UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELAINE L. CHAO,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-1587 (JR)
	:	
LOCAL 140, AMERICAN POSTAL WORKERS UNION, AFL-CIO,	:	
	:	
Defendant.	:	

MEMORANDUM

The Secretary of Labor, alleging that defendant Local 140 of the American Postal Workers Union, AFL-CIO ("Local 140") had failed for nine consecutive years to file timely annual financial reports, filed this suit seeking (1) a declaratory judgment stating that Local 140 is in violation of its statutory obligations with regard to the 2001 report, (2) an order directing Local 140 to file its 2001 report, and (3) a mandatory injunction requiring Local 140 to comply with its reporting requirements for five years. After the complaint was filed, Local 140 filed its 2001 annual report, thus rendering moot the Secretary's first two prayers for relief. The Secretary continued to pursue her prayer for an injunction, and the parties filed cross-motions for summary judgment on that claim. This memorandum sets forth the reasons for the Court's order of September 30, 2003, denying the Secretary's motion for summary judgment and dismissing the case.

Background

The material facts were not in dispute. Local 140 was (and is) required by the Labor Management Reporting and Disclosure Act (LMRDA) to file an annual financial report with the Secretary of Labor, 29 U.S.C. § 431(b), and to do so within 90 days after the end of its fiscal year. 29 C.F.R. § 403.2. Local 140's fiscal year ends December 31, so its annual reports are due the following March 31. Local 140 failed to meet that deadline for nine years straight: its 1993 report was filed on July 14, 1994; its 1994 report, on October 10, 1995; its 1995 report, on September 3, 1997; its 1996 report, on January 13, 1998; its 1997 report (or an unsigned version of it), on November 23, 1998; its 1998 report, on July 12, 2001; its 1999 report, on July 12, 2001; its 2000 report, on July 11, 2001; and its 2001 report was filed on August 29, 2002.

Local 140 had a good excuse for its late filing of the 2001 report: one of the facilities the Local represents -- indeed the largest -- is the mail processing center at 900 Brentwood Road in Washington, D.C. The Brentwood facility fell victim to a terrorist attack in October, 2001, when two of its employees, both members of Local 140, died of anthrax poisoning. In the wake of this attack, the Brentwood facility was closed and its employees reassigned to other locations. This event not only caused general pandemonium in Local 140's ranks, see Declaration

of Raymond C. Williams ("Williams Decl.") at ¶¶ 4-6, but also presented a specific practical problem related to the 2001 annual report: certain relevant documents were in the Brentwood facility and could not be accessed by Local 140's representatives. See Williams Decl. at ¶ 7.

As for the years before 2001, Local 140 did not deny that it "historically had problems in filing the financial disclosure statements . . . in a timely manner." Defendant's Response at 4-5. In January 1998, when Cargie Vaughn became president, "the Local was nearly bankrupt and its financial records were in shambles," Declaration of Cargie Vaughn ("Vaughn Decl.") at ¶ 2. That situation, however, had been almost completely rectified by the winter of 2000. See id. at ¶ 5.

Analysis

The statute the Secretary invokes in this suit, 29 U.S.C. § 440, states that "[w]henever it shall appear that any person has violated or is about to violate any of the provisions of this subchapter, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate." Id. The Secretary's brief can be read to suggest that the language of the statute virtually requires the issuance of an injunction if the Secretary applies for it. If that is the Secretary's position, it is incorrect. As the Supreme Court has explained:

> [While] Congress may intervene and guide or control the exercise of the courts' discretion . . . we do not lightly assume that Congress has intended to depart from established principles . . . . 'Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.'

Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982) (quoting Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946); other citations omitted); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483, 496 (2001). Section 440 clearly contemplates that relief other than an injunction may be appropriate. Cf. Ctr. for Biological Diversity v. Pirie, 201 F. Supp. 2d 113, 119 (D.D.C. 2002) (no need to look beyond plain text of statute when language acknowledged "courts' discretion to balance the equities").[1]

---

[1] A court does not have discretion to provide no relief at all when a statute is being violated:

> [The courts'] choice (unless there is statutory language to the contrary) is simply whether a particular means of enforcing the statute should be chosen over another permissible means; their choice is not whether enforcement is preferable to no enforcement at all. Consequently, when a court of equity exercises its discretion, it may not consider the advantages and disadvantages of nonenforcement of the statute, but only the advantages and disadvantages of employing the extraordinary remedy of injunction.

Oakland Cannabis Buyers' Coop., 532 U.S. at 497-98 (footnote and quotation omitted).

