**IN THE UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **DENNIS R. ALBERS, et al.,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**FREDDIE N. SIMPSON, et al.,**<br><br>**Defendants.** | **Case No. 4:21-cv-11834**<br><br>**Hon. Matthew F. Leitman** |

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rules of Civil Procedure 65, Plaintiffs, Dennis R. Albers, Dale E. Bogart, Jr., Tony D. Cardwell, Jeffrey L. Fry, Staci R. Moody-Gilbert, Jason E. Graham, Allied Federation, BMWED-IBT, Alliance System Federation, BMWED-IBT, Northeastern System Federation, BMWED-IBT, Unified System Division, BMWED-IBT, Atchison, Topeka & Santa Fe Frisco System Federation, BMWED-IBT, and Burlington System Division, BMWED-IBT, by their undersigned attorneys, hereby respectfully ask this Court to enter a preliminary injunction against Defendants, Freddie N. Simpson, David D. Joynt, Bruce G. Glover, Roger D. Sanchez, Louis R. Below, Jed Dodd, Jack E. David and David L. Carroll, individually and in their official capacities as officers of the remaining Defendant, Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters ("BMWED-IBT") enjoining them from -

- taking any and all further actions to forcibly consolidate BMWED-IBT System Federations and Divisions by any means, including by means of Defendant Simpson's forced consolidation scheme as outlined in Plaintiffs' Verified Complaint; and

- taking further actions which infringe on the BMWED-IBT members' (including those of the individually named Plaintiffs) rights guaranteed to them by Title I of the LMRDA, as well as their rights arising under the BMWED-IBT National Division Bylaws, their respective BMWED-IBT federation and division bylaws, and the 2004 Merger Agreement between the Brotherhood of Maintenance of Way Employes and the International Brotherhood of Teamsters and finally, their rights as protected by Michigan law.

In support of this Motion, Plaintiffs rely on the accompanying Brief in Support of Plaintiffs' Motion for Preliminary Injunction, Plaintiffs' Verified Complaint (Dkt. #1), and the exhibits attached to the Complaint.

Pursuant to Local Civil Rule 7.1(a), on August 16, 2021, Plaintiffs, through counsel, sought concurrence in this Motion with Defendants' counsel. Defendants oppose and do not concur with the Motion, thereby making Plaintiffs' Motion for Preliminary Injunction necessary for the Court's review and consideration.

Dated: August 16, 2021

Respectfully submitted,

BRANSTETTER, STRANCH & JENNINGS, PLLC

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# BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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## STATEMENT OF THE ISSUES PRESENTED

1. Are Plaintiffs entitled to a preliminary injunction against Defendants on Counts 1 through 4 and Count 6 of the Verified Complaint enjoining Defendants from –

   - taking further actions to forcibly consolidate BMWED-IBT system federations and divisions by any means, including by means of Defendant Simpson's forced consolidation scheme as outlined in Plaintiffs' Verified Complaint; and
   - taking further actions which infringe on the BMWED-IBT members' rights (including those of the individually named Plaintiffs) guaranteed to them by Title I of the LMRDA?

   Plaintiffs' answer "Yes."

## CONTROLLING AUTHORITY

**STATUTES**

Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959, *as amended* ("LMRDA"), 29 U.S.C. § 411(a)(1)

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959, *as amended* ("LMRDA"), 29 U.S.C. § 411(a)(2)

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, *as amended* ("LMRDA"), 29 U.S.C. § 411(a)(4)

Section 501 of the Labor-Management Reporting and Disclosure Act of 1959, *as amended* ("LMRDA"), 29 U.S.C. § 501

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185

29 U.S.C. § 152(3)

**CASES**

*ACS Consultant Co., Inc. v. Williams,* 2006 WL 897559 (E.D. Mich. 2006)

*American Fed. of Musicians v. Wittstein*, 379 U.S. 171 (1964)

*Babler v. Futhey,* 618 F.3d 514 (6th Cir. 2010)

*Blanchard v. Johnson*, 532 F.2d 1074 (6th Cir. 1976)

*Central States Pension & Health & Welfare Funds v. McNamara Motor Express, Inc.,* 503 F. Supp. 96 (W.D. Mich. 1980)

*Cole v. United Transportation Union,* No. 11-cv-11590, E.D. Mich. (July 7, 2011), 2011 WL 2669598

*Corea v. Welo*, 937 F.2d 1132 (6th Cir. 1991)

*Crowley v. Teamsters Local 82*, 679 F.2d 978 (1st Cir. 1982)

*Finnegan v. Leu*, 456 U.S. 431 (1982)

*Golden v. Kelsey-Hayes,* 73 F.3d 648 (6th Cir. 1996)

*Mamula v. Satralloy, Inc.,* 578 F. Supp. 563 (S.D. Ohio 1983)

*Mason County Med. Ass'n v. Knebel,* 563 F.2d 256 (6th Cir. 1977)

*Messina v. Local 1199, Health Employees Union,* 205 F.Supp.2d 111 (S.D.N.Y. 2002)

*Navarro v. Gannon,* 385 F.2d 512 (2d Cir. 1967)

*Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615 (1981)

*Raska v. Farm Bureau Mut. Ins. Co. of Michigan,* 412 Mich. 355, 314 N.W.2d 440 (1982)

*Schonfeld v. Penza,* 477 F.2d 899 (2d Cir. 1967)

