 election could occur until they had ruled. Now they have  
11 ruled.

12 THE COURT: Who has the power to declare a winner?

13 MR. DUFFEY: Right now?

14 THE COURT: Right now.

15 MR. DUFFEY: Between now and a rerun?

16 THE COURT: Right now.

17 MR. DUFFEY: I don't think any of the defendants have  
18 that power.

19 THE COURT: What you are saying is the election  
20 committee, by choice of its remedy, has rendered all the  
21 defendants, in essence, judgment proof because none of them now  
22 have the power to comply with the Court's order. That's a neat  
23 trick. You should patent that. You would make yourself very  
24 popular with folks who want to violate court orders.

25 MR. DUFFEY: Your Honor, the election protest

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1 procedure has been in place for several years.

2 THE COURT: The election protest procedure doesn't  
3 dictate the remedy that was chosen by the committee.

4 MR. DUFFEY: Yes, it empowers them to declare any  
5 remedy, including a rerun.

6 THE COURT: But I issued an order saying what the  
7 bylaws require, and they decided to say, well, we have chosen a  
8 remedy that is outside the bylaws and is outside your order, so  
9 take that, Judge, and there is nothing you can do about it.  
10 Maybe the circuit will agree with you, but I don't have to  
11 agree with you.

12 MR. DUFFEY: What were defendants supposed to do with  
13 respect to the election protest committee? Were they supposed  
14 to tell them how to rule? Were they supposed to overrule them?  
15 There is no authority for them to do either of those things.  
16 These are rank-and-file nurses who have full-time jobs, who are  
17 retired. Their powers are limited by the bylaws and the  
18 policies. They have no knowledge of how to do anything outside  
19 of that with respect to these elections or anything else. And  
20 there is a Department of Labor procedure, a Title IV procedure  
21 that is in place for dealing with election objections.

22 THE COURT: That's what is talked about in my opinion  
23 and basically what you said at the last oral argument, which  
24 was that until somebody was declared a winner, neither the  
25 Court nor the Department of Labor could really do anything

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1 about this. Right?

2 MR. DUFFEY: What we said was until the election  
3 protest committee had finished its work. That is not what we  
4 said, actually. We said that once the balloting is conducted,  
5 as the lion's share of authority holds, once the balloting is  
6 conducted, the election is concluded for purposes of Title I  
7 and Title IV jurisdiction. I don't think Crowley changes that,  
8 but that was the basis of our motion.

9 THE COURT: That was a way to strip me of  
10 jurisdiction. That was part one of your Texas two-step. Part  
11 two was that the Department of Labor couldn't get involved  
12 until there was a declared winner.

13 MR. DUFFEY: That is not true at all.

14 THE COURT: Your position now is that the remedy for  
15 the plaintiffs all along, certainly after the annual meeting,  
16 was to go to the Department of Labor?

17 MR. DUFFEY: That was made clear in all our papers on  
18 the preliminary injunction.

19 THE COURT: No, it wasn't. What you were talking  
20 about was that the Court didn't have jurisdiction. You didn't  
21 commit yourself to whether the Department of Labor had  
22 jurisdiction. You cited to provisions that talked about the  
23 Department of Labor's role in this, but the language of those  
24 statutes is premised on there being a winner. What it says is  
25 that the winner shall conduct the business affairs of the union

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1 in the interim, right?

2 MR. DUFFEY: No, it does not say that.

3 THE COURT: It doesn't say that?

4 MR. DUFFEY: There is a challenged election. I'm  
5 sorry, your Honor, it does not say the winners.

6 THE COURT: OK, it doesn't say that. I'm going to get  
7 to the statute.

8 MR. DUFFEY: To a challenged election.

9 THE COURT: A challenged election, right?

10 MR. DUFFEY: Right. The election has been conducted  
11 as of the conclusion of the balloting on August 25th. If the  
12 plaintiffs wanted to make any complaints about --

13 THE COURT: The challenged election shall be presumed  
14 valid pending a final decision thereon, and in the interim the  
15 affairs of the organization shall be conducted by the officers  
16 elected, right?

17 MR. DUFFEY: That provision --

18 THE COURT: Or in such other manner as this  
19 constitution and bylaws may provide. Now, if you had a  
20 constitution and bylaws that provided for some interim measures  
21 in a contested election, then you might have an argument here.  
22 But your bylaws don't do that. What has happened here is that  
23 by not declaring a winner of the election, the interim affairs  
24 of the organization are not conducted by the officers elected  
25 in the challenged election. Right?

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1           MR. DUFFEY: I disagree. First of all, that provision  
2 is in Title IV and it concerns the conditions that obtain after  
3 a complaint has been made to the Secretary of Labor. It  
4 doesn't control the jurisdictional question as to when  
5 exclusive Title IV jurisdiction attaches. As we made clear in  
6 our papers, we believe that begins at the conclusion of the  
7 balloting on August 25th. That is when the time to --

8           THE COURT: Who is conducting the affairs of the  
9 organization in the interim?

10           MR. DUFFEY: The incumbent board pursuant to the  
11 bylaws and policies adopted thereunder and the adequate  
12 safeguards that they are required to adopt under the LMRDA,  
13 which have to be followed anyway regardless of whether they are  
14 in the constitution and bylaws.

15           THE COURT: There is really no point in doing this  
16 anymore. I will issue an order.

17           Mr. Duffey, I don't know where you're used to  
18 practicing. Is it because I'm young and you think that you and  
19 I are just having a conversation on a street corner?

20           MR. DUFFEY: I apologize if I was interrupting.

21           THE COURT: You keep talking over me and you keep  
22 making your points. Maybe the folks who read the transcript  
23 will say bully for you. But wow, I'm just not used to it, I've  
24 got to say that.

25           MR. DUFFEY: Let me apologize again.

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1 THE COURT: Yes, you can keep apologizing all you  
2 want, but nothing changes. Right?

3 Let me hear from plaintiffs.

4 MS. DAVIS: Good afternoon, your Honor. I'm not going  
5 to address the merits of your order. As we have said in our  
6 papers, we agree that the defendants should be held in  
7 contempt.

8 THE COURT: Who should be held in contempt, that's the  
9 point Mr. Duffey was making.

10 MS. DAVIS: I would like to address who should be held  
11 in contempt. An unincorporated association such as NYSNA can  
12 only act through its officers and staff. That is the way it  
13 acts. The bylaws give the board of directors the authority for  
14 the corporate management, a fiduciary control of the  
15 association, and it is authorized to do anything necessary and  
16 appropriate.

