UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA CONVENTION CENTER AUTHORITY, Plaintiff, v. EDWARD CORYELL, SR.; EDWARD CORYELL, JR.; J.R. HOCKER; RICHARD RIVERA; RONALD CURRAN; KENYATTA BUNDY; RICHARD WASHLICK; DOES 1-10; and METROPOLITAN REGIONAL COUNCIL OF CARPENTERS, Defendants.	Civil Action No. 2:15-cv-02534-LFR Judge L. Felipe Restrepo

MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM

Defendants Metropolitan Regional Council of Carpenters, Edward Coryell, Sr., Edward Coryell, Jr., J.R. Hocker, Richard Rivera, Ronald Curran, and Kenyatta Bundy, by and through undersigned counsel, hereby move to dismiss Plaintiff's Complaint with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the following grounds:

- The Complaint fails to plead each of the elements necessary to state a RICO claim under 18 U.S.C. § 1962(c);
- The Complaint fails to plead a RICO conspiracy under 18 U.S.C. § 1962(d);
- The Complaint's trespass to chattels claim is not brought against any named Defendant, and if Plaintiff's RICO claims are dismissed there is no reason for this Court to exercise supplemental jurisdiction of a state-law claim against unidentified defendants.

In support of this motion, the moving Defendants submit the attached memorandum of points and authorities, supporting exhibits, and a proposed order.

Dated: June 30, 2015

Respectfully submitted,

/s/ Craig D. Singer

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2015, the foregoing was filed with the Court using the CM/ECF system. Notice of this filing will be electronically mailed to all parties registered with the CM/ECF system.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM

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INTRODUCTION

In this public relations stunt dressed as a federal lawsuit, the operator of the Philadelphia Convention Center ("Authority") sues the Carpenters Union ("Carpenters" or "MRC") for engaging in labor protests to reclaim its members' lost jobs. The Carpenters began these protests after the Authority collaborated with rival unions to exclude the Carpenters from working at the Center and to divide up their jobs among the other unions. The Carpenters have pursued their remedies principally through First Amendment-protected, non-violent protests, as well as under the labor laws, recently scoring a significant procedural victory in the Pennsylvania Labor Relations Board, which has scheduled a hearing to determine whether the Authority must reinstate the Carpenters Union and pay backpay to its members. On the heels of that ruling, the Authority filed this lawsuit, sensationally accusing the Carpenters of "racketeering" and "extortion."

The Carpenters' protests and efforts at legal redress are, however, far from the stuff of RICO. To be sure, the demonstrations and rallies at the Center have been noticeable and, as the Authority alleges, disruptive—in other words, precisely what labor protests are supposed to be. But even the Complaint's best efforts to scandalize the Carpenters' activities cannot fully mask the true lawful nature of these protests. Notably, the Complaint does not—and could not—allege that anyone associated with the Carpenters has been arrested, charged, or cited in any way as a result of the protests. With one exception, the allegedly "extortionate" protests have consisted of garden-variety demonstrations outside the Convention Center, which until this lawsuit not even the Authority claimed were unlawful. That one exception was on a single day during the Auto Show, when Carpenters members allegedly bought tickets to the show, entered the Center, distributed many leaflets, and a few (mostly unnamed) Carpenters allegedly behaved disruptively—though again, they did nothing to inspire any arrests.

The federal RICO statute punishes patterns of criminal activity, not uncouth labor protests, and it is not designed to be a weapon for employers to squelch inconvenient union activity. The allegations in this Complaint, even assuming (as we do for purposes of this motion) that they are true, do not come close to satisfying civil RICO's many demanding elements.

First, the Complaint alleges no predicate "racketeering" offenses. The Authority contends that the Carpenters' protests are federal criminal acts of "extortion" under the Hobbs Act. This is wrong, indeed absurd, for multiple reasons. Labor activity—even outright *violent* activity, which the Carpenters' actions are not alleged to be—is categorically excluded from the Hobbs Act under the *Enmons* doctrine as long as it is designed to achieve legitimate labor ends. Here, it is apparent from the face of the Complaint that the Carpenters' protests were designed to restore their jobs at the Center, a goal squarely in the heartland of the *Enmons* rule.

Even if not protected by *Enmons*, the alleged activities still would not constitute a Hobbs Act violation, which consists of the wrongful use of force or fear to deprive the victim of money or property. The Complaint's few allegations of "force" are conclusory, and the perpetrators are not identified. Federal pleading rules require far more specificity. The Complaint's allegations of extortion through non-violent acts creating "economic fear" are meritless, both because the "fearsome" activities are First Amendment protected and because they were designed to achieve legitimate labor objectives, not extortionate payoffs. Finally, on this point, there is no allegation that the Carpenters tried to extort the Authority of "money or property." Rather, the Authority alleges only a loss of its intangible rights to be free of Carpenter interference—but the Supreme Court has squarely held that such intangible "property" does not qualify.

Second, extortion aside, the Complaint does not sufficiently allege multiple other elements of the civil RICO statute:

Pattern: RICO requires a continuous pattern of multiple racketeering acts, extending over a long time period. Here, the most charitable reading of the Complaint shows that it focuses on the Carpenters' actions surrounding the 2015 Auto Show. That is an incident, not a pattern.

Enterprise: RICO applies to defendants who commit racketeering acts through an "enterprise." The enterprise must be separate and distinct from the defendants themselves. Here, it is not: The Complaint alleges that the Carpenters Union is the "enterprise," and it gins up an "association in fact" enterprise made up of *the Union itself* and some of its individual officers, employees, and members. This runs afoul of the distinctness requirement.

Proximate Causation: RICO imposes a heightened proximate causation requirement that applies at the pleading stage. The plaintiff must allege an injury to its business or property that is direct and not contingent on injury to a third party. The Complaint utterly fails to satisfy this requirement, as any alleged injuries to the Authority are speculative, remote, and dependent on third parties' responses to the Carpenters' protests.

In light of civil RICO's many elements, complaints that allege RICO violations often require courts to engage in difficult legal analysis. This is not one of those cases. The Complaint is far outside the realm of "extortion" or "racketeering," and RICO has no role to play in resolving the parties' labor dispute. This lawsuit can and should be dismissed, promptly and with prejudice.

THE ALLEGATIONS IN THE COMPLAINT

A. The Parties

Plaintiff Pennsylvania Convention Center Authority is an agency of the Commonwealth of Pennsylvania that operates the Convention Center in downtown Philadelphia. Compl. ¶ 10. Defendants are the Metropolitan Regional Council of Carpenters and certain individual MRC

officers, employees, and/or members. *Id.* ¶¶ 11-18.[1] Until May 2014, members of the MRC provided labor to exhibitors and customers at tradeshows and other events at the Center. *Id.* ¶¶ 29, 32. The Authority itself does not employ the Carpenters' members,[2] but the Carpenters' work at the Center historically has been governed, in part, by a Customer Satisfaction Agreement with the Authority.

B. The Original Customer Satisfaction Agreement

In 2003, the Authority, Elliott-Lewis Corporation (the private labor broker for the Center), the Carpenters, and five other labor unions entered into a Customer Satisfaction Agreement ("CSA") concerning the Center.[3] Compl. ¶¶ 21-24, 27. The CSA was designed to "ensure predictability, safety, consistency, uniformity, and cost effectiveness for the customers, exhibitors, and all those working" at the Center. *Id.* ¶ 21. To accomplish those objectives, the CSA "limited the work that customers and exhibitors may perform on their own and required that they engage a designated labor supplier for such show labor necessary to put on their shows and meetings." *Id.* The CSA formally expired in 2013, but it governed the performance of show labor work at the Center until May 2014, while the parties sought to negotiate a new CSA. *Id.* ¶ 23.

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[1] Edward Coryell, Sr. is the Executive-Secretary-Treasurer and Business Manager of the MRC; Edward Coryell, Jr. is the Assistant Executive Secretary-Treasurer and Business Agent of the MRC; J.R. Hocker and Richard Rivera are Organizers; and Ronald Curran, Kenyatta Bundy, and Richard Washlick are Members. Compl.¶¶ 11-18. Mr. Coryell, Sr. also served on the Authority's Board of Directors. *Id.* ¶ 12.

[2] The Carpenters work under the direction of individual contractors and are compensated through the labor broker, Elliott-Lewis Corporation.

[3] The other five unions were the Teamsters Local 107 ("Teamsters"), the International Brotherhood of Electrical Workers, Local 98 ("Electricians"), the Laborers' International Union of North America, Local 332 ("Laborers"), the International Alliance of Theatrical Stage Employees Artists and Allied Crafts of the United States and Canada, Local 8 ("Stagehands"), and the International Association of Bridge, Structural, and Ornamental Iron Workers, Local 405 ("Riggers"). *See* Compl. ¶¶ 27-28.

C. The Authority Locks Out the Carpenters

The parties negotiated for more than one year, with the Authority, Elliott-Lewis, and SMG (the manager of the Center) insisting on certain changes to the CSA that the Carpenters and other unions opposed. Compl. ¶¶ 23-25. The dispute came to a head in May 2014, as the Carpenters' collective bargaining agreement with Elliott-Lewis was set to expire on May 10. *Id.* ¶¶ 24, 30. On May 4, 2014, the Authority sent a draft CSA to the unions that "included a firm, 48-hour deadline" for the unions either to accept or reject. *Id.* ¶ 24. The Authority, Elliott-Lewis, SMG, and four of the unions signed the new CSA by May 6; the Carpenters and the Teamsters did not. *Id.* ¶ 27. Immediately thereafter, the four signatory unions met with the Authority to "reconfigure[]" the "work jurisdictions" of the Carpenters and the Teamsters. *Id.* ¶ 30. Although the Carpenters signed the new CSA a day later on May 7, 2014—three days before its collective bargaining agreement with Elliott-Lewis was to expire—the Authority took the position that its signature was not "timely" and "refused" to accept it. *Id.* ¶¶ 29, 31. As a result, the Carpenters "have not been called to work in the Convention Center" since May 9, 2014. *Id.* ¶¶ 29-31.

The labor dispute between the Authority and the Carpenters has been the subject of substantial litigation, as public filings reflect.[4] Within a week after the Authority locked the Carpenters out of the Center, the Carpenters filed unfair labor practices charges with the National Labor Relations Board ("NLRB") against the Authority, Elliott-Lewis, and SMG. *See* Ex. A. On July 14, 2014, the NLRB dismissed the charges on jurisdictional grounds because of the

[4] This Court, when deciding a motion to dismiss under Rule 12(b)(6), may take judicial notice of "matters of public record." *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014). Such matters include "the existence of [] state administrative and state court opinions," *M & M Stone Co. v. Pennsylvania*, 388 F. App'x 156, 162 (3d Cir. 2010), and "NLRB charge[s]," *Berg v. USW, Local 3733*, No. 98-308, 1998 WL 165005, at *7 (E.D. Pa. Apr. 8, 1998).

Authority's quasi-governmental status. *See* Ex. B. The NLRB's order, however, went out of its way to note that the Carpenters had "presented evidence of extensive conduct supporting findings that the Authority acted in derogation of bargaining obligations imposed by Section 8(a)(5) of the [National Labor Relations] Act." *Id.* at 2. The Carpenters then filed charges with the Pennsylvania Labor Relations Board. The Authority moved to dismiss for lack of jurisdiction and failure to state a claim. The Hearing Examiner denied the motion on April 16, 2015. *See* Ex. C. Three weeks later, the Authority filed the RICO Complaint in this case.

D. The Carpenters Protest the Lockout

According to the Complaint, the Carpenters have held numerous demonstrations and rallies at the Center since the Authority barred MRC members from working there. Compl. ¶¶ 34-58. While its focus is the events during two days of the Philadelphia International Auto Show in early 2015, *see id.* ¶¶ 49-70, the Complaint seeks to paint a picture of a larger "pattern" of conduct. It alleges that Carpenters' demonstrations between May 2014 and early February 2015 were part of "an extortionate plan to disrupt key shows" aimed at "forc[ing] the [Authority] to abandon the CSA." *Id.* ¶¶ 4, 33. Regarding these demonstrations, the Complaint alleges a variety of classic, First Amendment-protected advocacy activity, which it tries to portray as extortionate: demonstrations and protests, distribution of handbills, postings to a website and other social media, an advertisement in a trade newspaper, and letters to public officials. *See id.* ¶¶ 34-46, 73-74, 77-79. Notably, the Complaint does not allege any arrests, citations, or violent acts associated with any of this conduct, because there have been none.