*Sheet Metal Workers' International Ass 'n v. Lynn,* 488 U.S. 347 (1989)

*Sickman v. CWA Local 13000,* 162 LRRM 2935, 2940, 1999 WL 1045145 (E.D. Pa. 1999)

*Six Clinics Holding Corp. v. Cafcomp Sys., Inc.,* 119 F.3d 393 (6th Cir. 1997)

*UAW Local 594 v. Int'l Union, UAW*, 956 F.2d 1330 (6th Cir. 1992)

*UFCW Local 911 v. UFCW Int'l*, 301 F.3d 468 (6th Cir. 2002)

*United Steelworkers of America v. Sadlowski*, 457 U.S. 102 (1982)

*University of Texas v. Camenisch*, 451 U.S. 390 (1981)

*US. v. Edward Rose & Sons,* 384 F.3d 258 (6th Cir. 2004)

*Verville v. Intern. Ass'n of Machinists and Aerospace Workers,* 520 F.2d 615 (6th Cir. 1975)

*Vestal v. Hoffa*, 451 F.2d 706 (6th Cir. 1971)

*Wade v. Teamsters Local 247*, 527 F. Supp. 1169 (E.D. Mich. 1981)

*Waun v. Universal Coin Laundry Mach., LLC*, No. 267954, 2006 WL 2742007 (Mich. Ct. App. Sept. 26, 2006)

*Wooddell v. Int'l Bhd. Of Elec. Workers, Local 71*, 502 U.S. 93 (1991)

*Yolton v. El Paso Tennessee Pipeline Co.,* 435 F.3d 571 (6th Cir. 2006)

**NLRB DECISIONS AND AUTHORITY**

*Electromation, Inc.*, 309 NLRB 900 (1992), enf'd. 35 F.3d 1148 (7th Cir. 1994)

*In Re Masters, Mates & Pilots (Chicago Calumet Stevedoring, Co.)*, 125 NLRB 113 (1959)

NLRB General Counsel Advice Memorandum, 09-CE-000065, 2003 NLRB GCM LEXIS 135 (Nov. 25, 2003), available at https://apps.nlrb.gov/link/document.aspx/09031d458029358a

**OTHER AUTHORITY**

*McGlothlin v. Connors,* 15 Em. Ben. Cas. (BNA) at 1337

*Steelworkers v. Connors Steel Co.,* 8 Em. Ben. Cas. (BNA) at 1722

## INTRODUCTION

Defendant Simpson is the National President of Defendant BMWED-IBT. With the active, ongoing support from the other individually named Defendants, Defendant Simpson has embarked on a scheme to unilaterally and forcibly consolidate the BMWED-IBT's autonomous, affiliated representative organizations. Those organizations, known as "system federations" and "system divisions," provide the day-to-day representation on behalf of the BMWED-IBT local lodges that are connected to them, as well as the BMWED-IBT members of those local lodges. The BMWED-IBT system federations and divisions also handle contract negotiations, as well as contract administration and enforcement for and on behalf the BMWED-IBT local lodges and their members. Defendant Simpson and the other individually named Defendants are unilaterally and without authority dismantling the BMWED-IBT's representative structure that was established decades ago, preserved in the 2004 Merger Agreement, and repeatedly reaffirmed by Defendant Simpson and the other individually named Defendants since 2004. In so doing, they are circumventing the democratic process that Defendant himself acknowledged in a July 30, 2021 video as well as a July 30, 2021 "Question-and-Answer" communication to the BMWED-IBT membership acknowledging the appropriate means by which existing federations and divisions must be consolidated. In this regard, the BMWED-IBT's existing representative structure was created not by

unilateral dictate of any one officer of the BMWED-IBT or its predecessor, the Brotherhood of Maintenance of Way Employes ("BMWE"), but instead by the duly elected delegates of the BMWED-IBT acting openly and transparently at the quadrennial conventions, the next one of which is scheduled to commence in less one year, namely, June 2022.

Now, in the waning days of his last term of office, and with the active support of the other individually named Defendants, Defendant Simpson is circumventing that democratic – and required – process. He is scheduling so-called "founding conventions" to replace the existing system federations and divisions with new ones that are more to his personal and political liking. Defendant Simpson announced that he and the other individually named Defendants will chair and oversee the election of the officers of those new federations and divisions. The new officers will replace the elected officers of the existing federations and divisions, several of whom were just recently reelected. Tellingly, an overwhelming majority of the existing federations' and divisions' elected officers (including the individually named Plaintiffs in this case) are opposed to the anti-democratic scheme which Defendants are rushing to accomplish. Upon the completion of those founding conventions, Defendant Simpson and the other individually named Defendants will have substantially reduced the number of current elected officers and upcoming BMWED-IBT 2022 convention delegates who could frustrate the individual

Defendants' political objectives to control next year's BMWED-IBT quadrennial convention and election of national officers. In short, Defendant Simpson and the other individually named Defendants are using the founding conventions and Defendant Simpson's forced consolidation scheme to: (1) remove elected officers/members whom they consider to be impediments to their own personal and political objectives; (2) dissolve autonomous BMWED-IBT representative institutions and seize their treasuries and redistribute those assets to the new federations and divisions; and (3) injure the membership rights not only of the individually named Plaintiffs but of the BMWED-IBT members who elected them to serve as their representatives.