17 Yesterday, your Honor, the board acted, every member  
18 of the board except for Karen Ballard. We are not seeking  
19 contempt sanctions against Karen Ballard. But every other  
20 member of the board acted yesterday, and they acted, as they  
21 said they would on October 14th, to consider how to respond to  
22 your order.

23 As they said in their declaration yesterday, all of  
24 them, with the exception of defendant Ballard, did a couple of  
25 things yesterday. They acted. First of all, they declared

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1 elected all the delegates for the ANA house of delegates  
2 election. So, the notion that the board doesn't have the  
3 authority to declare anyone elected is expressly contrary to  
4 Kennedy's declaration indicating what they did yesterday.

5 Then they directed the CEO to take various steps to  
6 retain an election company and to hold a rerun election. Most  
7 importantly, your Honor, what they did yesterday, and this is  
8 in paragraph 8 of Kennedy's declaration, is they determined  
9 that the incumbent board should remain in place until its  
10 successors are validly elected.

11 The question is, who can act? The incumbent board can  
12 act, which constitutes all of the individual defendants and CEO  
13 Gerardi, who was carrying out their orders.

14 Your Honor, everything we have heard today from Mr.  
15 Duffey, every single thing that they have done since you issued  
16 your order on October 13th indicates their intent not to comply  
17 with your order notwithstanding Title IV of Landrum-Griffin  
18 which says that the elected officers need to be seated,  
19 notwithstanding their bylaws, which unequivocally declare that  
20 they are required to declare the person with the highest number  
21 of votes elected. Everything Mr. Duffey has said, everything  
22 they have done, has indicated they have no intent to comply.

23 Under Title V of the LMRDA, your Honor, individual  
24 board members and a CEO are individual fiduciaries of the  
25 organization. The organization is not permitted to pay a fine

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1 for the individuals. The individuals who acted yesterday in  
2 defiance of your order who have directed Mr. Duffey to respond  
3 as he did today are the only people that can effectuate  
4 compliance with your order.

5 Your Honor, we would like to ask two things. One is  
6 that fines be imposed on every individual defendant except for  
7 defendant Ballard because that is the only way that this  
8 unincorporated association can act. It is the only way that,  
9 consistent with Title V, we can proceed.

10 Secondly, your Honor, in light of everything that I  
11 have heard from Mr. Duffey today, I would ask that they report  
12 back to the Court tomorrow and indicate whether or not they are  
13 in compliance. The newly elected board members, your Honor,  
14 together with the existing board members, whose terms have not  
15 expired, have appeared at the offices, have been denied entry  
16 even though they are sitting board members. They have been  
17 denied the right to look at the books.

18 They asked that a meeting be called on ten days'  
19 notice. Under the bylaws, which is a sacred contract between  
20 the association and the members, the president is required to  
21 call a meeting, and she has refused to do so. She has refused  
22 a request for a conference call of the new board. She has  
23 ordered, CEO Gerardi, and all of this is undisputed, has  
24 ordered the security guard to turn away both the newly elected  
25 officers and the officers whose terms haven't expired.

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1           Absent your Honor doing two things -- one, fining the  
2 individuals except for defendant Ballard and, two, instructing  
3 counsel to report back to this Court -- I would virtually  
4 guarantee that there is going to be no compliance here.

5           THE COURT: That seems obvious to me. What about Mr.  
6 Duffey's point about having a hearing?

7           MR. DAVIS: Your Honor, if Mr. Duffey could show one  
8 disputed fact, there would be some credibility to his claim.  
9 There is no fact in dispute. The bylaws say what they say.  
10 The election committee was set up by a policy.

11           By the way, your Honor, in the bylaws themselves they  
12 set up a number of committees. They set up a finance  
13 committee, they set up a nominating committee. They set up  
14 other committees with specific authority in the bylaws. They  
15 did not set up an election committee in the bylaws even though,  
16 as Mr. Duffey says, three or four years ago they set up this  
17 election committee.

18           So, the only question, your Honor, is whether this  
19 election committee can somehow take an action that contravenes  
20 the bylaws. As your Honor said when we were last together, and  
21 I quote, well, the board's policies I don't give a damn about.  
22 The reason, your Honor, is that the board of directors cannot  
23 delegate authority to a committee to take action contrary to  
24 the bylaws.

25           In fact, the board of directors itself cannot take

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1 action contrary to the bylaws. The bylaws, as my partner Mr.  
2 Seltzer said when we were discussing this, is the Magna Carta  
3 of the union. It is a contract. They cannot have the board of  
4 directors or the election committee breach that contract.

5 Everything that has happened and everything that I  
6 have heard today indicates that unless you fine the individuals  
7 through whom the association can act, there will be no  
8 compliance and we will continue with this nightmare.

9 THE COURT: I'm not, frankly, planning to get too  
10 involved in the nightmare. I'm just here for a limited purpose  
11 of enforcing an order that I previously issued.

12 Mr. Duffey, what are the disputed issues that I need  
13 to have a hearing on? What is the testimony that you would be  
14 eliciting from witnesses at that hearing?

15 MR. DUFFEY: There has been a lot of statements about  
16 the intent and the willfulness and there has been an allegation  
17 of willful contempt. I think the state of mind of all the  
18 individual defendants is an issue. I think the reasonableness  
19 of their conclusions and the practice concerning how election  
20 results are declared is an issue. I think that --

21 THE COURT: Wait. The reasonableness of not complying  
22 with my order is an issue?

23 MR. DUFFEY: The defendants didn't understand that  
24 they had the authority to declare an election result that was  
25 prior to the election procedure result. It concluded that it

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1 did not have the authority to contravene that result. That was  
2 the basis for their actions. I think the question of the  
3 ability of any of the defendants to declare winners and seek  
4 candidates yet is a matter of fact that is in issue.

5 THE COURT: I don't think it is a matter of fact. It  
6 is a matter of argument, I suppose. You have cited the  
7 election protest procedure. You have cited other facts that I  
8 don't think are disputed. From that you draw certain  
9 conclusions. I'm not sure what testimony is going to add to  
10 any of this. What is it exactly that you intend to elicit from  
11 witnesses in the nature of facts that aren't already before the  
12 Court?