1. Demonstrations and rallies

The Complaint alleges that the Carpenters have held monthly or bi-monthly "illegal mass pickets" and "protests" that have created a "major disturbance." Compl. ¶¶ 35-45. For example, the Complaint alleges that (1) MRC "agents" "chant[ed] slogans on megaphones, blar[ed] air

horns and whistles, and block[ed] traffic around" the Center in July 2014, *id*. ¶ 35; (2) "massed near entrances to the Convention Center for the purpose of intimidating employees, patrons, and vendors" and "stalked building management and harassed them by loudly blowing whistles and air horns close to their persons, using profane and vulgar language, and acting in a physically menacing and intimidating fashion" in August 2014, *id.* ¶¶ 36, 38; (3) "surrounded the Convention Center, once again disrupting all vehicular and pedestrian traffic" in September 2014, *id.* ¶ 41; (4) engaged in "disruptive and threatening mass picketing" in October 2014, *id.* ¶ 42; (5) held "illegal mass demonstration[s]" and "mass picketing" at two events in November 2014—one which allegedly involved "blowing whistles" and "screaming" at attendees, and the other which allegedly caused a group of attendees to "re-route shuttles buses," *id.* ¶¶ 44-45; and (6) "videotape[d] members of building management as they entered and exited" the Center, *id.* ¶ 39.

The Complaint also describes the Carpenters' written advocacy related to the dispute at the Center. It alleges that the MRC sponsored a "Web site, www.fairdealphilly.com, [stating] that the Carpenters 'were not going anywhere'" "'until this unfair and illegal lockout ends, and our members are back at their jobs.'" Compl. ¶ 76. This website allegedly "broadcast[s] videos of the mass picketing and traffic disruptions," among other things. *Id.* The Complaint also alleges that the MRC's Twitter page "directly threatened the Flower Show" by tweeting "Protests @PAConvention will continue even during @PhilaFlowerShow! Lockout hurts everyone. Plant seeds of fairness!" *Id.* ¶ 74. The Complaint further claims that certain unnamed "member[s] or agent[s]" of MRC used "the popular classified advertisement website craigslist.com as another weapon in their war on the [Center]." *Id.* ¶¶ 47-48. The Complaint asserts, "upon information and belief," that a "fraudulent 'Help Wanted' advertisement" was

posted on Craigslist "calling for applicants to apply for work at the . . . Center." *Id.* The Complaint also takes issue with (1) the Carpenters' "letter-writing campaign" to "national and local" officials of the Democratic National Committee, *id*. ¶¶ 78-79; and (2) one advertisement in the USAE's "national, weekly newspaper" that criticized the Authority and referenced the "unfair and illegal lockout," *id.* ¶ 77.

The Complaint also includes a smattering of vague and conclusory allegations that refer to "assault," "battery," "violence," "stalking," and "destruction of property." *See* Compl. ¶¶ 5, 19, 37-38, 44, 46, 49, 71. The Complaint does not identify any individuals who allegedly committed these acts, other than describing them as "agents" of the Carpenters. Despite alleging a strong police presence at most, if not all, of the demonstrations (including the Auto Show), *id.* ¶¶ 34-35, 40, 42, 61, 69, the Complaint does not allege that the Defendants or any members or agents of the MRC at any time have been cited, arrested, or charged criminally with respect to any demonstrations at or related to the Center.[5]

2. The Auto Show

The focus of the Complaint is the 2015 Auto Show. The Authority alleges that, at a "Black Tie Tailgate" event on January 30, 2015, "80 to 100 members of MRCC gathered outside of the Convention Center" where the valet parking was located, and some unnamed individuals "surrounded [attendees'] vehicles, pounded on the windows and doors, and made rude and obscene comments to the occupants." *Id.* ¶¶ 52-53. The Complaint alleges that the MRC posted videos of these actions to its website (www.fairdealphilly.com). *Id.* ¶ 53. Then, according to the

[5] The Complaint also contains allegations about co-defendant Richard Washlick's Facebook page. Compl. ¶¶ 83-85. Mr. Washlick is filing a separate motion to dismiss that will address these allegations. Mr. Washlick's Facebook postings obviously are not actionable as "extortion." In addition, to the extent the Complaint means to allege that Mr. Washlick's conduct is somehow attributable to the Carpenters or the other individual defendants, it contains absolutely no factual allegations that would support such a claim.

Complaint, on February 6 the Carpenters purchased 200 tickets to the Auto Show and "infiltrated" the event the next day. *Id.* ¶¶ 55, 58. The Complaint alleges that, inside the Center, "[s]ome [unnamed] Carpenters locked themselves inside exhibitor vehicles and refused to come out," "tampered with and damaged exhibitor vehicles," and "stuff[ed] exhibitor vehicles with MRC flyers" concerning the lockout. *Id.* ¶¶ 59, 61; *see id.* ¶¶ 62-69. The Complaint further alleges that Defendant Curran was asked to leave the Center, initially resisted, but ultimately left. *Id.* ¶ 61. The Complaint does not reference any demonstrations after February 7. *Id.* ¶¶ 73-79.

LEGAL STANDARD

On a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a complaint's factual allegations must be accepted as true and construed in the light most favorable to the nonmoving party. *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). But that "tenet" is inapplicable to legal conclusions: "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see Chester Cty. Aviation Holdings, Inc. v. Chester Cty. Aviation Auth.*, 967 F. Supp. 2d 1098, 1105 (E.D. Pa. 2013) ("A court need not, however, credit 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." (quoting *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997))). "Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not show[n]—that

the pleader is entitled to relief." *Id.* at 679 (second alteration in original) (internal quotation marks omitted); *see Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009).

ARGUMENT

I. THE COMPLAINT DOES NOT ALLEGE A VIOLATION OF 18 U.S.C. §§ 1962(c) AND 1964(c)

The Complaint should be dismissed because it fails to plead the elements necessary to state a civil RICO claim under 18 U.S.C. §§ 1962(c) and 1964(c). To survive a motion to dismiss, the plaintiff must sufficiently plead the defendant's (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity that (5) causes injury to plaintiff's business or property. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). As demonstrated below, the Complaint pleads none of these elements and should be dismissed with prejudice.

A. The Complaint Does Not Allege Predicate Acts of "Racketeering Activity"

"Racketeering activity" can be any of a "list of criminal activities that constitute predicate acts for purposes of RICO." *See Warden v. McLelland*, 288 F.3d 105, 114 (3d Cir. 2002) (citing 18 U.S.C. § 1961(1)(A)). In this case, the Complaint alleges that Defendants' "racketeering activity" consisted solely of extortion, in violation of the Hobbs Act, 18 U.S.C. § 1951(a). Compl. ¶¶ 1, 91-92. To satisfy the "racketeering activity" element of RICO, therefore, the Authority was required to plead that the Carpenters violated the Hobbs Act. The Complaint utterly fails to do this.

The Hobbs Act criminalizes conduct by which a person obtains or attempts to obtain "property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear." 18 U.S.C. § 1951(b)(2). In the labor context, however, the Hobbs Act is limited significantly by the Supreme Court's holding that the Act does not apply to acts committed by members of a labor organization seeking legitimate collective bargaining ends,

even if those acts might otherwise be violent or criminal. *United States v. Enmons*, 410 U.S. 396, 400 (1973). In addition to triggering the *Enmons* labor exemption, the Complaint also fails to allege an actionable Hobbs Act violation for reasons that would apply equally to labor or non-labor disputes. We discuss each of these defects below.

1. *Enmons* squarely bars the Complaint, which alleges misconduct solely in connection with legitimate labor objectives

The defendants in *Enmons*—members and officials of Local 2286 of the International Brotherhood of Electrical Workers—were indicted under the Hobbs Act for violent acts they committed during a strike against their employer, Gulf State Utilities Company, to obtain higher wages. 410 U.S. at 397-98. The alleged violence included "firing high-powered rifles at three Company transformers, draining the oil from a Company transformer, and blowing up a transformer substation owned by the Company." *Id.* at 398. The Supreme Court held that the indictment did not describe an offense because "the use of violence to achieve legitimate union objectives, such as higher wages in return for genuine services which the employer seeks," is categorically exempt from the Hobbs Act. *Id.* at 400. "In that type of case, there has been no 'wrongful' taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled in compensation for their services." *Id.*

The Complaint in this case presents a straightforward application of *Enmons*. The Carpenters have a long history of providing show labor to exhibitors and customers at the Center, and for the past two years the Authority and the Carpenters have been embroiled in a labor dispute concerning the new CSA. Compl. ¶¶ 2, 23. The negotiations were heated and contentious, *id.* ¶¶ 24-27, and the Authority refused to accept the Carpenters' signature on the new CSA, claiming that it was past the deadline, *id.* ¶¶ 29, 31. The Authority thereafter refused to bargain with the Carpenters, and has not called the Carpenters to work at the Center since

May 9, 2014. *Id.* ¶ 30. The Carpenters have challenged the fairness and legality of the Authority's lockout, both in legal proceedings and through public demonstrations and rallies. The incidental misconduct alleged in the Complaint occurred during these demonstrations and rallies. Thus, the alleged acts of "extortion"—even if they may be characterized (dubiously) as "violent"—are well within the protections of *Enmons*, and cannot serve as the predicate to Hobbs Act liability.

When presented with similar circumstances, courts have not hesitated to dismiss indictments or complaints because, under the *Enmons* doctrine, the Hobbs Act does not reach violence incidental to union activity. *See, e.g.*, *Teamsters Local 372 v. Detroit Newspapers*, 956 F. Supp. 753, 757, 763 (E.D. Mich. 1997) (finding that *Enmons* required 12(b)(6) dismissal of employer's civil RICO claims based on the Hobbs Act because the misconduct and violence at issue occurred during lawful strikes, pickets, and concerted activities in support of legitimate collective bargaining demands); *Buck Creek Coal, Inc. v. United Mine Workers*, 917 F. Supp. 601, 612 (S.D. Ind. 1995) (finding that *Enmons* required 12(b)(6) dismissal of employer's civil RICO claim based on the Hobbs Act because "the conduct alleged to violate the Hobbs Act was arguably undertaken in pursuit of legitimate union ends, and such conduct does not, therefore, constitute a Hobbs Act violation or a predicate act for RICO purposes"); *see also United States v. Caldes*, 457 F.2d 74, 75 (9th Cir. 1972) (reversing convictions and dismissing indictment under the Hobbs Act because "the Act was not intended to reach low level violence committed in connection with bona fide labor disputes between employers and employees"). The same result is warranted here.

The *Enmons* Court set forth two limited circumstances where violence related to objectives of labor unions could be actionable, but neither circumstance is present in this case.

First, the *Enmons* exemption does not apply when "union officials threatened force or violence against an employer *in order to obtain personal payoffs*." *Enmons*, 410 U.S. at 400 (emphasis added). The Complaint does not allege any such thing; rather, the MRC's goal is allegedly to end the lockout and return the Carpenters to work at the Center. This is fully protected under *Enmons*. Second, the exemption does not apply "where unions used the proscribed means to exact 'wage' payments from employers in return for 'imposed, unwanted, superfluous and fictitious services' of workers." *Id*. (footnote omitted). This exception covers situations in which labor unions improperly seek "payment for work not performed" (known as "featherbedding"). *See Teamsters Local 372*, 956 F. Supp. at 763. But there is no allegation in the Complaint that the MRC or any individual Defendant is seeking something for nothing from the Authority.[6] The Complaint alleges instead that the Carpenters signed the new CSA to continue their employment at the Center. Compl. ¶ 31. In this situation, the Carpenters would provide services at the Center, as they have done for decades, and would be paid a wage by Elliott-Lewis in return. Accordingly, *Enmons* requires dismissal because the Complaint does not allege that the Carpenters sought to achieve anything but legitimate union objectives.

2. Irrespective of *Enmons*, the Complaint does not plead a predicate Hobbs Act violation

Even outside the context of a labor dispute, a complaint alleging a predicate Hobbs Act violation must allege facts showing that the defendant obtained (or attempted to obtain) property through the wrongful use of actual or threatened force, violence, or fear. *See* 18 U.S.C.

[6] By contrast, "featherbedding" was the issue in *United States v. Dougherty*, No. 14-69-9 & -10, 2014 WL 3670129 (E.D. Pa. July 21, 2014) (Baylson, J.), where the court refused to dismiss an indictment under *Enmons* because union members allegedly forced an employer into a relationship where they "were hired 'to do nothing'" and reported to work even though they "did not even know how to perform the work being done at the construction site." *Id*. at *4-5 (citation and internal quotation marks omitted).