The forced consolidation scheme was developed by Defendant Simpson in secret with the other individually named Defendants and other of their key allies, without authority under, and in violation of, the BMWED-IBT's governing documents. Those documents are the BMWED-IBT National Bylaws (the "National Bylaws") and the 2004 Merger agreement between the Brotherhood of Maintenance of Way Employes and the International Brotherhood of Teamsters (the "2004 Merger Agreement"). The forced consolidation scheme is also contrary to, and in violation of, the BMWED-IBT federations' and divisions' bylaws, all of which were approved by the Defendant Simpson. Through this motion, the Plaintiffs seek an order enjoining the Defendants from taking any further actions to forcibly

consolidate the existing BMWED-IBT federations and divisions by any means, including the scheme led by Defendant Simpson and described in the Verified Complaint. In the absence of preliminary injunctive relief, sought herein, the Plaintiffs will be irreparably harmed, as it will be difficult, if not impossible, to turn the clock back to the pre-forced consolidation status quo and restore the representative structures that will be supplanted and dissolved by the establishment of the new federations and divisions.

## STATEMENT OF FACTS

Rather than repeat what has already been set forth in great detail in the Verified Complaint, Plaintiffs fully incorporate the factual allegations outlined in their Verified Complaint.

## ARGUMENT

### I. APPLICABLE LEGAL STANDARD FOR PRELIMINARY INJUNCTION

Rule 65(a) governs the issuance of a preliminary injunction. As this Court has recognized, the purpose of the preliminary injunction is to preserve the status quo pending final determination of the lawsuit. *US. v. Edward Rose & Sons,* 384 F.3d 258 (6th Cir. 2004); *ACS Consultant Co., Inc. v. Williams,* 2006 WL 897559 (E.D. Mich. 2006) (unpublished). In deciding whether to grant a preliminary injunction, courts in the Sixth Circuit balance the following factors: (1) the likelihood of success on the merits; (2) whether irreparable injury will result without the injunction; (3)

the probability of substantial harm to others; and (4) whether the public interest is advanced by the injunction. *Yolton v. El Paso Tennessee Pipeline Co.,* 435 F.3d 571, 578 (6th Cir. 2006); *Golden v. Kelsey-Hayes,* 73 F.3d 648, 653 (6th Cir. 1996). "None of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them[.]" *Golden*, 73 F.3d at 653. Moreover, "[t]he degree of proof necessary for each factor depends on the strength of the plaintiffs' case on the other factors." *Id*. at 657.

## II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

In order to demonstrate a likelihood of success on the merits, a movant for a preliminary injunction is "not required to prove his case in full at the preliminary injunction hearing." *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Instead, the movant must show "more than a mere possibility of success." *Six Clinics Holding Corp. v. Cafcomp Sys., Inc.,* 119 F.3d 393, 402 (6th Cir. 1997) (citing *Mason County Med. Ass'n v. Knebel,* 563 F.2d 256, 261 n. 4 (6th Cir. 1977)). In this regard, "it is ordinarily sufficient if the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation and thus for more deliberate investigation.' *Id.* In the present case, the Plaintiffs have satisfied this requirement.

### A. DEFENDANTS HAVE BREACHED THE BMWED-IBT NATIONAL DIVISION BYLAWS, THE 2004 MERGER AGREEMENT AND THE PLAINTIFFS' SYSTEM FEDERATION AND DIVISION BYLAWS.

Count 1 of the Verified Complaint asserts that the Defendants have violated the BMWED-IBT National Division Bylaws, the 2004 Merger Agreement and the Plaintiffs' System Federation and Division Bylaws, in violation of Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. *See* V. Compl. ¶¶ 77-85. Since 2004, shortly before the BMWE merged with the IBT, the BMWE and its successor, the BMWED-IBT, have represented employees covered by the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq*. As such, Defendant BMWED-IBT is a labor organization within the meaning of both Section 2(5) of the NLRA ("NLRA"), 29 U.S.C. § 152(5), and Section 301 of the LMRA, 29 U.S.C. § 185. While the majority of BMWED-IBT's members are employees of rail carriers subject to the Railway Labor Act, 45 U.S.C. §§ 151 *et seq*., its status as the National Labor Relations Board certified exclusive bargaining representative of at least one employer whose employees are covered by the NLRA, namely, Voestapline Nortrak, also renders it a "labor organization" within the meaning of NLRA Section 2(5). *See* V. Compl., ¶¶ 10.C, 28.F. Section 2(5) of the NLRA provides that:

> The term 'labor organization' means any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of work or conditions of employment.

Congress intended the term "labor organization" to be defined broadly. *See Electromation, Inc.*, 309 NLRB 900, 992 (1992), *enf'd*. 35 F.3d 1148 (7th Cir. 1994).

A union need not have any minimum threshold number of employees either admitted to membership or participating in the union to qualify as a labor organization. *See, e.g., In Re Masters, Mates & Pilots (Chicago Calumet Stevedoring, Co.)*, 125 NLRB 113, 131 (1959) (1.5% of union membership was made up of statutory employees). "The status of the individuals involved in the labor organization's *dispute* is not one of the requirements set forth in the statutory definition of a labor organization." *Id*. (emphasis in original). In *Calumet*, for example, none of the employees involved in the labor dispute between the with the statutory employer was a statutory employee. Various sister locals, however, did have statutory employees as members, and that fact made their international (parent body) a NLRA Section 2(5) labor organization. Thus, any organization in which statutory employees participate, regardless of the degree to which non-employees participate, is a NLRA Section 2(5) labor organization. *See also* 2003 NLRB GCM LEXIS 135 (Nov. 25, 2003) (concluding that the Airline Pilots Association, which represents mostly pilots who are covered by the Railway Labor Act rather than the NLRA nevertheless was a NLRA Section 2(5) labor organization.)