13 MR. DUFFEY: Certainly on the issue of the practice.

14 THE COURT: What practice?

15 MR. DUFFEY: The practice under the bylaws as to how  
16 declarations of elections have occurred, also any issues  
17 concerning ability to pay and concerning intent and state of  
18 mind.

19 THE COURT: Again, it is not clear to me. You're  
20 going to call a witness and say what? What was your intent in  
21 not complying with the Court's order?

22 MR. DUFFEY: I think that the events of yesterday, if  
23 they are going to be the basis of --

24 THE COURT: Are they disputed, the events of  
25 yesterday?

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1           MR. DUFFEY: The events of yesterday, I think, if the  
2 contempt motion before the Court so far is based on what  
3 happened a week ago. Things have been moving very fast. The  
4 events of yesterday, I would submit respectfully that if they  
5 are the basis of any contempt order, the parties should have an  
6 opportunity to brief and submit additional evidence concerning  
7 that.

8           THE COURT: There has been a motion for contempt  
9 pending for a while now. It's already been briefed. What are  
10 you talking about?

11           MR. DUFFEY: I'm saying that the motion for contempt  
12 was filed on Monday the 17th based on the failure of defendants  
13 to do what plaintiffs claimed as of that time. The events of  
14 yesterday open up a whole new can of worms, I would submit. I  
15 understand what plaintiffs' position is. I would also submit  
16 that some direction as to who and how and findings of fact or  
17 conclusions as to who and how the declaration and seating is to  
18 occur need to be made.

19           THE COURT: There is a question as to whether the  
20 board has to ability to declare a winner of an election?

21           MR. DUFFEY: Yes.

22           THE COURT: I don't agree with that. I don't think  
23 the bylaws would support that view. I know you have argued  
24 that, but I don't think I need to have a hearing having people  
25 say things that are outside of the bylaws when the bylaws make

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1 it clear what the authority of the board is and then make clear  
2 what has to be done in connection with elections.

3 MR. DUFFEY: I think that if defendants are acting on  
4 a good faith understanding of what the limit of their power is,  
5 that is testimony and evidence that bears upon the  
6 appropriateness of the contempt order as to any individual  
7 defendant.

8 THE COURT: If you want to submit declarations, you  
9 can do that. I'm happy to take them. I just don't see what  
10 the point of a hearing is. This is really turning on what is  
11 in the bylaws, what is required by the bylaws, and what  
12 authority the board has in connection with the bylaws. The  
13 fact that they disagree is I guess their right, but it doesn't  
14 mean that they then get to disregard a court order because they  
15 disagree with it. That's what we have a Court of Appeals for.  
16 It doesn't mean they get to just thumb their nose at the Court  
17 and its order.

18 MR. DUFFEY: Your Honor, I do not believe the  
19 defendants, whatever plaintiffs may say or how it apparently  
20 appears to the Court, were thumbing their nose at the order.  
21 They were trying to act within the scope of their authority as  
22 they understood it. That authority, again, is a limited  
23 authority. These are not full-time professional union  
24 officers. They are rank-and-file people who work in hospitals  
25 for the most part.

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1 THE COURT: Maybe they weren't advised well. The fact  
2 is I issued an order almost two weeks ago, two weeks ago, and  
3 it hasn't been complied with. The explanation is we didn't  
4 think you were serious about that?

5 MR. DUFFEY: No. The explanation is that they took  
6 the actions that they understood to be within their authority  
7 in an effort to comply with the order.

8 THE COURT: How does that comply with the order?

9 MR. DUFFEY: The standard for contempt is reasonably  
10 diligent efforts to comply. There is also the defense of  
11 impossibility to do things beyond that. There is also a  
12 requirement that the order has to make it clear precisely who  
13 is supposed to do what when.

14 THE COURT: It was an order issued in a case in which  
15 the entire board and the association were named as defendants,  
16 right?

17 MR. DUFFEY: Not the entire board. Certain members of  
18 the board and the association, all of whom have limited powers.

19 THE COURT: The powers are set forth in the bylaws.  
20 I'm looking at the bylaws. I have already concluded what the  
21 bylaws say. That's part of the analysis here. The fact that  
22 they have a different analysis in your view is a defense in a  
23 sanctions motion?

24 MR. DUFFEY: Whether or not they have the authority,  
25 legally or under the bylaws, to do what the order specifically

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1 directed I think is a defense, yes. The individuals can't do  
2 anything relative to this as private persons.

3 THE COURT: The powers of the board are very clear.  
4 The powers of the election committee are the only ones that are  
5 delegated by the board. The obligations to declare the winner  
6 and the timing of that declaration are set forth in the bylaws.  
7 You're telling me that the bylaws don't make clear who actually  
8 declares the winner so that you don't have to do this, because  
9 everybody can have plausible deniability as to what their role  
10 is?

11 MR. DUFFEY: I would say it's a novel situation. As  
12 under the Longshoremen's case and as under Chao v. Gotham  
13 Registry, it's a novel situation where, based on the facts and  
14 the four corners of the order, who could perform these actions,  
15 when, and how was not obvious. In that context we would  
16 respectfully submit that a contempt order would be  
17 inappropriate at this time.

18 THE COURT: What am I supposed to do? I have to draft  
19 a new order that explains to them why I believe the bylaws are  
20 clear as to their authority and hope maybe they will agree with  
21 it?

22 MR. DUFFEY: No. I would say that an order that would  
23 specify exactly what has to be done when and by whom would not  
24 raise the problems that were felt by the board and the other  
25 defendants in taking the actions directed in the order.

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1 THE COURT: When and by whom. It's a preliminary  
2 injunction order, right? Was it ambiguous as to when it was  
3 required to be complied with?

4 MR. DUFFEY: It didn't specify a date. Many times  
5 preliminary injunction orders do specify a date by which  
6 certain action will be taken, yes. As we said in our papers,  
7 that was not obvious to the defendants when this had to be done  
8 by or how it could be done.

9 THE COURT: So it is my job to tell them how it should  
10 be done. I should credit the arguments that I have actually  
11 rejected for purposes of explaining to them how they might in  
12 their own consciences comply with an order that was made two  
13 weeks ago?

14 MR. DUFFEY: I certainly wouldn't put it like that.

15 THE COURT: How would you put it? I don't understand.  
16 You're basically saying they don't intend to comply with my  
17 order, so, Judge, you'd better take another crack at explaining  
18 how they get to do it, and in the interim nothing should happen  
19 to them so that the status quo can continue. In essence,  
20 that's really what you are saying, right?