§ 1951(b)(2). Here, the Complaint fails in at least three respects: It does not sufficiently allege force or violence; it does not allege actionable "fear" of economic loss; and it does not allege that the Carpenters obtained or tried to obtain any "property" within the meaning of the Hobbs Act.

a. No allegations of actual or threatened force or violence

The Complaint is peppered with vague references to "assault," "battery," "violence," "stalking," and "destruction of property." *See, e.g.*, Compl. ¶¶ 5, 19, 37-38, 44, 46, 49. To the extent these conclusory allegations are an effort to support a Hobbs Act claim based on "force" or "violence," they are utterly insufficient. The Complaint does not allege which Defendants, if any, committed such acts, referring instead to unnamed "Does 1-10" and "MRCC agents." *See, e.g.*, *id.* ¶ 19 ("*Does 1-10* participated in the violence, intimidation, assault, and destruction of property that occurred during the 'Black Tie Tailgate' event held at the [Center] . . . ." (emphasis added)); *id.* ¶ 37 ("MRCC *agents* harassed, physically assaulted, and threatened show labor workers outside the Convention Center." (emphasis added)); *id.* ¶ 38 ("MRCC *agents* stalked building management and harassed them by loudly blowing whistles and air horns close to their persons, using profane and vulgar language, and acting in a physically menacing and intimidating fashion." (emphasis added)); *id.* ¶ 44 ("MRCC *agents* harassed and threatened event attendees by blowing whistles directly into their ears and screaming at them." (emphasis added)). Nor does it identify the purported victims or the circumstances surrounding the alleged acts.

Instead, the Complaint makes the general, conclusory allegation that Defendants somehow "orchestrated" these acts. *See* Compl. ¶ 49 ("Defendants hatched a scheme."); *id.* ¶ 70 ("All of these acts were orchestrated by Defendants."). Such allegations, however, are "naked assertions" and/or mere "legal conclusions" that are not entitled to the presumption of truth under Rule 12(b)(6). *Iqbal*, 556 U.S. at 678, 680 (alteration and internal quotation marks omitted); *see Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997); *Chester Cty. Aviation*

Holdings, Inc. v. Chester Cty. Aviation Auth., 967 F. Supp. 2d 1098, 1105 (E.D. Pa. 2013). To the extent the Complaint's allegations of Hobbs Act "extortion" are based on alleged violence, therefore, they do not state a claim.

b. No allegations of economic fear

Without any sufficiently pleaded allegations of force or violence, the Complaint is left to allege that the Defendants tried to extort the Authority through "fear" induced by the Carpenters' public demonstrations, online activity, and letter writing. *See supra* Section D.1. These allegations do not make out a claim for "wrongful use of . . . fear" within the meaning of the Hobbs Act. 18 U.S.C. § 1951(b)(2).

First, the acts alleged in the Complaint are not "wrongful" as a matter of law because they are protected by the First Amendment. *See Thornhill v. Alabama*, 310 U.S. 88, 102-04 (1940) (holding that the First Amendment protects labor pickets and dissemination of information concerning the facts of a labor dispute); *see also N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982) (discussing prior Supreme Court precedent recognizing that "'offensive' and 'coercive' speech [i]s nevertheless protected by the First Amendment" (citations omitted)). Indeed, the allegations here that concern the demonstrations and protests, distribution of flyers, postings to a website and other social media like Twitter, placement of an advertisement in a trade newspaper, and letters to public officials, Compl. ¶¶ 34-46, 73-74, 77-79, are textbook First Amendment-protected activity. They cannot, as a legal matter, form the basis of a Hobbs Act violation. *See, e.g.*, *Palmetto State Med. Ctr. v. Operation Lifeline*, 117 F.3d 142, 149 n.9 (4th Cir. 1997) (reversing judgment for civil RICO liability under the Hobbs Act, in part, because the acts of distributing literature during and after a protest were "protected activity under the First Amendment").

Second, the alleged economic pressure is not the sort of conduct the Hobbs Act criminalizes. '"[T]here is nothing inherently wrongful about the use of economic fear to obtain property.'" *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't*, 770 F.3d 834, 838 (9th Cir. 2014) (quoting *United States v. Sturm*, 870 F.2d 769, 773 (1st Cir. 1989)). On the contrary, "the fear of economic loss is a driving force of our economy that plays an important role in many legitimate business transactions." *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 523 (3d Cir. 1998). Thus, acts creating economic "fear" can qualify as extortion only when the plaintiff had a legal right to operate its business free from the defendant's acts. *Id.* at 525-26. That was not the case here. The "wrongful" conduct alleged by the Complaint was designed to achieve a lawful union objective to reach a collective bargaining agreement. In that situation, the use of economic fear is not extortionate; rather, it is merely "hard bargaining." *Id.* at 526. Thus, the Complaint fails adequately to allege a wrongful use of actual or threatened force, violence, or fear to support a Hobbs Act violation.

c. No allegations of obtaining property

In addition to its failure to allege a "wrongful use of actual or threatened force, violence or fear," the Complaint also fails to allege the Hobbs Act's separate essential element that those wrongful acts must be committed to *obtain property*. Notably, the Complaint never alleges that the Carpenters tried to extort money or any tangible thing from the Authority. Any such allegation would be impossible because the Authority does not employ or compensate the Carpenters or other show labor at the Convention Center. (Rather, as explained above, private contractors retain the Carpenters' members and compensate them for their services through labor broker Elliott-Lewis.) Instead, the Complaint alleges only an attempt to extort *intangible rights* from the Authority:

> The goal of this illegal scheme has been, and remains, to force the [Authority] to surrender its valuable property rights associated with the CSA and the Convention Center, including: [1] The rights and economic advantage granted to the [Authority] under the CSA; [2] The right to be free from being forced to accept unwanted, unnecessary, or fictitious work; [3] The right to control and operate its business free from unlawful coercion; and [4] The right to choose who to allow entry into and who to exclude from the Convention Center property for the purpose of serving its customers and exhibitors.

Compl. ¶ 94.

These allegations fail because, under governing Supreme Court precedent, such intangible rights do not qualify as "property" that can be "obtained" for Hobbs Act purposes. The Hobbs Act "requires that the victim part with his property . . . and that the extortionist gain possession of it." *Sekhar v. United States*, 133 S. Ct. 2720, 2725 (2013) (citations and internal quotation marks omitted); *see Scheidler v. Nat'l Org. for Women, Inc.* ("*NOW2*"), 537 U.S. 393, 404 (2003) (holding that obtaining property requires "not only the deprivation but also the acquisition of property"). The "obtaining" prong therefore requires that a defendant must pursue "something of value" from the victim that the defendant can "exercise, transfer, or sell." *NOW2*, 537 U.S. at 404-05; *see also Sekhar*, 133 S. Ct. at 2725 ("The property extorted must . . . be *transferable*—that is, capable of passing from one person to another."). Thus, in *NOW2*, the Supreme Court held that, even though defendants "interfered with, disrupted, and in some instances completely deprived respondents of their ability to exercise their property rights," "such acts did not constitute extortion because [defendants] did not 'obtain' respondents' property." 537 U.S. at 404-05.

Under settled law, therefore, the Complaint does not state a Hobbs Act claim because it alleges only that Defendants sought to deprive the Authority of intangible, nontransferable property rights that Defendants cannot "exercise, transfer, or sell."

B. The Complaint Does Not Allege a "Pattern" of Racketeering Activity

Not only are the acts alleged in the Complaint not "racketeering activity," they also do not comprise a "*pattern*" of such activity. A RICO pattern "requires at least two acts of racketeering activity" occurring within a ten-year period. 18 U.S.C. § 1961(5). To establish a pattern, a plaintiff must show that two or more racketeering predicate acts are related and "amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). This is referred to as the "continuity" requirement. Continuity "is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." *Id.* at 241. To state a claim, a plaintiff must sufficiently allege either closed- or open-ended continuity. This Complaint alleges neither. Rather, it alleges short-term conduct surrounding the Auto Show, which poses no threat of repetition.

1. The Complaint does not allege closed-ended continuity

Closed-ended continuity requires a "series of related predicates extending over a substantial period of time." *Id.* at 242. It is well established in this Circuit that conduct lasting no more than twelve months fails to meet the standard for closed-ended continuity. *See, e.g.*, *Tabas v. Tabas*, 47 F.3d 1280, 1293 (3d Cir. 1995) (en banc) ("Since *H.J. Inc.*, this court has faced the question of continued racketeering activity in several cases, each time finding that conduct lasting no more than twelve months did not meet the standard for closed-ended continuity."); *Hughes v. Consol-Pa. Coal Co.*, 945 F.2d 594, 611 (3d Cir. 1991) (holding that a twelve-month period of fraudulent conduct "is not a substantial period of time" and therefore fails to establish closed-ended continuity). Here, even if all of the acts alleged in the Complaint constituted RICO predicates (which they do not), all of the purported acts spanned a total of less than 11 months—from May 2014 to April 2015.

The reality is that the Complaint's core allegations relate to a period of only *eight days*, during the 2015 Auto Show, and therefore cannot allege a RICO pattern. Compl. ¶¶ 49-72. That conduct was confined to the Black Tie Event on January 30, 2015, and the first day of the Auto Show on February 7, 2015. *See supra* Section D.2. The Complaint also describes other organized labor protests and online or written speech occurring between May 2014 and April 2015, *see supra* Section D.1, but these actions are obviously non-extortionate, and indeed they are core First Amendment-protected. The eight-day period during the Auto Show unmistakably is the crux of the Complaint. While the Carpenters' actions at the Black Tie Event and Auto Show were by no stretch of the imagination "extortion," in any event, an eight-day timeframe is insufficient to allege closed-ended continuity.

2. The Complaint does not allege open-ended continuity

Open-ended continuity requires a pattern of racketeering activity that threatens continued future racketeering activity. *H.J. Inc.*, 492 U.S. at 242; *Tabas*, 47 F.3d at 1292. Such continuity "is sufficiently established where the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes . . . [or] where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business . . . ." *H.J. Inc.*, 492 U.S. at 242-43.

This Complaint does not come close to alleging open-ended continuity. It alleges that the Carpenters engaged in legitimate demonstrations, protests, and speech over the course of roughly eleven months. To the extent that any acts attributed to the Carpenters during the eight-day period surrounding the Auto Show are alleged (incorrectly) to have crossed the line into tortious behavior, there is no threat of continued activity. Not a single allegation in the Complaint relates to a demonstration or rally after February 7, 2015. In fact, in the wake of the Auto Show, the parties agreed to a "Stipulated Permanent Injunction" in a Pennsylvania state court action that

binds and enjoins both parties from undertaking certain acts. *See* Ex. D.[7] Among other things, the injunction permits the Carpenters to continue to demonstrate lawfully at the Center, while enjoining them from doing so in any unlawful manner. *Id.* Thus, there is no reason to believe that the acts alleged to have occurred at the Auto Show will be repeated in the future, and the Complaint does not so allege.

Because the Complaint fails to allege the continuity required to establish "a pattern of racketeering activity," the Court should dismiss the RICO claim.

C. The Complaint Does Not Allege an "Enterprise"

As another independent and sufficient basis for dismissal, the Complaint identifies no RICO "enterprise" other than an "association-in-fact" enterprise *comprised of the Defendants themselves*. This is impermissible. A claim under § 1962(c) requires a plaintiff to allege that the defendants are "employed by or associated with any enterprise." Thus, the "enterprise" must be separate and distinct from the defendants who are "employed by or associated with" it. *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161, 163 (2001) (internal quotation marks omitted) (holding that the § 1962(c) "distinctness principle" requires a plaintiff to "prove the existence of two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name").

Because a legal entity must always act through employees or agents, a plaintiff cannot satisfy the "distinctness principle" by pleading that an enterprise consists of a defendant

[7] The Complaint references the injunction, Compl. ¶¶ 71, 75, but fails to attach it to the Complaint or mention that it was an *agreed* injunction that *binds both parties*. *See* Ex. D. The injunction permits the Carpenters to continue to lawfully demonstrate at the Center, while enjoining it from doing so "unlawfully." *Id.* Further, it enjoins the Authority "and their agents and employees" "from any and all acts or threats of violence, intimidation and coercion against [the MRC]." *Id.*

corporation along with any individual employees, agents, or affiliated entities. As the Third Circuit has explained:

> A corporation must always act through its employees and agents, and any corporate act will be accomplished through an "association" of these individuals or entities. Consequently, the [distinctness] rule would be eviscerated if a plaintiff could successfully plead that the enterprise consists of a defendant corporation in association with employees, agents, or affiliated entities acting on its behalf. . . . Our decision is in accord with numerous courts that have rejected attempts to circumvent the distinctiveness requirement by alleging enterprises that are merely combinations of individuals or entities affiliated with a defendant corporation.