Because the BMWED-IBT is a labor organization within the meaning of NLRA Section 2(5), it is also a labor organization within the meaning of LMRA Section 301, 29 U.S.C. § 185. The IBT likewise is a labor organization within the meaning of LMRA Section 301. As such, their governing constitutions and bylaws

are agreements with the meaning of LMRA Section 301 too. *Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624, (1981); *Wooddell v. Int'l Bhd. Of Elec. Workers, Local 71*, 502 U.S. 93, 101 (1991). Additionally, the 2004 Merger Agreement between the BMWED and the IBT is an agreement within the meaning of LMRA Section 301. *Id*. Furthermore, the BMWED-IBT System federations' and divisions' respective Bylaws, all of which are subject to the approval of the BMWED-IBT, are agreements within the meaning of Section 301. *Id*. As members of BMWED-IBT, Plaintiffs have a right under Section 301 to sue to enforce each of these respective contracts. *Wooddell*, 502 U.S. at 101-102.

As the Sixth Circuit has noted, "[c]ourts are reluctant to substitute their judgment for that of union officials in the interpretation of the union's constitution and will only interfere where there the official's interpretation is not fair or reasonable." *Vestal v. Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971). The Court has also noted, however, that "in cases involving unconscionable conduct, 'bad faith would strip away the protection from judicial interference to which the union would entitled otherwise.'" *UFCW Local 911 v. UFCW Int'l*, 301 F.3d 468, 478 (6th Cir. 2002) quoting *UAW Local 594 v. Int'l Union, UAW*, 956 F.2d 1330, 1338 (6th Cir. 1992).

In the present case, the Defendants claim that Article XIX, Section 1 of the BMWED-IBT National Division Bylaws grants the National President the unilateral

authority to forcibly merge system federations and divisions. They claim that such authority has lain dormant for decades but still justifies their admittedly unprecedent actions they are taking now, in the last year of their terms and less than one year prior to the BMWED-IBT's June 2022 quadrennial convention. The Defendants' recent claim of latent authority, however, is contradicted by the express, unambiguous provisions of the BMWED-IBT National Division Bylaws. Defendant Simpson has himself acknowledged that the Bylaw provision upon which he purports to justify his forced consolidation scheme have been in effect for decades. That provision, namely, Article XIX, Section 1, has consistently and repeatedly been interpreted and applied at numerous quadrennial conventions to **prohibit**, rather than authorize, the Defendants from doing what they are now seeking to do. It is of no moment that the BMWED-IBT National Division officers are vested with all administrative, executive a judicial power and authority between conventions, see Plaintiffs Exhibit 1, Art. 1, Section 3, because they are not authorized to take actions in contravention of the express and unambiguous terms of the BMWED-IBT Bylaws and in contravention to the interpretation and application of those terms by the delegates to the quadrennial conventions.

Article II, Section 1 of the BMWED-IBT National Division Bylaws grants the BMWED-IBT National Division only general supervision and control over BMWED-IBT system federations and divisions, local lodges, and the membership,

while the autonomy of the system federations and divisions is expressly recognized and preserved. *See* V. Compl, ¶¶ 13, 63. Thus, the BMWED-IBT system federations and divisions are expressly authorized to establish their own bylaws providing for their own procedures for the conduct of their own internal affairs and business, subject only to approval by then BMWED-IBT National President and IBT General President. The bylaws of each of the Plaintiff BMWED-IBT system federations and divisions have all been approved by both authorities. Those approvals confirm that the Plaintiffs' system federation and division bylaws are not in conflict with the BMWED-IBT National Division Bylaws subject to the terms of the Merger Agreement. *See* V. Compl. ¶ 63.

Article XIX, Section 1 of the BMWED-IBT National Division Bylaws only authorizes the BMWED-IBT National President to establish **first** "Joint Protective Boards." Joint Protective Boards are the governing councils of officers of BMWED-IBT system federations and divisions. Thus, when the National President determines that a railroad's railway system, a large branch of that system, or, bargaining units employed by employers covered by the NLRA (as opposed to railroad "carriers," as such term is used in the Railway Labor Act, 45 U.S.C. § 151 first) warrants the establishment of a Joint Protective Board, he is authorized to direct the delegates of the affected local lodges to form a **first** Joint Protective Board. In turn, the Joint Protective Board establishes the System Federation or Division over which it will

preside. *See* V. Compl. ¶¶ 3, Exhibit 1 to Pltffs.' V. Compl., Art. XIX, Section 1.