21 MR. DUFFEY: I respectfully disagree, that's not what  
22 I'm saying. I'm saying that in order to be the basis of  
23 contempt ruling, it has to be clear to the alleged contemnors  
24 what precisely they are supposed to do. I don't think that  
25 that was the case, and I certainly don't think that plaintiffs'

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1 motion for contempt, which was based on the failure to follow a  
2 certain set of --

3 THE COURT: "Defendants are hereby ordered to declare  
4 the winners of its recent election and to seat the winning  
5 candidates on the board." What is ambiguous about that?  
6 Defendants are ordered to declare the winners and seat the  
7 candidates.

8 MR. DUFFEY: Defendants are the association, which can  
9 only act through the board.

10 THE COURT: Right.

11 MR. DUFFEY: The CEO has never had any role in  
12 declaring people elected and doesn't have any apparent  
13 authority to do so. Ms. Ballard I think plaintiffs have  
14 conceded was not on the board as of the time of the order.

15 THE COURT: Why do I care that the association can  
16 only act through its board or its members? Why do I care?

17 MR. DUFFEY: Because insofar as the contempt order or  
18 the contempt motion goes against the association, the question  
19 then becomes what can the board of directors do.

20 THE COURT: If I make it clear that the defendant  
21 includes the association, then whoever within the association  
22 has the authority to make the association comply with the order  
23 is to do so. If they don't, then the association gets held in  
24 contempt. That's not that complicated, I have to say.

25 MR. DUFFEY: The question then is whether there is

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1 anybody within the association that has the authority or  
2 power --

3 THE COURT: To declare a winner of an election?

4 MR. DUFFEY: Correct.

5 THE COURT: I want to make sure I'm clear. Your  
6 position is there is no ability of anyone anywhere to declare a  
7 winner here?

8 MR. DUFFEY: That is correct. At this time that is  
9 correct.

10 THE COURT: Then what is the point of having a  
11 hearing? That is your position. Why should I not just impose  
12 sanctions today on the association?

13 MR. DUFFEY: Because if you found --

14 THE COURT: I don't find that to be credible and I  
15 don't find that to be consistent with the bylaws. Clearly, the  
16 association is able to act through its officers, through its  
17 board. Their refusal to do so is something they can then be  
18 sanctioned for.

19 MR. DUFFEY: I would respectfully submit that I don't  
20 think it is clear. I don't think it is consistent with the  
21 practice and the history that the board of directors declares  
22 elections or the bylaws.

23 THE COURT: Who does declare the winners of the  
24 election?

25 MR. DUFFEY: The chairman of the election protest

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1 committee has declared the results of the election at the  
2 annual meeting since the election protest committee came into  
3 place.

4 THE COURT: That person has no authority other than  
5 what the board has delegated to that person, right?

6 MR. DUFFEY: Right. That's right. The election  
7 protest committee is not something that the board felt that it  
8 could direct what to do.

9 THE COURT: That's different. That's you saying the  
10 board doesn't feel, Judge, they can comply with your order.

11 MR. DUFFEY: No.

12 THE COURT: The board respectfully disagrees with your  
13 order and has no intention of complying with it, and because  
14 they really feel that in their bones, there is nothing you can  
15 do about it; isn't that really what you are saying?

16 MR. DUFFEY: No.

17 THE COURT: What are you saying? What am I supposed  
18 to do here?

19 MR. DUFFEY: What I'm saying is that the defendants  
20 have done everything they could do, they have been reasonably  
21 diligent within the scope of their powers, they have taken all  
22 actions that they could or they have taken reasonably diligent  
23 actions to comply with your order. At this time none of the  
24 defendants has the authority to declare anyone elected.

25 THE COURT: You're saying no one has the authority to

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1 do that?

2 MR. DUFFEY: That's right, that's correct. It's not  
3 possible for anyone to presently declare the winners of the  
4 election. That's an impossibility defense to contempt.

5 THE COURT: That's not an impossibility defense.  
6 That's a manufactured impossibility defense. Impossibility is  
7 when you don't have the item to turn over or there is no way to  
8 comply with an order. Your clients have just decided that they  
9 don't want to or decided that they disagree with the order, so  
10 they are not gonna.

11 MR. DUFFEY: The board feels constrained to follow the  
12 election protest procedure by the LMRDA and by the --

13 THE COURT: By the LMRDA?

14 MR. DUFFEY: Yes.

15 THE COURT: The election protest procedure by the  
16 LMRDA. I ruled on this, right?

17 MR. DUFFEY: Well, I don't think it was part of the  
18 order to say that the election protest procedure is invalid or  
19 nullified or anything like that, not part of the mandatory  
20 actions that were directed in the order or declaratory judgment  
21 that the election protest procedure should be disregarded or  
22 could be disregarded.

23 THE COURT: The problem I have with the plaintiffs'  
24 position is that they are asking me to sort of pick and choose  
25 who on the board to hold in contempt and are urging me not to

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1 hold the association in contempt.

2 MR. DAVIS: No, your Honor. May I clarify plaintiffs'  
3 position?

4 THE COURT: Sure.

5 MS. DAVIS: First of all, we are urging you to hold  
6 the association in contempt.

7 THE COURT: I thought your papers -- anyway.

8 MR. DAVIS: Our point, your Honor, was that the  
9 association cannot pay the contempt fine levied against the  
10 individuals consistent with Title V. We have requested that  
11 you hold both the association and the individual defendants in  
12 contempt, as that is the only way to ensure compliance.

13 The reason that only some of the board members are  
14 named is that we have only named the incumbent board members  
15 whose terms have expired. Those whose terms have not expired  
16 who are allied with the plaintiffs have not taken the action  
17 that this prior board has taken.

18 With respect to Mr. Duffey's contention that the board  
19 has no authority to declare the winners, perhaps ten days ago  
20 that would have had some resonance. But what happened is the  
21 board met yesterday. What they did, and I'm quoting from  
22 Kennedy's declaration, "with respect to the first agenda item,  
23 compliance with the order, the board took the following  
24 actions." What they did is they declared a number of seats  
25 elected and then they held that the incumbents would not leave

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1 office.

2           So, the notion that they don't have the authority to  
3 address your Honor's order I think is nonsense, and it is  
4 completely inconsistent with Title IV of the bylaws, which  
5 gives the board authority to manage the association and do all  
6 things, and I'm quoting, "appropriate and necessary for the  
7 development and perpetuation of the association," and I'm  
8 quoting, "including transacting the business of the  
9 association."