Brittingham v. Mobil Corp., 943 F.2d 297, 301 (3d Cir. 1991), *abrogated on other grounds by Jaguar Cars, Inc. v. Royal Oaks Motor Car Co.*, 46 F.3d 258, 268 (3d Cir. 1995); *see also Newfield v. Shearson Lehman Bros.*, 699 F. Supp. 1124, 1126-27 (E.D. Pa. 1988) (dismissing a complaint naming a corporation and two of its employees as RICO defendants for failure to allege an enterprise distinct from defendants).

Under these principles, the Complaint flunks the "distinctness" requirement because the MRC is both a defendant and—in combination with certain officers, employees and members—the alleged enterprise. *See* Compl. ¶ 89 ("Defendants are a group of individuals and a union associated in fact so as to form an 'enterprise' for the purpose of extorting and attempting to extort valuable property from the [Authority] (the 'MRCC Enterprise') within the meaning of 18 U.S.C. § 1961(4)."). This is exactly the theory of "enterprise" that the Third Circuit has rejected. For this reason as well, the Complaint should be dismissed.

D. The Complaint Does Not Allege that Defendants Proximately Caused Injury to Plaintiff's Business or Property

In addition to all of the fatal defects discussed above, the Complaint also fails to allege facts satisfying RICO's stringent proximate causation requirement. A civil RICO plaintiff has standing to recover only if he was "injured in his business or property by reason of a violation of

section 1962." 18 U.S.C. § 1964(c); *see Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985). The "compensable injury" is limited to the harm to plaintiff's business or property "caused by [the] predicate acts sufficiently related to constitute a pattern." *Sedima*, 473 U.S. at 497. The requirement that injuries occur "by reason of" predicate acts incorporates proximate causation as well as "but for" causation. *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010) (internal quotation marks omitted); *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268-69 (1992); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 521 (3d Cir. 1998).

As the Supreme Court has emphasized, the proximate cause component of a civil RICO claim is exceptionally exacting. It requires "some direct relation between the injury asserted and the injurious conduct alleged"; a link that is "too remote," "purely contingent," or "indirect" is insufficient. *Hemi*, 559 U.S. at 9 (alteration and internal quotation marks omitted); *Holmes*, 503 U.S. at 271. "[I]n the RICO context, the focus [of the proximate cause inquiry] is on the directness of the relationship between the conduct and the harm," rather than on foreseeability. *Hemi*, 559 U.S. at 12.

Importantly, in a RICO case, a claim of injury cannot be "purely contingent on the harm suffered by" a third party. *Holmes*, 503 U.S. at 271. Similarly, independent acts and decisions by third parties can defeat proximate causation. *Anderson v. Ayling*, 396 F.3d 265, 270 (3d Cir. 2005). And the intervening decisions of a business's customers are often too indirect and speculative to be the proximate cause of a RICO injury. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 459-60 (2006) (holding that a corporate plaintiff failed to allege a RICO injury proximately caused by defendant's conduct because "[b]usinesses lose and gain customers for many reasons" thus requiring "a complex assessment to establish" what portion of plaintiff's injury was caused by the alleged acts and "[t]he element of proximate causation recognized in

Holmes is meant to prevent these types of intricate, uncertain inquiries from overrunning RICO litigation").

Here, the Complaint recites four supposed injuries, but each is far too indirect or remote from the Defendants' alleged conduct. *First*, the Authority seeks to recover "[e]xpenses incurred in reimbursing customers and exhibitors whose personal safety was threatened and property destroyed by Defendants and others acting at their direction." Compl. ¶ 95. In other words, the Authority does not claim that its own property was destroyed; rather, Defendants allegedly caused losses to "customers and exhibitors," which the Authority then reimbursed. *See id*. ¶ 72. This is a non-starter under the *Holmes* line of cases, because any injury to the Authority for indemnifying third parties is "purely contingent" on its patrons' injuries. *Holmes*, 503 U.S. at 271 (holding that a RICO plaintiff's injury cannot be "purely contingent on the harm suffered by" a non-plaintiff).

Second, the Authority claims injuries caused by the intervening acts of third parties, in the form of "canceled shows, lost customers, and lost booking fees." Compl. ¶ 95. The Complaint does not actually allege a single canceled show. It does identify one lost customer, the Chester County Democratic Committee, which allegedly "advised the [Authority] that, in response to Defendant Coryell Sr.'s letter, it would not host or attend any event held at the Convention Center during the Democratic National Convention" in 2016. *Id.* ¶ 79. That is a prototypical independent business decision of a third party, which defeats proximate causation as a matter of law. *See Anderson*, 396 F.3d at 270 (describing, *inter alia*, an employer's decision to fire employees as an intervening cause of harm that interrupts proximate causation). Incidentally, the Complaint's allegation describes the Chester Committee's cancellation as a response to Mr. Coryell's letter, which complained of the Authority's treatment of the

Carpenters—suggesting that the cancellation was an act of solidarity with the Carpenters, not a response to allegedly extortionate threats.

Third, the Authority seeks to recover "[c]osts associated with increased security and security measures to respond to and protect against Defendants' multiple disruptions of [Authority] events and assaults upon [Authority] property, customers, exhibitors, vendors, contractors, and employees." Compl. ¶ 95. This claim fails because the security costs are not alleged to have resulted directly from any acts of racketeering. *Sedima*, 473 U.S. at 496 ("[P]laintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation."). The Authority's general decision to beef up security out of concern that the Carpenters may protest is not proximately caused by any act of racketeering, and it is in any event an intervening decision by the Authority. Also, determining how much in added security costs may have been attributable to racketeering acts, as opposed to other factors—including *legitimate* protests—would require "intricate, uncertain inquiries," making such damages unrecoverable in a RICO case. *Anza*, 547 U.S. at 460.

Fourth, the Authority seeks to recover "[l]egal fees incurred directly and solely in responding to and obtaining protection from Defendants' extortionate conduct." Compl. ¶ 95. The Complaint alleges legal fees from two different proceedings. It claims that the contractors have had to undertake an "expensive and time-consuming" defense of "frivolous grievances" filed by the MRC against various contractors working at the Center. *Id.* ¶ 80. These fees are not recoverable RICO damages for multiple reasons:

- *The Authority lacks standing*: The Complaint does not allege any injury to *the Authority's* business or property from the grievances; it instead alleges only that *the contractors* have had to incur legal fees in their NLRB dispute with the MRC. Compl. ¶¶ 80-82. The Complaint does not allege that the Authority indemnified any contractors

for their legal fees, but even if it did, any such claim would fail the "directness" requirement for RICO's proximate causation prong. *Holmes*, 503 U.S. at 269, 271 (RICO plaintiff's injury cannot be "purely contingent on the harm suffered by" a non-plaintiff).

- *They are preempted by the labor laws*: Because claims for frivolous grievances in labor disputes arise under the NLRA, the NLRB has exclusive jurisdiction to hear such claims. *See San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959) (holding that "[w]hen an activity is arguably subject to § 7 or § 8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board").

The Complaint also identifies legal fees from a separate proceeding in which the Authority sought an injunction in state court against Defendants' protests. *See* Compl. ¶ 75. The decision to seek an injunction against future protests was the Authority's, not the Carpenters'. In any event, this is not a cognizable claim for RICO damages, but rather an attempt to circumvent Pennsylvania's fee-shifting rules, which do not allow recovery of attorney's fees. *See Merlino v. Delaware County*, 728 A.2d 949, 951 (Pa. 1999); 42 Pa. Cons. Stat. § 2503 (restricting the right to recovery of attorney's fees to limited circumstances specified by statute). The Authority was not permitted to recover its fees in the state-court action, and it certainly cannot recover them through an end-run in this Court.

II. THE COMPLAINT DOES NOT ALLEGE A RICO CONSPIRACY UNDER § 1962(d)

For many of the same reasons, Count II of the Complaint should be dismissed for failure to plead a cognizable RICO conspiracy claim. It is well established that a plaintiff cannot claim that a conspiracy to violate RICO existed if it does not adequately plead that the conspiracy encompassed all the elements of a substantive violation of RICO. Thus, a RICO conspiracy claim "must be dismissed if the complaint does not adequately allege 'an endeavor which, if completed, would satisfy all of the elements of a substantive [RICO] offense.'" *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 373 (3d Cir. 2010) (quoting *Salinas v. United States*,

522 U.S. 52, 65 (1997)); *see Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1191 (3d Cir. 1993) ("Any claim under section 1962(d) based on a conspiracy to violate the other subsections of section 1962 necessarily must fail if the substantive claims are themselves deficient."). Because the Complaint fails to plead a substantive violation of RICO under § 1962(c), its RICO conspiracy claim under § 1962(d) also must fail.

Even assuming *arguendo* that the Complaint adequately pleads a substantive RICO claim, it independently fails to plead a RICO conspiracy. A RICO conspiracy requires that a conspirator *agree* to facilitate an endeavor which, if completed, would satisfy all of the elements of a substantive RICO offense. *Salinas*, 522 U.S. at 65. The Complaint does not allege any facts supporting a claim that each Defendant entered into an agreement to further or facilitate a scheme that would satisfy all of the elements of a substantive RICO offense, including Hobbs Act extortion. Rather, it contains only conclusory statements that are legally insufficient—e.g., that Defendants "hatched a scheme to force the [Authority] to abandon the CSA and surrender work performed by other hard-working union members to the Carpenters through a campaign of illegal violence and intimidation," Compl. ¶ 4, and that "Defendants conceived an extortionate plan to disrupt key shows scheduled to take place at that facility through a series of illegal mass pickets," *id.* ¶ 33. The Supreme Court has rejected this type of conclusory pleading in the context of conspiracy allegations. *See Iqbal*, 556 U.S. at 678, 680 (holding that "naked assertions" and mere "legal conclusions" that are unsubstantiated by alleged facts are not entitled to the presumption of truth under Rule 12(b)(6) (alteration and internal quotation marks omitted)). Accordingly, the Complaint fails to plead a valid claim for a RICO conspiracy under § 1962(d).

III. THE COMPLAINT'S TRESPASS TO CHATTELS CLAIM AGAINST "DOES 1-4" ALSO FAILS

The Complaint finally alleges that unnamed "Does 1-4"—*not* the MRC or any named individual Defendants—intentionally used or intermeddled with vehicles at the Center during the Auto Show. Compl. ¶¶ 101-102. Because this claim is not brought against any named Defendant, and lacks any semblance of particularity, it should be dismissed for failure to plead wrongful conduct. If it is not dismissed on the merits, the Court nevertheless should decline to exercise supplemental jurisdiction over this state-law claim. 28 U.S.C. § 1367(c)(3) provides that a district court "may decline to exercise supplemental jurisdiction" when it "has dismissed all claims over which it has original jurisdiction." Here, the Court has original jurisdiction over Plaintiff's RICO claims; if those are dismissed, there is no reason to retain jurisdiction of this state-law claim against unidentified defendants. In that instance, "once the crutch of the federal question issue is removed . . . the state law issue should not remain for adjudication." *Overall v. Univ. of Pa.*, 393 F. Supp. 2d 341, 342 (E.D. Pa. 2005) (alterations and internal quotation marks omitted).

CONCLUSION

For the foregoing reasons, the moving Defendants respectfully request that the Court dismiss the Complaint. In light of the extensive defects in the Complaint, further amendment would be futile and thus the dismissal should be with prejudice. *See Sarpolis v. Tereshko*, 26 F. Supp. 3d 407, 431 (E.D. Pa. 2014) (dismissing plaintiff's civil RICO claim with prejudice when "extensive deficiencies" in the complaint rendered amendment futile).

Dated: June 30, 2015

Respectfully submitted,

/s/ Craig D. Singer

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2015, the foregoing was filed with the Court using the CM/ECF system. Notice of this filing will be electronically mailed to all parties registered with the CM/ECF system.