Moreover, while Article XIX, Section 1 of the BMWED-IBT National Division Bylaws expressly authorizes the National Division President to call for the formation of first Joint Protective Boards, it does not grant him the authority to consolidate those entities and their affiliated system federations and divisions after they have been duly established. That authority is instead expressly granted to the involved federations' and division's joint Protective Boards and their elected officers, as provided in Article XIX, Section 22 of the BMWED-IBT-National Division Bylaws, a provision that the Defendants have assiduously avoided referencing. Based upon that express empowerment to them, the system federations, and divisions each contain nearly identical provisions in their own approved bylaws delineating the procedure by which two or more federations or divisions are merged or consolidated. *See* V. Compl. ¶ 3, 65; Exhibit 1 to Pltffs.' V. Compl., Art. XIX, Section 22; Exhibit 5 to Pltffs.' V. Compl., Art. II; Exhibit 6 to Pltffs.' V. Compl., Art. I, Section 2; Exhibit 7 to Pltffs.' V. Compl., Art. I, Section 2; Exhibit 9 to Pltffs.' V. Compl., Sections 1(b), (2); Exhibit 10 to Pltffs.' V. Compl., Art. I, Section 3; Exhibit 11 to Pltffs.' V. Compl., Art. I, Section 2.

The above-referenced provisions contained in the BMWED-IBT National Division Bylaws and the Plaintiffs' respective federation and division bylaws, therefore, do not authorize nor otherwise allow Defendants to forcibly consolidate

existing system federations and divisions. Any such forced consolidation requires that such BMWED-IBT Bylaws be amended in order to allow for such a transaction. In this regard, Article XX, Section 1 of the BMWED-IBT National Division Bylaws requires that such amendments must be made by a majority vote of the delegates present at the BMWED-IBT National Division Convention. *See* Exhibit 1 to Pltffs.' V. Compl., Art. XX, Section 1. The Defendants have not proposed to amend the BMWED-IBT National Division Bylaws to secure the authorization of the National Division President to force the consolidation of existing BMWED-IBT system federations and divisions. *See* V. Compl. ¶ 66.

The 2004 Merger Agreement likewise precludes the Defendants from forcibly consolidating the BMWED-IBT system federations and divisions. In this regard, Section 3.7.1 of the Merger Agreement provides that "[a]ll BMWED subordinated bodies shall retain and maintain control of their respective predecessor BMWE subordinate bodies' assets and funds." Exhibit 1 to Pltffs.' V. Compl., Section 3.7.1. Furthermore, Section 4.24 of the Merger Agreement provides that:

> Notwithstanding any provision of the IBT Constitution, there will be no mergers, disbandments or consolidations of any System Federations/Divisions or local lodges within the BMWED except as provided in the applicable BMWED or System Federation/Division Bylaws.

*Id.*, Section 4.24. Furthermore, Section 1.4 of the Merger Agreement states:

> In the event of any conflict or inconsistency, this Merger Agreement

> shall govern over the BMWED Bylaws, all subordinate BMWED affiliate bylaws, the IBT Constitution and the IBT Rail Conference Bylaws; and the Merger Agreement and the BMWED Bylaws shall govern over the IBT Constitution and the IBT Rail Conference Bylaws.

*Id.*, Section 1.4; *see* V. Compl. ¶ 68.

Defendant Simpson has served as the BMWED-IBT National President for more than seventeen years. Over the course of his long tenure, numerous system federations and divisions have consolidated and merged in accordance with the procedures outlined above. He has never rejected the conditions of those mergers/consolidations that were negotiated and agreed upon by the involved federations and divisions. V. Compl. ¶ 13.D. Indeed, by both word and deed, he has on numerous occasions acknowledged that he lacks the authority to forcibly consolidate system federations and divisions. In 2005, for example, he acknowledged that while he and the BMWED-IBT national officers are the "policy making group" of the organization between National Division conventions, they "run[] this union, based on what the general chairmen [of the BMWED-IBT system federations and division] and the members tell them they want. . . So it takes the members, it takes the structure, and that's what we've got to protect." *See* V. Compl. ¶ 15; Exhibit 4 to Pltffs.' V. Compl.. Moreover, at the 2014 BMWED-IBT National Convention, Defendant Simpson rose in favor of a resolution that would have authorized the National Division President to "explore all steps" to establish a

passenger rail federation to represent all rail workers working on passenger railroads and to also establish one (1) federation for each Class I freight railroad in the United States. Speaking from the convention floor, Defendant Simpson claimed that the National Division President had the authority "to establish joint protective boards without the influence of any of the officers in that resolution." He did not claim, however, that the National President had the authority unilaterally to forcibly consolidate existing system federations and divisions. He instead stated that "moving forward, we've done these mergers and things voluntarily for twenty years and we're going to continue doing that." After vigorous debate, during which Defendants Carroll and Below argued against the resolution, the convention delegates resoundingly defeated the resolution. See V. Compl. ¶ 45; Exhibit 18 to Pltffs.' V. Compl.. Shortly thereafter, Defendant BMWED-IBT published Defendant Simpson's 2014 keynote address to the convention delegates. In his speech, he stated that "voluntary mergers and affiliations continue to be a priority for my Administration." V. Compl. ¶ 46; Exhibit 19 to Pltffs.' V. Compl..