10           So, your Honor, I would like to reiterate that we  
11 would ask that you impose some process that we can attempt to  
12 bring the defendants in compliance with your order which would  
13 include both individual contempt citations on those who acted  
14 yesterday and who can continue to act and bring the association  
15 in compliance with your order as well as the association, and  
16 we would ask the defendants be ordered to report back to this  
17 Court before Friday, when the contempt citations commence, and  
18 advise this Court of whether or not they are going to be  
19 complying with your order.

20           THE COURT: I'm not sure what you are talking about by  
21 "process." Are you suggesting, like Mr. Duffey was suggesting,  
22 that there needs to be additional facts developed with respect  
23 to individual defendants at this point?

24           MR. DAVIS: No, your Honor. I don't think there are  
25 any facts in dispute. We are asking that counsel report to

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1 this Court before Friday and advise the Court whether or not  
2 they are going to be complying. Everything he is saying and  
3 everything they have done has indicated they are not going to  
4 comply.

5 THE COURT: I think that's true. Do you disagree with  
6 that, Mr. Duffey?

7 MR. DUFFEY: I would submit that the defendants have  
8 taken all the actions that they can to reasonably and  
9 diligently comply with the order. If there are specific acts  
10 that the Court feels need to be taken by specific defendants or  
11 groups of defendants, that would be useful. It is not clear  
12 from the order what those acts are or who can do them.

13 THE COURT: The board of directors can, I think that's  
14 clear.

15 MR. DUFFEY: That's contrary to what plaintiffs have  
16 said in their papers. They seem to feel the board of directors  
17 do not have the authority to do anything relative to  
18 declaration of an election. That's a previously undisputed  
19 point that is now disputed.

20 THE COURT: I'm not sure that that fairly  
21 characterizes what was just said by Ms. Davis.

22 MR. DUFFEY: It was in the papers, in their papers.

23 THE COURT: Which papers? Are you talking about  
24 papers in connection with the motions before me now?

25 MR. DUFFEY: Yes.

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1 THE COURT: Or papers from a month ago?

2 MR. DUFFEY: The present papers in connection with the  
3 motion before you now.

4 THE COURT: What Ms. Davis just referred to is the  
5 declaration of the president from yesterday. Right, that's  
6 what you are referring to?

7 MR. DAVIS: Yes, your Honor.

8 THE COURT: In which there was a declaration of new  
9 board members, right, of winners -- of delegates, excuse me,  
10 right?

11 MR. DAVIS: Yes, your Honor.

12 THE COURT: What is that paragraph?

13 MR. DAVIS: That is on page 4 of the declaration. It  
14 actually begins in paragraph 7 at the bottom of page 3, where  
15 they address the first agenda item, which is compliance with  
16 your order. Then there are a number of items enumerated on  
17 page 4. One of them is with respect to the ANA house of  
18 delegates election. They declare those people elected, and  
19 there is some notice that they are sending that I presume  
20 notifies everybody that they have been elected.

21 Then, at the bottom with respect to the election that  
22 we have brought before you, they defy your order and they  
23 declare that the board will remain in place until their  
24 successors are validly elected and there is an election that is  
25 certified.

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1           So, they said yesterday through the individual  
2 defendants, on advice of CEO Gerardi, on advice of Mr. Duffey,  
3 that they are going to defy your order. Unless there is some  
4 process to indicate they are going to comply, they are not  
5 going to comply. That's not our facts, those are their facts.

6           MR. DUFFEY: I'd like to respond.

7           THE COURT: Yes.

8           MR. DUFFEY: What the board did with respect to the  
9 ANA house of delegates election was that they effectuated the  
10 certification by the election committee. As I have noted, it's  
11 always been, since the election committee was put into place,  
12 the election committee that certifies and announces the  
13 results.

14           As to the incumbent board staying in place, the order  
15 did not direct them to declare winners and seat incumbents. It  
16 couldn't declare winners. In order to comply with that, it did  
17 something that I don't think it has done before, which is it  
18 had a meeting to receive the election committee report and  
19 directed at a meeting that it be complied with. That was their  
20 diligent --

21           THE COURT: That what would be complied with?

22           MR. DUFFEY: That the election committee report would  
23 be complied with on an expedited basis. Again, it is a novel  
24 situation under the Supreme Court's ruling in International  
25 Longshoremen Local 1291, this Court's ruling in Chao v. Gotham

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1 Registry. This is new territory for the board.

2 THE COURT: What is new territory for the board?

3 MR. DUFFEY: The situation in which there have been  
4 election protests pending that were not resolved by the  
5 election committee prior to the completion of the convention.  
6 Again, the election protest committee is something that the  
7 LMRDA authorizes. It requires adequate campaign safeguards.

8 THE COURT: No question about that. I have no problem  
9 with any of that. The issue is whether or not they can choose  
10 not to do their work before the annual meeting as required for  
11 the declaration of election.

12 MR. DUFFEY: They did issue an interim report. There  
13 were many, many protests, and they did not finish during their  
14 September 16th meeting. That's why they didn't finish  
15 beforehand. It wasn't anything other than that.

16 THE COURT: I'm not suggesting that the election  
17 committee can't do the work that has been delegated to it. I'm  
18 saying they have to do it within a certain period of time under  
19 the bylaws. By not doing that and then saying, well, we're not  
20 going to follow that part of the bylaws because we've got our  
21 own election protest procedures is not really an argument that  
22 I find compelling. I don't see why they would find it  
23 compelling. The bylaws trump the election protest procedure,  
24 right?

25 MR. DUFFEY: I don't think so, no.

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1 THE COURT: You don't think so?

2 MR. DUFFEY: No, I don't think the bylaws trump the  
3 election protest procedure. I don't think they are  
4 inconsistent.

5 THE COURT: You don't think they are inconsistent, but  
6 I have already concluded that they are.

7 MR. DUFFEY: The order was not clear to defendants  
8 that the election protest procedure was to be disregarded in  
9 the context of their compliance with the order or for purposes  
10 of their compliance with the order.