/s/ R. Kennon Poteat, III
R. Kennon Poteat, III (*pro hac vice*)
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Exhibit A

Form NLRB-501
(11-88)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U S C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
04-CA-128505	5/12/14

INSTRUCTIONS:
File an original of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
a) Pennsylvania Convention Center Authority, b) SMG, and c) Elliott-Lewis Corp., Joint Employer		
c. Address (street, city, state, ZIP code) a) 1101 Arch St, Philadelphia, PA 19107 b) 300 Conshohocken State Rd., Suite 450, West Conshohocken, PA 19428 c) 2900 Black Lake Pl, Philadelphia, PA 19154	d. Employer Representative a) John McNichol b) Robert McClintock	e. Telephone No. a) (215) 418-4700 b) (610) 729-7900 c) (215) 698-4400 Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

See attached.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Metropolitan Regional Council of Carpenters

4a. Address (street and number, city, state, and ZIP code)	4b. Telephone No.
1803 Spring Garden Street Philadelphia , PA 19130	(215) 569-1634 Fax No. (215) 569-0263

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
United Brotherhood of Carpenters and Joiners of America

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Stephen J. Holroyd — Attorney
(signature of representative or person making charge) — (title, if any)

Address Jennings Sigmond
Penn Mutual Towers 16th Floor, 510 Walnut Street
Philadelphia, PA 19106-3683

(215) 351-0670 — (Telephone No.)

05/12/2014 — (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

The Metropolitan Regional Council of Carpenters ("MRC") has, for many years, been the exclusive collective bargaining representative for carpenters employed at the Philadelphia Convention Center ("Center"). This relationship has been embodied in a series of collective bargaining agreements with Elliott-Lewis Corporation, the labor broker for the Pennsylvania Convention Center Authority ("Authority").

These collective bargaining agreements have been further amended by a Customer Satisfaction Agreement ("CSA") between the Authority, Elliott-Lewis, and six labor organizations: the MRC, IBEW Local 98, Laborers Local 332, Stagehands Local 8, Iron Workers Local 161, and Teamsters Local 107. The CSA was the product of joint negotiation by the six labor organizations with representatives of the Authority and Elliott-Lewis, and contains terms and conditions of employment.

In the summer of 2013, with the original CSA set to expire, the six unions commenced bargaining over the terms of a successor CSA with representatives from Elliott-Lewis and the Authority. The lead spokesperson for the Authority during these negotiations was Robert McClintock, COO and Senior Vice President of SMG. SMG was slated to take over as manager of the Center in 2014. Ultimately, the parties were unable to reach agreement, and continued to work under the terms of the expired CSA.

In the spring of 2014, several of the unions' collective bargaining agreements with Elliott-Lewis were set to expire. However, instead of bargaining over those agreements, the Authority—through SMG—continued bargaining over the terms of a new CSA with the six unions. These negotiations were done with all of the unions present at the same time.

On May 1, 2014, all six unions and the Authority, through SMG, reached a tentative agreement on a new CSA. However, the terms of the tentative agreement were rejected by the Authority. Nevertheless, all of the unions except the MRC signed extensions of the Elliott-Lewis agreement to May 10, 2014. The MRC eventually signed a similar extension one day later.

On Sunday, May 4, 2014, the Authority submitted to the six unions a new CSA. This version contained terms and conditions substantially worse than and different from the tentative agreement of three days earlier. The unions were given 24 hours to take or leave the new CSA. Of particular note was a new clause—never proposed at *any* point during the previous negotiations—stating that, if all of the unions did not sign the CSA, those who did would then meet to divide up the work jurisdiction of those who did not.

By the deadline, all of the unions except the MRC and Teamsters 107 had signed the new CSA. Shortly thereafter, the four signatory unions met to divide up the work jurisdiction of the MRC and Teamsters. In addition, statements were made to the media by the Authority that the MRC and Teamsters would not be permitted back in the building.

Even though the MRC's agreement with Elliott-Lewis was not set to expire until May 10—said agreement being part and parcel of the CSA—neither Elliott-Lewis, the

Authority, nor SMG made any effort to respond to the MRC's requests to continue bargaining.

On May 9, 2014, the MRC signed the "take it or leave it" offer of the Authority. However, this was rejected as untimely, even though the MRC's agreement with Elliott-Lewis had not yet expired.

To date, the MRC has been locked out of the facility, and the Authority, SMG, and Elliott-Lewis have refused repeated requests to continue bargaining.

By the above acts, the Authority, SMG and Elliott-Lewis have engaged in bad faith bargaining in violation of Section 8(a)(1) and (5) of the Act.

Injunctive relief under Section 10(j) is requested.

FORM NLRB-4541
(9-07)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE: PARTIES INVOLVED IN AN INVESTIGATION OF AN UNFAIR LABOR PRACTICE CHARGE SHOULD BE AWARE OF THE FOLLOWING PROCEDURES:

Right to be Represented — Any party has the right to be represented by an attorney or other representative in any proceeding before the National Labor Relations Board. If you wish to have a representative appear on your behalf, please have your attorney or other representative complete Form NLRB-4701, Notice of Appearance, and forward it to the respective Regional Office as soon as a representative is chosen.

Attorneys and Service of Documents — If your representative is an attorney, your attorney will receive exclusive service of all documents, except that you and your attorney will both receive those documents described in Sec. 11842.3(a) of the Casehandling Manual. However, your attorney may consent to have additional documents or correspondence served on you by making the appropriate designation on Form NLRB-4701, Notice of Appearance.

Non-Attorney Representatives and Service of Documents — If your representative is not an attorney, you and your representative may receive copies of all documents and correspondence.

Impartial Investigation — Upon receipt of a charge, the Regional Office will conduct an impartial investigation to obtain all material and relevant evidence. Your active cooperation in making witnesses available and stating your position will be most helpful to the Region in determining whether the charge has merit. The Region may also contact and interview other relevant witnesses and parties.

If only the charging party cooperates in the investigation, its evidence may warrant issuance of complaint in the absence of the charged party's defenses. Thus, the charged party is encourage to fully cooperate and present all available evidence and its defenses. The Region seeks such relevant evidence from all parties to reach an informed determination and help resolve the matter, whether or not the case has merit, at the earliest possible time.

Withdrawal/Dismissal — If the Regional Director determines that the charge lacks merit, the charging party is offered the opportunity to withdraw. Should the charging party not withdraw the charge, the Regional Director will dismiss the charge and advise the charging party of the right to appeal the dismissal to the General Counsel.

Pre-Complaint Voluntary Adjustment — If the Regional Director determines that the charge has merit, all parties are afforded an opportunity to settle the matter by voluntary adjustment. It is our policy to explore and encourage voluntary adjustment before proceeding with costly and time-consuming litigation before the Board and courts.

Complaint and Voluntary Adjustment — If, following the investigation, the Regional Director determines that there is merit to the charge and a voluntary adjustment is not reached, the Regional Director will issue a complaint and notice of hearing. The hearing will be conducted before an administrative law judge who will issue a decision and recommendation to the Board in Washington, D.C. However, issuance of a complaint does not preclude voluntary adjustment by the parties. On the contrary, at any stage of the proceeding the Regional Director and staff will be available to provide any assistance in arriving at an appropriate settlement.

Exhibit B

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

July 14, 2014

Stephen J. Holroyd, Esquire
Jennings Sigmond
Penn Mutual Towers, 16th Flr.
510 Walnut Street
Philaelphia, PA 19106-3683

Thomas H. Kohn, Equire
Markowitz & Richman
123 South Broad Street
Suite 2020
Philadelphia, PA 19109

Re: Pennsylvania Convention Center Authority, SMG and Elliott-Lewis Corp., Joint Employer
Cases 04-CA-128505 and 04-CA-128506

Dear Mr. Holroyd and Mr. Kohn:

We have carefully investigated and considered your charges that Pennsylvania Convention Center Board of Directors and SMG Convention Venue Management, SMG and Elliott-Lewis Corp. have violated the National Labor Relations Act.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The charge alleges that Pennsylvania Convention Center Authority (the Authority), SMG and Elliott-Lewis Corp. (Elliott-Lewis), as alleged joint employers, engaged in bad faith bargaining with Metropolitan Regional Council of Carpenters (Carpenters) and Teamsters Local 107 (Teamsters) in violation of Section 8(a)(5) of the Act during their 2014 negotiations for a Customer Service Agreement (CSA) covering work at the Convention Center. SMG acted as the agent of the Authority in these negotiations with six unions.[1]

[1] Metropolitan Regional Council of Carpenters, IBEW Local 98, Laborers Local 332, Stagehands Local 8, Iron Workers Local 161 and Teamsters Local 107.

Initial efforts to renegotiate the CSA upon its July 15, 2013 expiration did not yield an agreement, and negotiations were postponed until early 2014. During this period of time, employees of the six unions involved operated under the terms of the expired CSA, and those terms were extended into 2014. Elliott-Lewis did not participate in the CSA negotiations. The parties held multiple meetings in the expectation that an agreement would be reached by April 30, 2014, which was the expiration of the collective-bargaining agreement between Elliott-Lewis and the Carpenters. During the early morning hours of May 1, 2014, the parties reached a tentative agreement that SMG was to present to the Authority's governing board for its approval. Instead, the board rejected the proposal and the Carpenters commenced a work stoppage. By letter dated May 4, 2014, the Authority delivered an ultimatum to the six unions to sign the Authority's revised CSA proposal by 11:59 PM on May 5 or risk that the work jurisdiction of the Unions would be reallocated to the Unions that did sign the revised CSA proposal. The Carpenters and the Teamsters did not sign, and, true to the Authority's threat, the Carpenters' work was reallocated to the four unions that executed the CSA. The Charging Parties allege that bargaining was not at an impasse at that point and that the Authority engaged in conduct in violation of Section 8(a)(5) of the Act by: (1) offering its proposal on a take-it-or-leave-it basis; (2) refusing to continue bargaining; (3) repudiating its bargaining relationship with, and withdrawing recognition from, the Charging Parties; (4) unilaterally reassigning the Charging Parties' work jurisdictions without bargaining with the Charging Parties; and (5) refusing to restore the scope of their work notwithstanding that the Carpenters and the Teamsters on May 9, accepted the Authority's CSA proposal.

The Charging Parties have presented evidence of extensive conduct supporting findings that the Authority acted in derogation of bargaining obligations imposed by Section 8(a)(5) of the Act. However, the investigation disclosed that the Authority is a political subdivision of the Commonwealth of Pennsylvania within the meaning of Section 2(2) of the Act, and therefore is not an employer subject to the Act's jurisdiction. The Authority was created pursuant to the Pennsylvania Convention Center Authority Act to promote economic growth and tourism through the operation of the Convention Center. The Authority is governed by a 15-member governing board appointed by various municipal, county and Commonwealth officials with full authority to manage the affairs and property of the Authority. In addition, the Authority is vested with the power to exercise eminent domain and has sovereign immunity. The Authority is subject to the Pennsylvania Right-To-Know Act, which provides public access to its documents. According to the operating agreement for the Convention Center, the Commonwealth is financially responsible for all costs of the Convention Center and has the right to review and approve the Authority's annual capital and operating budgets and certain large contracts. The Commonwealth's approval is required regarding the hiring of any contract management firm to oversee the Convention Center's operations. Under the operating agreement, the Commonwealth also has the right to conduct management and financial audits of the Authority's operations and to institute corrective action plans where appropriate, and if necessary, to assume management control of the Convention Center until such time as the deficiency has been corrected.

The Act does not define what constitutes an exempt political subdivision, but the Board and the courts have held that the exemption rests with entities that are (1) created directly by the state so as to constitute a department or administrative arm of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate. *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). Based on the facts set forth above, under both prongs of this test, the Authority is an exempt political subdivision, and is thus not an employer within the meaning of Section 2(2) of the Act and subject to the jurisdiction of the Board. *Hinds County Human Resource Agency*, 331 NLRB 1404 (2000); *University of Vermont*, 297 NLRB 291 (1989); cf. *Charter School Administrative Services*, 353 NLRB 394 (2008).

There is also no legal basis for holding either of the private sector entities, SMG or Elliott-Lewis, liable under Section 8(a)(5) of the Act. There is no evidence that SMG has any direct employment relationship with any of the employees covered by the CSA, so there is no basis for finding that it is a joint employer with the Authority. SMG acted as the Authority's agent in negotiating the CSA, but an agent cannot generally be held liable for the conduct of its principal. Elliot-Lewis employs the employees covered by the CSA, and based on the terms and conditions of employment which the Authority has negotiated in the CSA, the Authority is arguably a joint employer with Elliot-Lewis. Elliot-Lewis, however, took no part in the negotiations during the time when the alleged unlawful conduct occurred. Accordingly, as the only party which could be held liable for that alleged conduct is a political subdivision not subject to the Board's jurisdiction, I am refusing to issue Complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents,** enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **Monday, July 28, 2014**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **Sunday, July 27, 2014. If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal

must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before Monday, July 28, 2014.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **Monday, July 28, 2014, even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Dennis P. Walsh

DENNIS P. WALSH
Regional Director

Enclosure

cc: Edward Coryell, President
Metropolitian Regional Council
of Carpenters
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John McNichol
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Philadelphia, PA 19154

Teamsters Local 107
12275 Townsend Road
Philadelphia, PA 19154

Form NLRB–4767

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charges in

Pennsylvania Convention Center Authority, SMG and Elliott-Lewis Corp., Joint Employer
Case Name(s).