During Defendant Simpson's approximately forty-five (45) year tenure as a member of the BMWED-IBT and its predecessor, the BMWE, there have been several other efforts undertaken at the organizations' quadrennial conventions to amend their governing documents to vest the National President/Grand Lodge President with the authority to forcibly merge and consolidate existing system

federations and divisions. Those efforts themselves demonstrate that in the absence of such amended provisions, the National President/Grand Lodge President lacks(ed) the authority to take such actions. All of those proposals were rejected by the national convention delegates. *See* V. Compl. ¶ 62; Exhibits 36-39 to Pltffs.' V. Compl.. In so doing, the delegates recognized that the National Division President/Grand Lodge President lacks(ed) the authority to effectuate such forced mergers and consolidations of system federations and divisions, and they affirmatively refused to grant such authority to him. *Id*. Defendant Simpson, moreover, recently noted that the By-Laws provision that he now claims authority has not changed in decades. He also acknowledged, and indeed conceded, that he is rushing to forcibly consolidate the existing federations and divisions because he has grown weary of trying to accomplish democratically single entity federations and divisions, through the existing BMWED-IBT "processes that rationalize the representation structure of our union." *See* V. Compl. ¶ 59. Having failed to accomplish his goal within those existing processes, Defendant Simpson and the other individually named Defendants have deliberately and in bad faith chosen to circumvent those processes. All of the efforts and acknowledgements discussed above and in Paragraphs 28.E, 46, 47, 62, therefore, support and corroborate the fact that none of the Defendants have the authority unilaterally to forcibly merge or consolidate system federations and divisions and that they are violating the

BMWED-IBT National Division Bylaws, the 2004 Merger Agreement and the Plaintiff federations' and divisions' bylaws.

### B. DEFENDANTS HAVE INFRINGED UPON MEMBERS' RIGHT TO VOTE AND PARTICIPATE IN THE ELECTION PROCESS IN VIOLATION OF SECTION 101(a)(1) OF THE LMRDA.

Count 3 of the Verified Complaint asserts that individually named Defendants have infringed upon members' right to vote and participate in the election process in violation of LMRDA Section 101(a)(1), 29 U.S.C. § 411(a)(1). *See* V. Compl. ¶¶ 91-97. LMRDA, Section 101(a)(1), 29 U.S.C. § 411(a)(1), guarantees equal rights in voting to all members of labor organization. LMRDA Section 101(a)(1) requires that in order to ensure an equal vote, union members must also have a meaningful vote. The Sixth Circuit Court of Appeals requires "full disclosure of the terms of all proposals submitted to the membership for a referendum in order to ensure that the vote is meaningful, and that the membership has fully participated in the decision making process." *See Corea v. Welo*, 939 F.2d 1140 (6th Cir. 1990); *Blanchard v. Johnson*, 532 F.2d 1074 (6th Cir. 1976).

The Defendants have not provided sufficient details and information to the BMWED-IBT membership regarding the forced consolidation scheme. To the extent they have provided any information to the members, the individually named Defendants have misrepresented certain material facts concerning their scheme, and have withheld other material facts from the members. The Defendants are forcing

the members to vote on the effective dissolution of their existing system federations and divisions, the removal of their elected officers and representatives from their existing federations and divisions, and on the establishment of new federations and systems in an informational vacuum. As a result, the votes that are being rushed through in special "founding conventions" will neither be fair nor democratic, and the outcome of those votes may not be said to reflect the members' informed sentiments. The Defendants likewise are rushing the conduct of the "founding conventions" so as to deprive the members of their right to become informed, to discuss and debate the merits of the proposed forced consolidation of system federations and divisions, and to cast enlightened and informed ballots in the votes that will be taken at those "founding conventions." *See* V. Compl. ¶ 94.

By posting information on the BMWED-IBT website regarding the forced consolidation scheme, the Defendants are also discriminating unlawfully against those members who do not own computers, or who are not internet savvy, or who do not regularly peruse the BMWED-IBT website. Therefore, by their actions and inactions described in Plaintiffs' Verified Complaint, the individually named Defendants have infringed upon members' right to vote and participate in the election process in violation of LMRDA Section 101(a)(1), 29 U.S.C. § 411(a)(1). *See* V. Compl. ¶¶ 95, 96.

### C. DEFENDANTS HAVE INFRINGED ON PLAINTIFFS AND MEMBERS' FREE SPEECH RIGHTS IN VIOLATION OF SECTION 101(a)(2) OF THE LMRDA.

Count 4 of the Verified Complaint asserts that individually named Defendants have violated Plaintiffs' and members' free speech and assembly rights in violation of LMRDA, Section 101(a)(2), 29 U.S.C. § 411(a)(2). *See* V. Compl. ¶¶ 98-10. The LMRDA was created to assure "full and active participation by the rank and file in the affairs of the union." *American Fed. of Musicians v. Wittstein*, 379 U.S. 171, 182-83 (1964). Title I of the LMRDA, and specifically section 101, 29 U.S.C. § 411, is the Bill of Rights for union members. Title I protects rank and file union members who speak out against union leaders or who seek elective union offices. *United Steelworkers of America v. Sadlowski*, 457 U.S. 102, 109 (1982). It guarantees every union member the rights of free speech and assembly and equal voting rights. Title I also provides for private enforcement actions to further the primary objective of the LMRDA, "ensuring that unions [are] democratically governed and responsive to the will of their memberships." *Sheet Metal Workers Int'l Ass'n v. Lynn*, 488 U.S. 347, 352 (1989) (quoting *Finnegan v. Leu*, 456 U.S. 431, 436 (1982)); see also *Corea v. Welo*, 937 F.2d 1132, 1136 (6th Cir. 1991).