11 MR. DAVIS: Your Honor, may I address that?

12 THE COURT: It's not about disregarding. It's about  
13 complying with the bylaws and declaring a winner. The protests  
14 can go forward. Certainly there are provisions in the labor  
15 law and in the election protest procedure to deal with that.  
16 What happened here is that the bylaws which require this to be  
17 done before the annual meeting weren't complied with. You're  
18 suggesting that they don't have to comply with that for some  
19 reason. I'm not sure what the authority is that you are  
20 relying on for that.

21 MR. DUFFEY: Defendants did not understand the ruling  
22 to state that the election committee work had to be done before  
23 the convention, and the bylaws do allow and specifically  
24 provide for situations in which the incumbents will continue  
25 their terms beyond the term specified.

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1           THE COURT: You're saying the bylaws allow the  
2 incumbents to extend their terms?

3           MR. DUFFEY: Yes.

4           THE COURT: That phrase in section 7?

5           MR. DUFFEY: That's it, yes.

6           THE COURT: We've already talked about that. I think  
7 what you are saying is that you and your clients have chosen to  
8 interpret section 7 the way you want to and are not going to  
9 comply with my order as a result, and you're saying that there  
10 is not much I can do about it, and you're telling me to go back  
11 and take a crack at another order.

12           MR. DUFFEY: What we are saying at the present time is  
13 that a contempt ruling, given the novelty of the situation,  
14 given the lack of clarity as to how these particular defendants  
15 could within the scope of their powers do things beyond what  
16 they have done --

17           THE COURT: You're saying I have to persuade them, is  
18 what you are telling me?

19           MR. DUFFEY: I'm not saying you have to persuade them,  
20 not at all, your Honor.

21           Stepping back to the election protest procedure, that  
22 was understood it was adopted to be a procedure for dealing  
23 with election protests in a reasonable manner that was not  
24 supposed to be subject to the tinkering of the board. So,  
25 until that process concluded, the board didn't take any action

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1 inconsistent with that. Taking an action inconsistent with  
2 that is contrary to the spirit of that and the LMRDA and the  
3 safeguard's requirements.

4 THE COURT: The what requirements?

5 MR. DUFFEY: The LMRDA's requirements for election  
6 safeguards. So, yes, it didn't happen by the time the  
7 convention occurred. I understand your Honor's determination  
8 that it had to have happened by then. But it didn't. Now that  
9 it didn't happen, how do you cure it? What do you do? Do you  
10 disregard the election protest procedure after the election  
11 committee has found serious violations and seat people who got  
12 the highest vote tallies, or do you follow the election protest  
13 procedure that was adopted in order to comply with the LMRDA  
14 and comply with that and have a rerun election? That was the  
15 question that they were faced with.

16 THE COURT: I'm not sure it's fair to say that the  
17 election protest procedure, which is not part of the bylaws --  
18 it's basically a resolution from the board, right?

19 MR. DUFFEY: It was a policy adopted by the board  
20 under its authority to establish policies.

21 THE COURT: You're elevating this by sort of wrapping  
22 it in the mantle of the LMRDA. I don't think you get to do  
23 that to say that the policy this board has endorsed now trumps  
24 the bylaws.

25 MR. DUFFEY: First of all, we don't think it trumps

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1 the bylaws. Be that as it may, the DOL's regulations expressly  
2 provide that election protest procedures have to be followed  
3 whether or not they are in the constitution and bylaws.

4 THE COURT: But there is no reason why these election  
5 protest procedures couldn't have been followed consistent with  
6 the bylaws, right? Is there?

7 MR. DUFFEY: Based on your determination that they had  
8 to have been completed prior thereto, no, it didn't seem it was  
9 impossible, but it didn't happen. Now we are faced with an  
10 order and contempt allegations and what do you do now given the  
11 status of the election protest procedure pursuant to the LMRDA?  
12 Although I understand that the Court disagrees and has made a  
13 determination to the contrary and also pursuant to the board's  
14 limited powers and its understanding of those powers, what do  
15 you do?

16 THE COURT: What you're telling me is to stand down,  
17 though, right? That's what you're telling me to do. You're  
18 saying let the status quo continue, we'll have a new election,  
19 who knows what will happen, and in the meantime the incumbent  
20 board will stay in office even though the law contemplates that  
21 the challenged election will have the winners as the  
22 presumptive folks who manage the affairs of the union.

23 MR. DUFFEY: We disagree with that.

24 THE COURT: I know that, but I think that's what you  
25 keep coming with up. I keep pointing out what I have already

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1 ruled on, and you keep saying we disagree with that so that's  
2 the reason for us not to comply with your order.

3 MR. DUFFEY: It was not our understanding that the  
4 order directed, as plaintiffs have claimed, that the board had  
5 no authority anymore. If that's true, then that also raises a  
6 question. They made that argument, and that raises the  
7 question of if the board has no authority anymore to do  
8 anything, what can defendants who are board members do? Who  
9 can comply with the Court's order?

10 THE COURT: Maybe I'm misreading this. What is Mr.  
11 Duffey referring to when he says that you asserted that the  
12 board no longer has the authority?

13 MR. DAVIS: First of all, it is hard to sort out what  
14 Mr. Duffey is referring to. But here is what I believe Mr.  
15 Duffey is referring to. We said two things in our original  
16 brief in support of our original application for contempt.

17 First, we say your Honor's order is self-effectuating.  
18 The board does not get to decide whether or not they are going  
19 to comply with it. Under NYSNA's bylaws, it is essentially a  
20 temporal event that after the annual meeting, the new board is  
21 seated; the old board doesn't act on that under the bylaws.  
22 The bylaws -- and I'm not going to reiterate to your Honor,  
23 because you have many times -- direct a temporal sequence of  
24 events that doesn't require discretionary authority. That was  
25 our primary argument.

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1           Our secondary argument was in the event their board is  
2 going to meet to address this, first, they can act on 24 hours'  
3 notice. That is expressly permitted in the bylaws and in a  
4 policy they adopted, and they did just that at the beginning of  
5 October, when they denied some of the board members access to a  
6 severance package that they had given to several people. They  
7 acted. We said secondarily if the board is going to act, they  
8 don't have the discretion to ignore your order, they have to  
9 adhere to your order.

10           I am reading now from page 8 of your decision where  
11 you say, "Defendants violated NYSNA's bylaws by, among other  
12 things, refusing to declare the winners of the election and  
13 permitting the incumbent board members to extend their two  
14 years of office." Yesterday the board met on 10 days' notice  
15 and they decided that they were going to ignore that and the  
16 incumbent board would remain in place.