Cases 04-CA-128505 and 04-CA-128506
Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

_____
(Signature)

Exhibit C

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

METROPOLITAN REGIONAL COUNCIL OF CARPENTERS	:	
v.	:	Case No. PERA-C-14-218-E
PENNSYLVANIA CONVENTION CENTER AUTHORITY	:	
TEAMSTERS LOCAL 107	:	
v.	:	Case No. PERA-C-14-222-E
PENNSYLVANIA CONVENTION CENTER AUTHORITY	:	

ORDER DENYING PENNSYLVANIA CONVENTION CENTER AUTHORITY'S MOTION TO DISMISS

On July 21, 2014, the Metropolitan Regional Council of Carpenters (MRC or Carpenters), filed a charge of unfair practices, at Case No. PERA-C-14-218-E, with the Pennsylvania Labor Relations Board (Board) against the Pennsylvania Convention Center Authority (Authority or Center). On July 24, 2014, Teamsters Local Union 107 (Teamsters) filed a charge of unfair practices, at Case No. PERA-C-14-222-E, against the Authority. Both charges alleged that the Authority violated Section 1201(a)(1)and (3) of the Public Employe Relations Act (PERA). Specifically, both charges allege that the Authority discriminated against employes represented by the MRC and the Teamsters (collectively "the Unions") by unilaterally setting an unreasonable deadline for the Unions' representatives to sign a new customer satisfaction agreement (CSA), while the Unions' principles were out of town, and then by subsequently banning employes represented by the Unions from entering Authority property and by redistributing their work when the two Unions failed to sign the CSA by the deadline.

On August 1, 2014, the Secretary of the Board issued a complaint and notice of hearing in each case designating a hearing date of October 14, 2014, in Harrisburg for both cases. On October 9, 2014, the Authority filed a Motion to Dismiss in both cases. The Hearing Examiner continued the October 14, 2014 hearing to give the Unions an opportunity to respond to the Authority's Motion. The hearing was rescheduled for January 6, 2015 and January 7, 2015. On October 31, 2014, the Unions jointly filed a response to the Authority's Motion. On November 14, 2014, the Authority filed a reply. The parties agreed that the facts as presented in their prehearing submissions were not in dispute and that a hearing on the jurisdictional question raised by the

Authority in its prehearing Motion to Dismiss was unnecessary.[1] On December 22, 2014, the Examiner continued the hearings scheduled for January 6th and 7th, 2015, and rescheduled the hearings for February 11, 2015 and February 12, 2015. On February 2, 2015, I granted the Motion to Dismiss, limited to the jurisdictional question only, pending a written order, and cancelled the scheduled hearing dates. However, I have reconsidered that decision and herein reverse my prior ruling. Accordingly, the Motion to Dismiss is hereby denied in its entirety and hearings will be rescheduled in the near future.

The Examiner, based on all matters of record, makes the following findings of fact:

FINDINGS OF FACT

1. The Authority is a public employer within the meaning of Section 301(1) of PERA. (64 Pa. C.S. §6001 et seq.; Auth. Mem. of Law at 2)

2. The Unions are employe organizations within the meaning of Section 301(3) of PERA. (Unions' Response Brief at 3)

3. Elliott-Lewis is a private employer and has been the labor supplier at the Center since 2003. Elliott-Lewis distributes payroll and benefits to all workers performing show labor at the Center. Employes represented by MRC and the Teamsters are not directly paid by the Authority. (Auth. Mem. of Law at 3, 4; Unions' Response Brief at 3)

4. In 2003, all the trade show unions, including the MRC and the Teamsters, became signatories to the CSA. This original CSA was valid for a ten-year period and expired in 2013. Any entity, exhibitor, contractor or other person engaged to perform or receive show labor services at the Center is obligated to contract with Elliott-Lewis for all necessary labor. (Auth. Mem. Of Law at 3, 4; Unions' Response Brief at 3)

5. Pursuant to a recognition agreement, the MRC is the exclusive collective bargaining representative of carpenters performing show labor work at the Center. Elliott-Lewis has negotiated private-sector collective bargaining agreements directly with the MRC and the Teamsters, covering wages, hours and other terms and conditions of employment. (Auth. Mem. of Law at 3-4; Exhibits A & B)

6. The CSA delineates work jurisdiction and rules among various groups of contractors and show laborers, each of which have different collective bargaining agreements with their private sector employers and Elliott-Lewis. All customers, exhibitors, contractors, Elliott-Lewis and participating labor unions must agree to be bound by the CSA before entering the Center premises. The MRC has frequently challenged the ability of exhibitors and customers to self-perform

[1] Accordingly, the motion, the parties' briefs and the documents accompanying those submissions are the source for the findings of fact in this order.

certain work within the work jurisdiction of the Carpenters. (Auth. Mem. of Law at 4; Unions' Response Brief at 3-4)

7. The Center experienced a decrease in bookings and a loss in renewal bookings. After polling customers, exhibitors, decorators, Authority staff, the Philadelphia Area Labor Management organization and the Philadelphia Convention and Visitors Bureau, the Authority learned that the loss in business resulted from dissatisfaction regarding exhibitors' rights to perform work within their own exhibit space, work assignments of show labor and a lack of training among show laborers. The Authority sought input from union representatives regarding methods to improve operations at the Center. (Auth. Mem. of Law at 5-6)

8. On or about August 1, 2013, following the expiration of the collective bargaining agreement between Elliott-Lewis and the MRC, and during discussions for a new CSA, the Carpenters engaged in a one-day work stoppage against Elliott-Lewis, which was honored by the Teamsters and three other trade unions in solidarity. (Auth. Mem. of Law at 6; Unions' Response Brief at 4)

9. Following the work stoppage, Elliott-Lewis entered one-year extensions to the trade unions' collective bargaining agreements and there were no formal discussions regarding the new CSA. In January 2014, the Authority, through its management firm, resumed discussions with the six unions and Elliott-Lewis regarding the new CSA. The Authority wished to expand the rights of customers and exhibitors with respect to exhibit space, the right to act within that space and the tools they could employ within their booths. By the end of April 2014, most trade unions, with the exception of the MRC, reached agreement on revisions to the CSA. The terms that the Carpenters were willing to accept were presented to and rejected by the Customer Satisfaction Committee of the Pennsylvania Convention Center Authority Board. (Auth. Mem. of Law at 6-8; Unions' Response Brief at 5)

10. As of May 1, 2014, the Authority Board conveyed a desire to continue discussions concerning a new CSA with all trades. Elliott-Lewis conveyed a desire to extend all collective bargaining agreements to engage in discussions regarding a new CSA. The MRC initiated a second one-day work stoppage. The second work stoppage was honored only by the Teamsters in solidarity with the MRC. (Auth. Mem. of Law at 8; Unions' Response Brief at 5).

11. The American Academy of Diabetes Educators cancelled its return show in 2019 as a result of the Carpenters' work stoppage in August 2013. A show that finished on May 2, 2014, notified the Authority that it was cancelling a future show scheduled for 2019, also as a result of the May 2014 work stoppage. (Auth. Mem. Of Law at 9)

12. On Sunday, May 4, 2014, the Authority presented a new CSA to all six trade unions, including the Carpenters, and required them to agree to the new work rules and work jurisdictions to continue to perform show labor work at the Center. The unions were given either a thirty-six or forty-eight-hour deadline. Four of the six trade unions signed the new CSA by the deadline period. At an Authority Board meeting on May 6, 2014, Authority Board member Ed Coryell, Sr., President of the Carpenters Union, publicly renounced the new CSA and

refused to sign it on behalf of the Carpenters. Mr. Coryell abstained from voting. The remaining Authority Board members unanimously voted in favor of the new CSA. (Auth. Mem. of Law at 9-10)

13. The Board ordered the immediate realignment of work assignments and reconfigured work jurisdictions among the four trade unions that signed the new CSA, effective following the expiration of the Carpenters' and Teamsters' collective bargaining agreements on May 10, 2014. The Carpenters and the Teamsters eventually provided an executed copy of the new CSA after the deadline. Since that time, the Carpenters and the Teamsters have been banned from the Center. (Auth. Mem. of Law at 11; Unions' Response Brief at 5-6)

14. The opening paragraph of the CSA provides as follows:

> The parties hereto have made and entered into this agreement ("Agreement") as an addendum to the existing collective bargaining agreements covering work performed at the Pennsylvania Convention Center to create an exhibition and working environment wherein all Parties are committed to creating and maintaining the highest level of customer satisfaction.

(Auth. Mem. of Law; Exhibit F at 2)

15. The "STATEMENT OF PURPOSE" section of the CSA provides as follows:

> The purpose of this Agreement is to outline the manner in which work is performed at the Convention Center in order to ensure customer satisfaction in all facets of such work. The Parties hereto acknowledge and agree that Show Labor at the Convention Center shall be performed at the lowest reasonable cost and shall reflect the highest level of efficiency, productivity and quality.
>
> To meet these objectives the Parties hereto have taken steps to create this Agreement to amend the existing collective bargaining agreements and incorporate all of the following terms and conditions as they relate to each bargaining unit.

(Auth. Mem. of Law; Exhibit F at 6)

16. Section III of the CSA, "SIGNATORY PARTIES" provides, in relevant part, as follows:

> The following labor unions, based upon their historic participation at the [Authority], are eligible to become signatories to this Agreement and to thereby amend their respective collective bargaining agreements and agree to take all necessary steps to ensure the enforceability of such agreements: the Carpenters; the Teamsters; the Laborers; the Riggers; the IATSE; and the Electricians.

> In addition to the above signatories, the [Authority] has entered into this Agreement in its capacity as the owner and operator of the Convention Center facilities. Elliott-Lewis Corporation has entered into this Agreement in its capacity as the Labor Supplier at the Convention Center and SMG has entered in this Agreement in its capacity as manager of the Convention Center. Following the effective date of this Agreement, any entity subsequently retained by the [Authority] to manage the Convention Center or to serve as the Labor Supplier shall also be required to enter into this Agreement.

(Auth. Mem. of Law; Exhibit F at 7)

17. Section IV of the CSA designated "SCOPE" provides, in relevant, part as follows:

> The scope of this Agreement shall encompass Show Labor performed at the Convention Center, except for housekeeping, meeting room setup, and maintenance work to the extent that they had been historically performed by the [Authority] or its designee.
>
> The Parties acknowledge and agree that the terms and conditions of this Agreement shall apply only to Show Labor performed at the Convention Center and not to any of the work location.

(Auth. Mem. of Law; Exhibit F at 8)

18. Section VIII "WORK JURISDICTIONS" provides in relevant part as follows:

> The [Authority], through its designated representative, after reasonable investigation, reserves the right to eject immediately from the Convention Center premises and to bar from returning any person who violates the provisions of this section, disrupts work at the Convention Center over a jurisdictional issue, and/or threatens to disrupt such work. Union representatives shall be subject to all terms and conditions contained within the [Authority] Code of Conduct, but may fully, fairly and effectively represent the interests of the bargaining unit so long as such representation does not violate the [Authority] Code of Conduct or this Agreement.

(Auth. Mem. of Law; Exhibit F at 15)

19. Section IX of the CSA: "HOURS OF WORK, OVERTIME AND HOLIDAYS" provides in detail the hours of work, the beginning and end of the work week and overtime. This section also designates nine paid holidays. (Auth. Mem. of Law; Exhibit F at 16)

20. Section XI of the CSA prohibits work stoppages and lockouts during the term of the CSA and provides, in relevant part, as follows:

A. Prohibited Conduct. The Parties to this Agreement agree that during its term or the term of any successor agreement, they shall engage in no strike, lockout, sympathy strike, work slowdown, interruption of work, or any other job action or work stoppage of any kind, and that there shall be no threats of any of the foregoing notwithstanding any language or rights contained in or arising out of any other collective bargaining agreement; provided however, that nothing contained herein shall in any way limit the Parties right to engage in any of the foregoing conduct that the expiration of any collective bargaining agreement arising out of any term contained in the collective bargaining agreement that is not modified by this Agreement. Any Party violating this paragraph is subject to immediate discipline by the PCCA or its designee. Any appeal to an arbitrator because of discipline imposed for violation of this paragraph may only be based upon whether the appealing party violated this paragraph and the Arbitrator shall have no right to mitigate the discipline imposed.