Generally, the factors to be considered in a motion for an injunction, whether preliminary or permanent, see, e.g., Amoco Prod. Co. v. Village of Gambell, Alaska, 480 U.S. 531, 546 n.12 (1987); Nat'l Ass'n of Psychiatric Health Sys. v. Shalala, 120 F. Supp. 2d 33, 44 (D.D.C. 2000), are (1) success on the merits; (2) the threat of irreparable injury to the moving party in the absence of the injunction; (3) the prospect that others will be harmed by the injunction; and (4) the public interest in granting the injunction. See, e.g., Wis. Gas Co. v. FERC, 758 F.2d 669, 673-74 (D.C. Cir. 1985).

In cases involving a statutory violation, "when a governmental entity sues to enforce a statute, irreparable injury is presumed to flow from the violation itself." United States v. Microsoft Corp., 147 F.3d 935, 943 (D.C. Cir. 1998) (citing United States v. Diapulse, 457 F.2d 25, 27-28 (2d Cir. 1972)); United States v. Odessa Union Warehouse Co-op, 833 F.2d 172, 175 (9th Cir. 1987) ("Where an injunction is authorized by statute, and the statutory conditions are satisfied as in the facts presented here, the agency to whom the enforcement of the right has been entrusted is not required to show irreparable injury") (footnote and citations omitted).

On September 30, 2003, there was no violation of the statute to remedy. Local 140 was up-to-date on its annual report responsibilities. But

> a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. Such abandonment is an important factor bearing on the question whether a court should exercise its power to enjoin the defendant from renewing the practice, but that is a matter relating to the exercise rather than the existence of judicial power.

City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982) (footnote omitted); United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953). The key question, then, was whether there existed a "reasonable expectation that the wrong will be repeated." W. T. Grant Co., 345 U.S. at 633 (quotation omitted). The burden of persuasion on this issue was with the local, and it was a heavy one. See Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 66 (1987) ("The defendant must demonstrate that it is *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur") (quotation omitted) (emphasis in original).

If Local 140's sole transgression had been its failure to file a timely 2001 report, the wrongful behavior certainly would not have been expected to recur, because of the truly extraordinary problems faced by the Local after the October 2001 anthrax attack. Local 140's history of failures to make timely filings for nine years running, however, complicated matters. See Odessa Union, 833 F.2d at 176 (inference of future violations

can arise from past violations). The Secretary insisted upon enforcing the statute with a five-year injunction.

The only reported case we found having facts similar to the case at bar was Shultz v. Local Union 1694, Int'l Longshoremen's Ass'n, 310 F. Supp. 1356 (D. Del. 1970). In that case, the Secretary sought an injunction compelling the union to file correct financial reports for the years 1963-68, and prohibiting the defendants from any further violations of their reporting requirements. After a bench trial, the court found that "the Union exhibited carelessness and indifference in securing the effective assistance of accountants in preparing these reports." Id. at 1358. Defendant had filed annual reports for the years in question by the time of trial, but several of the filings contained defects and discrepancies, and so the Union was still in violation of the LMRDA. Id. at 1360. Ultimately, the court, "[h]aving considered both the Union's past failures to keep accurate records and to submit satisfactory financial reports, and having considered as well the present efforts of the Union and its representatives to remedy the these failures and to establish a basis for future compliance," id. at 1361 (footnote omitted), issued an injunction requiring defendants to file correct, amended reports for three previous fiscal years and prohibiting defendants from further violating their reporting requirements for the next five years. Id.

While certain of the considerations present in Local Union 1694 were found in this case, there were also several important differences. Most importantly, Local 140 was no longer in violation of its reporting requirements: plaintiff did not argue that any of the annual reports for the last nine years needed supplementation or amendment. Second, nothing in the record evidenced "carelessness and indifference" on the part of Local 140 similar to what the Court found in Local Union 1694. Indeed, the undisputed evidence provided through the Vaughn declaration demonstrated a conscientious effort to bring Local 140 back into compliance, culminating in the filing of the last three late reports in July 2001. That event indeed might have inaugurated a new period of timely compliance by Local 140, had it not been for the October 2001 anthrax attack. It bears noting that, even in the calamitous aftermath of the anthrax attack, Local 140 was able to file its report less than five months late (even though it was probably pressed into that endeavor by the filing of this lawsuit).

These facts, and particularly the efforts made by Local 140's leadership in the past two years to bring the Local into compliance with its reporting requirements, made it clear to this court that, barring another extraordinary circumstance such as the anthrax attack, Local 140's problems with submitting timely

annual reports were in the past and not reasonably expected to recur.

No injunction was issued. Nor was a declaratory judgment, since the Secretary's prayer was that the court declare Local 140 to be in violation. Local 140 would of course be well advised to fulfill this court's prediction and turn square corners with its reporting requirements in the future. Litigation over any future violation that is not attended by extreme extenuating circumstances will have a different result.

JAMES ROBERTSON
United States District Judge