17           There are 37,000 members of this association. The  
18 bylaws is a contract between the members and the association.  
19 These nine members of the rogue board who Mr. Duffey I believe  
20 is saying are not going to comply with the order have to be  
21 encouraged to comply with your order.

22           THE COURT: I get that part. I'm asking what the  
23 reference was to the board not having authority.

24           MR. DAVIS: I believe he is referring to our primary  
25 argument that your order is self-effectuating and they don't

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1 get to choose. But it is very clear both in our contempt brief  
2 and our reply brief that we said if they get together and act,  
3 they have no choice but to comply with your order. I believe  
4 that is what Mr. Duffey is referring to.

5 THE COURT: I'm not sure. Is that what you are  
6 referring to?

7 MR. DUFFEY: That is essentially what I am referring  
8 to, though that is not exactly it. The plaintiffs' papers say  
9 in a few places, including in their brief, that the bylaws  
10 don't empower the board to declare anyone elected.

11 THE COURT: Where are you referring to?

12 MR. DUFFEY: Hold on a second. Bear with me a minute.  
13 I have it in one of the declarations, but it is also in one of  
14 the briefs.

15 MR. DAVIS: Your Honor, I believe I can refer you  
16 in -- I'm sorry, Mr. Duffey, I'm just in the middle of a  
17 sentence. Your Honor, I believe I can refer you in our papers  
18 to what he is referring to, which is on page 4 of our  
19 memorandum in support of our application for contempt. We say  
20 initially that there is an individual obligation to comply.  
21 There is nothing that requires they will to hold --

22 THE COURT: Where are you? I'm on page 4.

23 MR. DAVIS: I'm on the top of page 4, your Honor, of  
24 our original memorandum of law in support of our application  
25 for contempt.

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1 THE COURT: That's aside from the independent  
2 obligations to comply?

3 MR. DAVIS: Right. I'm attempting to wrap my brain  
4 around what Mr. Duffey is referring to. I believe what he is  
5 referring to is, as we say initially, they have to comply with  
6 the order, they have no choice. It is self-effectuating. In  
7 fact, in the past NYSNA has never required a board to declare  
8 anybody elected. The certification that he refers to doesn't  
9 exist in the bylaws. Essentially, your order is self-  
10 effectuating.

11 Then we go on to say, in addition, and this is what I  
12 believe he is referring to, "Even if arguably the order  
13 required some deliberative action by the prior board, there is  
14 nothing that required them to wait 10 days." Then we go on to  
15 say they could have called a meeting on 24 hours' notice, they  
16 are entitled to do that under their bylaws, they are entitled  
17 to do that under their policy, and in fact they did you that on  
18 October 3rd. That I believe is what Mr. Duffey is referring  
19 to. I can't imagine what else he would be referring to in  
20 terms of characterizing our arguments.

21 MR. DUFFEY: That is part of it. The other part is  
22 the plaintiffs say in several places that the board has no  
23 authority to transact business. They made that point  
24 particularly in reference to the proposed action concerning  
25 amendment of the bylaws. Also, they specify that the bylaws do

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1 not require the board to declare anyone elected.

2 Further, the plaintiffs really pointed up exactly the  
3 problem that was faced by defendants generally, which is that  
4 if the order does mean that the board has no authority, if it's  
5 a declaratory judgment that the results are X, then there is no  
6 possibility of contempt, because it is self-effectuating.

7 If it requires action on the board of directors and  
8 the board has no authority to do anything, then it's  
9 impossible. And if that's true, what the individuals have the  
10 authority to do outside of action on the board is not clear at  
11 all. So, in my view, based on plaintiffs' argument that the  
12 incumbent board has no authority anymore, who can perform the  
13 seating and declaration and installation of anybody is not  
14 clear and was not clear to defendants.

15 THE COURT: I think that's kind of a circular  
16 argument. It's not clear to me why the declaring of the winner  
17 and the new board members coming on prevents the election  
18 committee from doing its work. If they think the remedy is no,  
19 we are going to have a new election, there were so many illegal  
20 or improper things going on, they can do that, right?

21 MR. DUFFEY: The declaring of the election and  
22 installation of people, again, it's just not obvious who has  
23 the authority to do that prior to a positive determination by  
24 the election protest procedure that someone was elected.

25 THE COURT: Where does it say that the election

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1 protest procedure means that the election will not be declared  
2 until the election committee has decided that? It doesn't say  
3 that, does it? It seems to me perfectly consistent with the  
4 election protest procedure policy that they get protests, they  
5 convene, they investigate, they basically recommend remedies.

6 If in the interim, in accordance with the bylaws, the  
7 winners of the election are declared and they now sit and form  
8 the new board, the election committee still gets to make its  
9 recommendations and no one is saying that they don't get to  
10 proceed. Are you saying something different, Ms. Davis?

11 MR. DAVIS: No, your Honor, we are saying precisely  
12 that. We have no problem with the spirit of the LMRDA allowing  
13 them to set up a policy that sets up an election committee that  
14 essentially can do an investigation -- they didn't do one here,  
15 but theoretically they can do an investigation -- and they can  
16 make recommendations to the board. That's exactly what  
17 happened and the board met yesterday.

18 But Congress has declared, in addition to what NYSNA's  
19 bylaws provide, that while this is all being sorted out, while  
20 you're trying to figure out who was right about whether or not  
21 there was a violation in the election both in terms of in-union  
22 remedies and at the Department of Labor, while this is being  
23 sorted out, Congress has declared that the winners of the  
24 election must run the affairs of the association.

25 They did so because as between the incumbents who have

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1 been vanquished and the newly elected winners who have been  
2 elected, there is a presumption in favor of those who have been  
3 elected taking their seats while this is being sorted out.  
4 That's all we ask, and they are not going to comply with that.

5 THE COURT: In light of the declaration that I just  
6 got today, I'll give Mr. Duffey an opportunity to submit any  
7 declarations he thinks relevant to the issue of sanctions and  
8 why the sanctions for certain individuals should be low or  
9 nonexistent or why there are reasons that the Court, in its  
10 exercise of discretion, should go easy on certain folks or give  
11 them time to comply. I'll allow him to do it.

12 I'm not looking to short circuit the record on this,  
13 but I'm not staying the proceeding, I'm not staying my  
14 injunction pending the appeal. And I do intend to get  
15 compliance with my order. I think by Friday I'm likely to do  
16 that.