B. Violation of Code of Conduct. The Parties to this Agreement acknowledge and agree that a violation of this provision also constitutes a violation of the Code of Conduct and, therefore, that the offending person or entity may be ejected from the Convention Center premises and barred from returning to the Convention Center.

(Auth. Mem. of Law; Exhibit F at 18)

21. Section XII of the CSA is a detailed dispute resolution procedure. (Auth. Mem. of Law; Exhibit F at 19-21)

22. Section XVI of the CSA provides, in relevant part, as follows:

> The Parties expressly agree that their respective collective bargaining agreements now in existence, in so far as such agreements apply to work performed at the Convention Center, are hereby amended by this Agreement and that this Agreement shall supersede any and all provisions of such collective bargaining agreements to the extent inconsistent herewith.
>
> The Parties further agree that any and all new or successor collective bargaining agreements or modifications to existing collective bargaining agreements which are negotiated during the term of this Agreement shall include all terms and conditions contained herein, as such terms may be modified from time-to-time in accordance with the "Communication and Flexibility" section of this Agreement.
>
> The Parties agree that the wage and benefit packages contained in each respective collective bargaining agreement will be adjusted by three percent (3%) per year across the board, inclusive of wages and benefits, during the term of this Agreement. Each year, the Labor Supplier will negotiate the breakdown of the wage and benefit increases with each of the Labor Unions to address their

> respective benefit fund issues consistent with these terms. In the event that the CPI for the Philadelphia MSA exceeds a five percent (5%) increase for a contract year, then the adjustment for the following contract year shall be adjusted upward by the difference of the actual CPI increase and five percent (5%).

(Auth. Mem. of Law; Exhibit F at 25)

DISCUSSION

In its Motion to Dismiss, the Authority sets forth several bases to dismiss the complaint before a hearing. A prehearing motion to dismiss is in the nature of a demurrer and all well-pleaded facts in the specification of charges and all reasonable inferences deduced therefrom must be accepted as true. *City of Philadelphia v. Buck*, 587 A.2d 875 (Pa. Cmwlth. 1991). Indeed, in determining whether to issue a complaint, the Secretary of the Board assumes that the allegations in the specification of charges are true. *Pennsylvania Social Services Union, Local 668 v. PLRB*, 481 Pa. 81, 392 A.2d 256 (1978). Legal conclusions, unjustified inferences, argumentative allegations and expressions of opinion are not deemed admitted. A demurrer will be sustained only when it appears with certainty that the law permits no recovery under the allegations pleaded. *Buck*, 587 A.2d at 877.

The Authority argues that the complaint should be dismissed because the charges do not state a plausible claim of discrimination under Section 1201(a)(3) of PERA. The Authority specifically contends that the charge fails to allege retaliation on the basis of any protected activity under PERA. The Authority maintains that "[t]he Carpenters cannot establish that its members were engaged in protected activity in the first instance, or that the Authority engaged in adverse action or acted with anti-union animus against the Carpenters' bargaining unit members. The Authority claims that the Carpenters' work stoppages were unlawful and therefore unprotected.

The Unions counter-posit that those strikes were lawful and that proper notification procedures were followed. Consequently, argue the Unions, the Teamsters' honoring of that work stoppage was also lawful. The Authority's argument neglects the MRC's alleged vigilance in protecting its work at the Center and its refusal to sign the new CSA, by the Authority's deadline, after an alleged tentative agreement was rejected by the Authority. In this regard, the Unions have presented allegations of protected activity. Moreover, the parties have presented a factual and legal dispute regarding the notification procedures and the lawfulness of the work stoppages. I must, therefore, determine after a hearing whether the work stoppages were lawful and protected, and dismissal is improper.

The Authority also claims that the new CSA does not constitute adverse action against the Unions. The Union counter-argues that the Authority's refusal to permit the Unions to sign the new CSA (after a unilaterally imposed thirty-six hour deadline, while both Unions' principles were unavailable, resulting in a permanent lockout) constituted adverse employment action. The Unions further argue that the new CSA is not the sole adverse action. The adverse action

included the permanent lockout of Carpenters and Teamsters and the complete reassignment of all of the Carpenters' work, after the Carpenters sought to limit the Authority's proposed reduction in bargaining unit work and engaged in two work stoppages. With respect to this issue, the parties have again favorably characterized facts and events and have drawn favorable conclusions therefrom. The resolution of these disputes over whether the Authority took adverse action against the Unions requires a hearing. Therefore, dismissal is improper.

The Authority further claims as follows:

> The Assignment of work previously performed by Carpenters in the Center to the four current signatories to the New CSA is not an adverse action against members of the Carpenters' bargaining unit. The Carpenters' bargaining unit members are still employed by their employer Elliott-Lewis, however, due to the decision of the Carpenters' leadership not to sign on to the New CSA within the relevant timeframe, there is currently no work available to Carpenters at the Center.

(Auth. Mem. of Law at 15). The Authority contends that it does not have the power to hire, fire or direct show labor. It only has the right and obligation to establish rules to govern entry into and conduct at the Center. (Auth. Mem. of Law at 15). The Carpenters' decision not to sign the CSA cannot be construed as adverse action by the Authority. (Auth. Mem. of Law at 15)

The Authority's argument assumes the legal conclusion that the Authority is not a joint employer of the Unions' members and favorably characterizes the nature of its control over the employes and the terms of the CSA. As an alleged joint employer, the Unions have averred that the Authority has retaliated against them by unilaterally reducing bargaining unit work, which must be negotiated with its employes as a joint employer, and locked out those employes after they refused to agree to the imposition of reduced work and engaged in two allegedly lawful work stoppages. The determination of whether the Unions can demonstrate adverse action against its members depends on whether the Authority is a joint employer, with Elliot-Lewis, of the Unions' members.

The Authority also argues that, as a matter of law, it cannot be established that it acted with discriminatory motive because the Carpenters were provided with the same opportunities as all of the other unions to renegotiate and sign the new CSA. The Union counters by asserting that this argument depends on accepting the Authority's view that it is not a joint employer. As a joint employer, the Union contends that there is at least a viable claim that the Authority retaliated against its employes by imposing an unreasonable deadline to accept a significant reduction in work for the Carpenters and by locking out its employes because they engaged in two work stoppages and refused to agree to a reduction in their work, by the deadline. Accepting the well-pleaded facts as true, there is a colorable claim of discrimination, provided a joint employer relationship exists.

The Authority also posits that the complaint should be dismissed because the specification of charges does not allege an independent violation of Section 1201(a)(1). However, this question has been mooted by the conclusion that the charge does not fail, as a matter of law, to set forth a viable claim of discrimination.

The Authority further contends that the Board lacks subject matter jurisdiction over the instant dispute because it does not involve any unfair labor practice outlined in Article XII of PERA. (Auth. Mem. of Law at 20). Instead, argues the Authority, the dispute centers around the new CSA, which sets standards for entry into and work in the Center and which is critical to ensure that customers, exhibitors and show labor work together at the Center in a safe and consistent manner. (Auth. Mem. of Law at 20-21). The Authority contends that there simply is no bargaining relationship between it and the Unions and the CSA represents its right to contract freely with vendors and control behavior on its premises. For the Board to take jurisdiction over a dispute centered around the CSA where no bargaining obligation exists would interfere with the Authority's right to contract.

Certainly, if the Authority is not a joint employer, there can be no viable claims against the Authority under PERA. Although the Carpenters objected to the reduction in bargaining unit work contained in the new CSA, the CSA is not the sole focus of the dispute. The Unions signed the new CSA, eventually accepting its terms. The alleged additional retaliatory employment action averred in support of the Unions' discrimination claim is the refusal to permit bargaining unit employes to enter the premises and continue working after missing the thirty-six-hour deadline and engaging in two work stoppages. Because dismissal centers on whether the Authority is a joint employer, that jurisdictional question becomes the central question of the Authority's Motion to Dismiss and the viability of the Unions' charges.

The Authority argues that the Board lacks jurisdiction over the parties because the Carpenters and the Teamsters are not public employes within the meaning of section 301(2) of PERA. Specifically, the Authority maintains that the employes at issue in this matter are not employed by the Authority or any other public entity. (Auth. Mem. of Law at 17-18).

The Teamsters and the Carpenters counter-argue that the Carpenters and the Teamsters are public employes of the Authority, which is a public employer, because the Authority is a joint employer with Elliott-Lewis. (Unions' Response Brief at 11-14). The Unions argue that the CSA is not merely a right of entry agreement, as characterized by the Authority, rather it is an agreement negotiated between the Authority and the Unions, without the involvement of Elliott-Lewis, delineating terms and conditions of employment at the Center. As such, contend the Unions, the Authority exercises direct control of these employes' terms and conditions of employment as a joint employer with Elliott-Lewis, and the Board has jurisdiction over the parties. (Unions' Response Brief at 12).

In *Sweet v. PLRB*, 457 Pa. 456, 322 A.2d 362 (1974), the Pennsylvania Supreme Court opined as follows:

The relation of employer and employe exists when a party has the right to select the employe, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done. ***The duty to pay an employe's salary is often coincident with the status of employer, but not solely determinative of that status.***

Sweet, 457 Pa. at 462, 322 A.2d at 365 (citations omitted)(emphasis added). Also, in *Costigan v. Philadelphia Finance Dept. Employees Local 696*, 462 Pa. 425, 341 A.2d 456 (1975), our Supreme Court reasoned as follows:

> In the instant case, no single entity controls all of the terms of the employment relationship. The register of Wills is conceded by all parties to have the exclusive power to hire, fire, promote, and direct the work of the employees. The City of Philadelphia pays most of the employee salaries and other compensation costs of the office and exercises considerable control over the fringe benefits accorded the employees, which include enrollment under the City's group life and health insurance plans and coverage by the City's pension. Thus the Register and the City each exercise independent control over important "conditions of the relation [which] are such that the process of collective bargaining may appropriately be utilized as contemplated by the Act," and both must be deemed employers for purposes of the Act.

Costigan, 462 Pa. at 434-435, 341 A.2d at 461.

In *Borough of Lewistown v. PLRB*, 558 Pa. 141, 735 A.2d 1240 (1999), a borough and two townships entered into an inter-municipal agreement to form a regional police department governed by a board of directors where each municipality appointed two representatives to the regional police department board. An Act 111 interest arbitration award ordered the municipalities to transfer their pensions to the regional police department and the Borough of Lewistown refused. Our Supreme Court relied on *Sweet* and *Costigan* and held that the Borough and the Townships were joint employers of the police officers because they exercised powers demonstrating the employment relationship through their designated representatives to the board of directors of the regional police department. *Lewistown*, 558 Pa. at 149-152, 735 A.2d at 1244-1246.

In *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Steamfitters Local 449 v. PLRB (Steamfitters)*, 613 A.2d 155 (Pa. Cmwlth. 1992), Local 449 represented thirteen steamfitters who were employed by Bryan Mechanical Company, a contractor for the University of Pittsburgh. Approximately thirteen Bryan employes worked at the University of Pittsburgh main campus performing maintenance repair and installation of heating and air conditioning equipment. Two of the thirteen Bryan employes were foreman. However, the Bryan foremen were supervised by the University's Manager of Mechanical Systems.

Bryan was a member of the Mechanical Contractors' Association of Western Pennsylvania (MCA) and was a signatory to a collective

bargaining agreement between Local 449 and the MCA. The collective bargaining agreement governed referrals, hiring, grievances, arbitration procedures, hours of work, holidays, overtime, shift work, pensions, work rules and subcontracting. All payroll, withholding and benefits were handled by Bryan. When steamfitters were subject to discipline, the University determined the severity of discipline and reserved the exclusive right to modify the discipline without any involvement from Bryan. The University's Director of Physical Plant Operations and Maintenance and its Manager of Mechanical Systems decided to lay off two steamfitters without consultation with Bryan.

In *Steamfitters*, the Board held that Bryan and the University were joint employers. However, the Board further held that, where one joint employer falls outside the jurisdiction of the Board because it is a private entity, as was Bryan, the Board cannot exercise jurisdiction over either joint employer. The Commonwealth Court reversed. Relying on *Sweet* and *Costigan*, the Commonwealth Court affirmed the Board's determination that Bryan and the University were joint employers, where Bryan controlled the payroll function as well as the maintenance of personnel files, benefits and insurance plans, and where the University controlled supervision and discipline. However, the Commonwealth Court held that the Board erred in concluding that it lacked jurisdiction because Bryan was beyond the Board's jurisdiction "where it is undisputed that the University exercises considerable control over the hiring, firing, and direction of the employees. Under these facts, a remedial order directed only against the University could remedy any potential violation based on the underlying charge." *Id.* at 158.