Elected union officials like Plaintiffs have a right of relief under the LMRDA when a union takes action against them for taking a public position against that of the leadership. *Sheet Metal Workers' International Ass 'n v. Lynn,* 488 U.S. 347, 355

(1989). *Lynn* makes clear that when an elected officer "pa[ys] the price for the exercise of his membership rights" by being removed from his post, the removal itself violates the LMRDA. *Id.* at 354-55; *see also Cole v. United Transportation Union, No. 11-cv-11590, E.D. Mich. (July 7, 2011), 2011 WL 2669598,*9* ("As the Supreme Court held in Lynn, when an elected officer's exercise of his membership right results in his removal from his position, such removal violates [LMRDA] Section 101(a)(2)"); *Messina v. Local 1199, Health Employees Union,* 205 F.Supp.2d 111, 121 (S.D.N.Y. 2002) ("As plaintiff was an elected official, the removal of plaintiff as a delegate raises the concerns expressed in *Lynn* that the retaliatory removal of an elected official (as opposed to an appointed official) not only chills the free speech rights of the removed official as a member and as an official, but also deprives the membership of their choice for elective office and sends a message to members that they speak against the leadership only at their peril."). Additionally, if unions are permitted to remove elected officials for exercising their rights of free speech, a member's right to vote for a candidate whose views he supports is nullified. *Lynn,* 488 U.S. at 355.

Here, shortly after learning that the individually named Plaintiffs are running for BMWED-IBT National Division office in next year's 2022 election without having secured Defendant Simpson's permission, and shortly after they learned that Plaintiff Albers and the other individually named Plaintiffs had declined to include

any of Defendant Simpson's closely aligned colleagues on their election slate, Defendants embarked on this forced consolidation scheme. That scheme and their actions taken in furtherance of it are part of a purposeful and deliberate attempt to retaliate against and suppress dissent within the union and to control the outcome of the upcoming 2022 BMWED-IBT National Division Convention. By forcibly consolidating the existing federations and divisions, Defendants are also eliminating and effectively removing numerous currently elected officers. By diminishing the size of the existing system federations and divisions and packing the new federations and divisions that they seek to establish, the individually named Defendants will also obtain "jury-rigged" and gerrymandered institutions from which they may control and obtain sufficient delegate votes to secure their elections at the 2022 Convention.

At the same time, the Defendants' scheme will result in the further disenfranchisement of members from the smaller system federations and divisions that are not directly affected by the establishment of the first seven (7) "founding conventions" but will be folded into the seven (7) newly established institutions because, as Defendant Simpson stated, "[they] cannot support their own system[s] based upon membership levels." *See* Exhibit 16 to Pltffs.' V. Compl..[1] This second

[1] Indeed, one of the most pernicious and alarming outcomes of the Defendants' forced consolidation scheme is that after both "phases" of the consolidation are completed, namely the establishment of the first seven (7) federations followed by the subsequent consolidation of the remaining federations and divisions into one or more of the first seven (7), is that the resulting structure will be effectively the same

wave of forced consolidation will result not only in the destruction of the affected federations and divisions and their affiliated local lodges, but also the elimination of their members' elected officials and the forced assignment of those members into new organizations whose officers and representatives they will not have had any opportunity to elect in the first place. That is because those members are not "invited to" and will not be represented at the "founding contentions" of those organizations where those organizations' new officers will be elected. That same injury inflicted on those members will be compounded to the extent their current, pre-forced consolidation, ability to nominate delegates to the 2022 Convention will be diluted by virtue of having been assigned to federations and divisions with larger membership populations. Through these actions, therefore, the individually named Defendants are violating LMRDA Section 101(a)(2), 29 U.S.C. § 411(a)(2).

**D. INTERNAL APPEALS WOULD BE FUTILE.**

While not necessarily required for LMRA Section 301 claims, LMRDA Section 101(a)(4) provides that members claiming a violation of their LMRDA Title I rights generally may be required to exhaust internal union remedies for a period not to exceed 120 days. The Sixth Circuit has held that internal union exhaustion in

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as the one that exists today. The only difference will be that the total number of federations and divisions will have been cut in half, thereby providing ripe opportunities for the Defendants to control them by having directly eliminated elected officers whom they consider threats to their ability to control the outcome of the 2022 Convention. See V. Compl. ¶¶ 5, 6, 72, 73, 100.

Section 101 claims is "not mandatory in all cases," and that courts have discretion to determine if a member must pursue internal union remedies. *Verville v. Intern. Ass'n of Machinists and Aerospace Workers,* 520 F.2d 615, 620 (6th Cir. 1975). In *Verville,* the court stated, "When internal union remedies are inadequate or illusory, or when the union has taken a consistent position in opposition to that of a plaintiff, and exhaustion would be futile, exhaustion is not required." *Id.*

Here, by scheduling the "founding conventions" within 120 days of the time notice of such meetings was scheduled, appointing the individually named Defendants to chair those founding conventions, excluding Plaintiff officers from chairing any of the founding conventions, and by virtue of the fact that the individually named Defendants constitute a majority of the BMWED-IBT National Division officers to whom all internal appeals would be decided, exhaustion of internal union remedies otherwise required by LMRDA, Section 101(a)(4), 29 U.S.C. § 101(a)(4), would be futile. *See* V. Compl. ¶¶ 85, 97, 101, 110.