17 Anything you want to get me tomorrow, you can do that.

18 MR. DUFFEY: Very good.

19 THE COURT: If plaintiffs want to respond or submit  
20 their own affidavits or declarations, I'm fine with that, too.  
21 I'm not seeking them, but I want to be sure I'm not missing any  
22 facts or short-changing anybody. I do think what this boils  
23 down to is a disagreement as to whether my order is right.  
24 People are free to disagree, but they are not free to just  
25 disregard. I think that's what this really boils down to.

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1            Depending on what I get, I will tweak my order to make  
2 clear what sanctions are appropriate and why, if I need to.

3 But people should expect sanctions.

4            MR. DUFFEY: Let me ask, when you say tweak the order,  
5 would that be in terms of specifying who, what, why, when,  
6 things like that? Not why, I understand why.

7            THE COURT: Why I don't think I'm going to get too  
8 into. I may explain why I think something is appropriate, but  
9 I don't think I'm going to get too deep into why I think my  
10 first order was correct notwithstanding that the defendants  
11 have a different view. That I don't think I'll spend too much  
12 time on. But I'll address whatever points you think are  
13 relevant.

14            You're not seeking sanctions against Ballard?

15            MR. DAVIS: That is correct, your Honor. May I  
16 clarify to make sure that I understand? I am not attempting to  
17 characterize what you are doing at all. I really am honestly  
18 trying to understand it. Is it fair to say that unless they  
19 produce some facts that are different from what we understand  
20 now, sanctions will be imposed effective Friday? I don't want  
21 to overstate how I report this, but that was how I understood  
22 the original part of your ruling.

23            THE COURT: Certainly my intention was and still is to  
24 impose sanctions on the association starting Friday. As to the  
25 individual defendants, Ballard is now off the table. If there

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1 are different arguments or facts raised with the individual  
2 defendants, then I will perhaps come to a different place and a  
3 different amount with respect to the individual defendants.

4 For example, the CEO is one of the defendants, right?  
5 That's Gerardi. I don't know what power, frankly, the CEO has  
6 to declare a winner. That was a point Mr. Duffey made. I  
7 haven't thought it through. I'm happy to see whatever the  
8 declaration has to say on that. She is not a member of the  
9 board, right?

10 MR. DAVIS: No, your Honor, she is not a member of the  
11 board. But attached as exhibits to some of our papers, Gerardi  
12 is the person who is denying both the newly elected officers  
13 and the incumbent board members whose terms have not expired,  
14 she is denying them access to the union office.

15 THE COURT: I'm not running the union. I don't really  
16 care to run the union. The board has the ability to comply  
17 with my order. It's not clear to me what Gerardi does one way  
18 or the other. She does the board's bidding, right?

19 MR. DAVIS: She certainly does the board's bidding.

20 THE COURT: The fact that she is mean or you guys  
21 don't like her is not of any moment to me. That's one that I'm  
22 curious to hear more about.

23 MR. DAVIS: Fair enough. We will address that.

24 THE COURT: I think the board has the ability and the  
25 authority to do this, and I'm inclined frankly to sanction the

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1 association and perhaps the board. But you're telling me that  
2 there are other members of the board who I shouldn't be  
3 sanctioning. That's why, because they are not able to vote?

4 MR. DAVIS: No. Because their terms have not expired.

5 THE COURT: I don't care whose terms have expired. I  
6 care in a sense about that, but compliance with my orders  
7 doesn't turn on whether or not your term expired.

8 MS. DAVIS: I agree. But the other members who are  
9 not named as defendants did not appear at this meeting, because  
10 they are attempting to bring the association into compliance  
11 with your order. They are among the people who have written,  
12 and this is all in our papers, numerous times asking the board  
13 and Gerardi to comply with your order.

14 THE COURT: Maybe the easiest thing to do is to just  
15 impose sanctions on the association, maybe make it higher.  
16 That just gives everybody enough incentive to get this done and  
17 to comply with the order, whoever has the authority.

18 MR. DAVIS: Your Honor, I'm certainly in favor of  
19 whatever is going to coerce them into compliance. But because  
20 the association can only act through the board and because the  
21 board, as evidenced yesterday, has decided, the individual  
22 defendants, to defy your order, and because of Mr. Duffey's  
23 position that somehow they are the ones that need to effectuate  
24 action in an unincorporated association, if it's not Gerardi,  
25 it is our view that they need to be incentivized to comply as

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1 well.

2 THE COURT: I think a sanction on the association  
3 should incentivize everybody.

4 MR. DAVIS: One would hope that, your Honor. One  
5 would hope that. I would like to hear by Friday from Mr.  
6 Duffey that they intend to comply. They are counsel to the  
7 association. We welcome the association's compliance with your  
8 order. We don't want to be here. This is costing a lot of  
9 money and time and anxiety. If they indicate that the  
10 association is going to comply, we would be quite pleased to  
11 hear that. But I don't think that is what we are hearing.

12 THE COURT: I don't think that's what we are hearing.  
13 That's not what you are saying, right, Mr. Duffey?

14 MR. DUFFEY: That what?

15 THE COURT: That there is any realistic likelihood  
16 that my order is going to be complied with.

17 MR. DUFFEY: I am not disagreeing. I am not saying  
18 that your order is not going to be complied with. I will  
19 advise the defendants that you have determined that the board  
20 is the appropriate body to take actions and that the actions  
21 taken so far are not considered to be reasonably diligent.  
22 We'll go from there.

23 MR. DAVIS: Your Honor, I'm sorry, what I think I'm  
24 hearing from Mr. Duffey is that a fine on the association is  
25 not going to bring the defendants into compliance.

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1           THE WITNESS: I don't know whether that is true or  
2 not, and I don't know that I, frankly, care whether his  
3 projections on that score are right or wrong. Whatever you  
4 want to submit tomorrow, Mr. Duffey, with respect to  
5 individuals or the association itself you can, and then we will  
6 be where we are.

7           MR. DAVIS: Thank you, your Honor.

8           THE COURT: I expect I will be imposing sanctions, at  
9 least on the association, by Friday.

10          MR. DUFFEY: Understood. Thank you, your Honor.

11          THE COURT: Thanks. Interesting. Interesting is not  
12 necessarily in the best interests, I don't think, of the  
13 association, for sure. But for my purposes that's neither here  
14 nor there.

15          Anyway, thank you, and I thank the court reporter for  
16 his time and efforts and patience.

17          (Adjourned)

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