The Unions in this case specifically argue that the Authority and Elliott-Lewis are joint employers each controlling significant aspects of the employment relationship with the Carpenters and the Teamsters. Moreover, the Unions contend that, under the holding of *Steamfitters*, the Board has jurisdiction over Unions' claims because one of the two joint employers in this case, i.e., the Authority, is a public entity. The Authority, however, contends that *Steamfitters* is distinguishable because the public University in that case had the power to fire and direct employes whereas the Authority in this case does not have the power to fire employes hired and employed by Elliott-Lewis. However, the Authority's attempt to distinguish *Steamfitters* on the basis that it cannot terminate the employment of show laborers employed by Elliott-Lewis, as was the case in *Steamfitters*, is misplaced. The Authority's argument presents a distinction without a difference and *Steamfitters*, as developed from *Costigan* and *Sweet*, is controlling in this case.

A thorough review of the CSA in this case erodes the Authority's position that it lacks a major involvement in the employment relationship with show labor at the Center and that it is not involved in major discipline, including termination, of show laborers within the meaning of *Steamfitters*. The CSA is an extensive agreement negotiated between the Authority and the Unions containing detailed provisions governing terms and conditions of employment, including supervision and discipline. The Authority exercises significant control over the behavior and direction of show labor and the employment relationship between show labor and the Authority. *Costigan* requires only that the Authority "exercise independent control over important 'conditions of

the relation [which] are such that the process of collective bargaining may appropriately be utilized as contemplated by the Act.'" Costigan, 462 Pa. at 434-435, 341 A.2d at 461. The Authority emphasizes that it cannot terminate employes who work for Elliott-Lewis but they have prohibited Carpenters and Teamsters from entering its premises where they worked. Although it did not technically sever their relationship with Elliott-Lewis, it terminated their ability work.

The CSA further provides that the CSA is an addendum to existing collective bargaining agreements and, in Section XVI, it ***supersedes*** any inconsistent provisions of any collective bargaining agreements. It provides that the purpose of the agreement is to outline the manner in which work is to be performed. The Authority clearly controls the direction of personnel. By its own terms, the CSA "amend[s] the existing collective bargaining agreements and incorporate[s] all of the following terms and conditions as they relate to each bargaining unit." (Exhibit F at 6) Section III of the CSA provides that it was a negotiated agreement with the signatory parties including Elliott-Lewis and the show labor unions. The Authority, as a joint employer therefore, was well aware of its obligations to bargain the distribution of work and other terms and conditions of employment for show labor, i.e., the Authority's employes.

The Authority also retains the right to eject any employe for violating work rules or disrupting work at the Center. (Exhibit F at 15). Permanently ejecting an employe from his/her place of employment is akin to a discharge. In Section XI of the CSA, the Authority retains the right to discipline employes for engaging in a prohibited work slowdown or stoppage, as determined by the Authority, including permanent expulsion from the Center premises, clearly affecting continuity of employment. There is an arbitration provision wherein the Authority has agreed to arbitrate disputes regarding the ejection and discipline of personnel relating to work stoppages and code of conduct violations. Moreover, the CSA provides a negotiated wage package for show labor employes at the Center. Although Elliott-Lewis is responsible for negotiating the breakdown of wage and benefit increases with the various unions, the CSA provides for three percent per year across the board wage increases plus an allowance for a cost of living increase based on the consumer price index in the Philadelphia area.

The undisputed facts presented by the parties demonstrate that the Authority exercises significant control over employes at the Center. It may not directly pay employes or have the ability to sever the employment relationship between an employe and Elliott-Lewis, but it does exercise significant control over supervision, wages, bargaining unit work, direction, selection and ejection of personnel, which has the effect of terminating one's employment, at least temporarily. This exercise of independent control over important conditions is what the Costigan Court concluded was appropriate for collective bargaining. Costigan, 462 Pa. at 434-435, 341 A.2d at 461.

The Authority also relies on Sheetmetal Workers Union Local No. 110 v. Public Service Company of Indiana, Inc., 771 F.2d 1071 (7th Cir. 1985), for the proposition that the Authority does not meet the test contained therein for determining whether an entity is a joint employer. However, a review of Sheetmetal Workers demonstrates why

that analysis is inapplicable to a determination of whether a joint employer relationship exists between a public entity and a private employer.

In *Sheetmetal Workers*, an employe worked for Pullman Sheetmetal Works and was a member of the Sheetmetal Workers Local Union No. 110. The worker possessed benefits under a collective bargaining agreement between Pullman and the Union setting forth the worker's terms and conditions of employment. *Id.* at 1072. The Public Service Company of Indiana (PSI) owned a construction project called the Marble Hill Nuclear Generating Project. PSI contracted with companies, including Pullman, to perform various aspects of the construction work. The Pullman worker at issue worked at the Marble Hill site. Additionally, Local 110, Pullman and PSI were parties to a project agreement setting forth the rights and responsibilities of the parties. One day, the Pullman worker physically and verbally abused a PSI security guard at Marble Hill. The next day, PSI refused to permit access to the worker and informed Pullman. After an examination of the worker's record, Pullman terminated the worker. After the court dismissed Section 301 claims against PSI under the project agreement, because PSI had not agreed to arbitrate disputes under that agreement, the worker claimed that PSI was the joint employer of Pullman and was therefore bound by the arbitration provisions in that agreement.

The Seventh Circuit Court of Appeals adopted the test espoused by the National Labor Relations Board when determining whether a joint employer relationship exists ***between two private entities***. *Id.* at 1074. The National Board examines the following factors: (1) an interrelationship of operations; (2) common management; (3) centralized control over labor relations; and (4) common ownership. *Id.* The critical factor, however, is centralized control over labor relations. *Id.*

These factors, however, cannot be utilized in determining whether there is a joint employer relationship between a public entity and a private employer. There cannot be an interrelationship of operations or common management or centralized control or common ownership between the public entity, such as the Authority in this case, and a private employer like Elliott-Lewis. None of the *Sheetmetal Workers* factors could ever be present because of the inherent distinction and separation between public and private employers. Significantly, the Appeals Court opined that "the cases concluding that a joint employer relationship does exist commonly involve parent and subsidiary corporations, or corporations linked by common controlling shareholders and corporate officers." *Id.* at 1075. Obviously, there will never be such a relationship between a public entity and a private employer and the *Sheetmetal Workers* case is inapposite.

The Unions seek the reinstatement of the permanently expelled Unions' members, jointly employed by the Authority and Elliott-Lewis. The remedy of permitting the Unions' members to enter the Center premises and return to the performance of work as outlined in the new CSA, which both Unions signed after the deadline, is clearly within the remedial power of the Authority and within the meaning of *Steamfitters*. Accordingly, the Authority's Motion to Dismiss is denied in its entirety and I have reversed my prior determination. I will issue a

hearing schedule in the near future. This order is not immediately appealable to the Board.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Respondent's Motions to Dismiss Complainants' Charges of Unfair Practices at the above case numbers are denied and dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that no exceptions may be filed to this procedural order, pursuant to 34 Pa. Code § 95.96(a). If a proposed decision and order is issued pursuant to 34 Pa. Code § 95.91(k)(1) in the future, exceptions to this order may be filed pursuant to 34 Pa. Code § 95.98(a) at that time.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this sixteenth day of April, 2015.

Pennsylvania Labor Relations Board

Jack E. Marino, Hearing Examiner

Exhibit D

PENNSYLVANIA CONVENTION CENTER AUTHORITY 1101 Arch Street Philadelphia, PA 19107 **Plaintiff,** v. METROPOLITAN REGIONAL COUNCIL OF CARPENTERS, et. al. **Defendants.**	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY FEBRUARY TERM, 2015 NO.: CIVIL ACTION-EQUITY **EMERGENCY**

STIPULATED PERMANENT INJUNCTION

AND NOW, this 20th day of February 2015, after due consideration of Plaintiff's Verified Complaint in Equity, Petition for Temporary Restraining Order and Preliminary Injunction, and other supporting papers, and it appearing that notice of the application therein for a Temporary Restraining Order has been given to Defendants, and it further appearing from the representations of the Plaintiff and Defendant that they agree and stipulate to comply with the obligations outlined herein, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. A Permanent Injunction be and hereby is issued, upon agreement of the parties, as provided under the Pennsylvania Rules of Civil Procedure.

2. Defendants, together with their representatives, agents, servants, sympathizers, members and all others acting on their behalf or in concert with them, be and hereby are ENJOINED and RESTRAINED FROM:

   A. Preventing or attempting to prevent by obstructing, mass picketing, threatening, harassing, intimidating, or otherwise unlawfully

interfering in any form with any persons entering onto or performing their work at the Pennsylvania Convention Center;

B. Preventing or attempting to prevent by obstructing, harassing, disrupting, intimidating or otherwise unlawfully interfering in any form with any persons' attempt to enter a display or exhibit at any show at the Pennsylvania Convention Center or their enjoyment of any display or exhibit at the Pennsylvania Convention Center;

C. Seizing exhibitor property or booths inside the Pennsylvania Convention Center;

D. Any assisting, aiding or abetting any person or persons who violate or attempt to violate this Order; and

E. Vandalizing or destroying any property inside the Pennsylvania Convention Center, including but not limited to exhibitor displays, booths, signage and decoration.

4. Pickets, including relief pickets, and any other persons acting on behalf of or in concert with defendant, shall be limited as follows:

A. No Pickets shall be allowed inside the Pennsylvania Convention Center.

B. No more than three (3) pickets, including relief pickets, shall be placed at the 12th and Arch Street entrances to the Pennsylvania Convention Center. These pickets shall be at least ten (10) feet from the doors at the 12th and Arch Street entrances.

C. No more than three (3) pickets, including relief pickets, shall be placed at the 11th and Arch Street entrance to the Pennsylvania Convention Center.

D. No more than three (3) pickets, including relief pickets, shall be placed at the Pennsylvania Convention Center Show Labor Entrance on 11th and Race Street.

E. No more than three (3) pickets, including relief pickets, shall be placed at the two 13th and Arch Street entrances to the Pennsylvania Convention Center.

F. No more than three (3) pickets, including relief pickets, shall be placed at the Broad Street entrance to the Pennsylvania Convention Center. These pickets shall be at least ten (10) feet from the doors.

G. Picketing is limited to the entrances and exits specifically designated in this Order. No pickets shall be placed at any other location around the Pennsylvania Convention Center.

4. Pickets, including relief pickets, and any other persons acting on behalf of or in concert with defendants, shall not be allowed inside the Pennsylvania Convention Center.

5. Defendant MRCC and its officers, including Defendant Coryell Sr., shall make every reasonable effort to communicate the dictates of this Order to their representatives, agents, pickets, sympathizers, and members engaging in picketing and other activity at the Pennsylvania Convention

Center and shall make every reasonable effort to cause their agents, representatives, members and those acting in concert with them, to comply with the dictates of this Order.

6. It is also ordered that Plaintiff and their agents and employees shall be enjoined from any and all acts or threats of violence, intimidation and coercion against the Defendants or organizations engaged in the dispute.

7. Upon the request of Plaintiff, this Permanent Injunction shall be enforced by the Sheriff of this County and by any other law enforcement agency having jurisdiction over the enjoined persons.

8. This Permanent Injunction shall remain in effect until the Court otherwise orders.

BY THE COURT:

Wright-Padilla, J.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA CONVENTION CENTER AUTHORITY, Plaintiff, v. EDWARD CORYELL, SR.; EDWARD CORYELL, JR.; J.R. HOCKER; RICHARD RIVERA; RONALD CURRAN; KENYATTA BUNDY; RICHARD WASHLICK; DOES 1-10; and METROPOLITAN REGIONAL COUNCIL OF CARPENTERS, Defendants.	Civil Action No. 2:15-cv-02534-LFR Judge L. Felipe Restrepo

[PROPOSED] ORDER

UPON CONSIDERATION of the Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim, and for good cause shown, it is hereby

ORDERED that the Motion to Dismiss for Failure to State a Claim is GRANTED and the above captioned case is hereby dismissed with prejudice.

SO ORDERED.

ENTERED this _____ day of _____, 2015.

Judge L. Felipe Restrepo
United States District Court
for the Eastern District of Pennsylvania