The futility of pursuing internal union appeals through the BMWED-IBT is underscored by the 2004 Merger Agreement. As set forth therein, the BMWE and IBT entered into the merger with the express understanding and commitment that the BMWE, its subordinate bodies and its members would maintain "maximum autonomy within the structure of the IBT[.]" *See* Exhibit 1to Pltffs.' V. Compl., 4th Recital; Section 1.1; Section 1.4. That purpose is emphasized throughout the 2004

Merger Agreement, including Section 1.2, which states in pertinent part that "[t]he BMWED and its subordinate bodies will maintain the same control over their assets, contracts and affairs that they have prior to the merger, limited only by the provision of this Merger Agreement." *Id.*, Section 1.2. The autonomy of the BMWED-IBT and its subordinate bodies is, therefore, the *sine qua non* of the 2004 Merger Agreement. Oversight and supervision by the IBT and its governing General Executive Board is limited only to essential items required by federal law, such as the oversight of elections of officers of the BMWED-IBT and its subordinate bodies, as well as the guarantee of due process to officers of the BMWED-IBT and its subordinate bodies who are brought up on and tried on internal charges. *Id.*, Section 4.12. Section 4.12, for instance, provides that appeal on internal union disciplinary matters decided by the BMWED-IBT National Division may be brought to the IBT's General Executive Board. The narrowness of this limitation on the autonomy of the BMWED-IBT providing for appeals to the IBT General Executive Board, however, is itself emphasized in the 2004 Merger Agreement, which provides that "[t]he IBT General Executive Board shall not entertain any appeal from any collective bargaining matter or administrative matter decided by the BMWED." *Id.*, Section 4.12. Thus, even if this case presents an issue of interpretation by the BMWED-IBT National President – and, as discussed above, it does not, as the operative language, namely, Article XIX, Section 1 is clear and unambiguous and its meaning has been consistently

upheld and applied in numerous BMWE and BMWED-IBT conventions – any decision by BMWED-IBT National President Defendant Simpson and appealed to the BMWED-IBT Appeal Board would be futile and in any event unappealable.

### E. Defendants Have Breached their Fiduciary Duties Under Michigan law

Count 6 of the Verified Complaint seeks relief against the individually named Defendants for violations of fiduciary duty under Michigan law. In *Waun v. Universal Coin Laundry Mach., LLC*, No. 267954, 2006 WL 2742007, at *8 (Mich. Ct. App. Sept. 26, 2006), the court held that "[a] plaintiff is entitled to relief when a fiduciary relationship arises and the fiduciary's influence has been acquired and abused, or when confidence has been reposed and betrayed."); *see* Count 6 of V. Compl. ¶¶ 108-110.

Each of the individually named Defendants is an officer, agent, and representative of the BMWED-IBT and is a fiduciary respect to the BMWED-IBT, the BMWED-IBT federations and divisions and local lodges and their members. Through their forced consolidated scheme and by the actions they are taking in furtherance of that scheme, the individually named Defendants are placing themselves in conflict with the entities and members whom they own fiduciary duties of loyalty. Moreover, by refusing to abide by a majority of the BMWED-IBT National Division Executive Board's June 14, 2021 directive not to expend union funds in furtherance of that forced consolidation scheme, and by continuing to spend,

and allow the expenditure of, BMWED-IBT assets and to force the expenditure of local lodge resources in furtherance that scheme, the individually named Defendants have also breached, and continue to breach, their fiduciary duties under Michigan law.

### F. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY ABSENT AN INJUNCTION.

Plaintiffs' case on the merits is so compelling that, under the *Golden* analysis, the degree of proof necessary for the other factors in favor of a preliminary injunction is correspondingly lower. *See* 73 F.3d at 657. Here, the irreparable harm is immediate and it is palpable. Defendant Simpson's forced consolidation scheme was developed in secret with his closely aligned compatriots, including the individually named Defendants, and it is being used to retaliate against and remove elected union officers who exercised their membership rights to run for union office. *See* V. Compl. ¶ 71. If the individually named Defendants succeed in establishing their new federations and divisions to supplant the existing ones, remove and eliminate currently elected officers and representatives of those existing institutions, and seize and disburse/reallocate the existing federations' and divisions' assets, the ability to undo those transactions will be exceedingly difficult. They will be even more difficult, if not impossible, in the short period of time that would remain in order to restore the status quo in time to allow the Plaintiffs and their affiliated lodges

and members to participate fully in the upcoming 2022 BMWED-IBT National Division Convention.

The irreparable harm in this case extends beyond the Plaintiffs to the system federations and divisions and their affiliated local lodges and the members who elected the individual Plaintiffs. *Lynn*, 488 U.S. at 355 ("Not only is the fired official likely to be chilled in the exercise of his own free speech rights, but so are the members who voted for him... [O]ther members of the Local may well have concluded that one challenged the union's hierarchy, if at all, at one's peril"). As the Sixth Circuit stated in *Babler v. Futhey*, 618 F.3d 514 (6th Cir. 2010), "[T]he potential chilling effect on the guarantees of free speech... provided in the LMRDA constitutes a clear threat of irreparable harm to the Plaintiffs." *Babler*, 618 F.3d at 524. We further note that if a LMRDA violation has been identified, courts are likely to find irreparable harm and thus to grant injunctive relief. As the Second Circuit has stated, "once suppressed, the 'democratic spirit' within a union 'may not soon be revived.'" *Schonfeld v. Penza,* 477 F.2d 899, 903-04 (2d Cir. 1967) *(quoting Navarro v. Gannon,* 385 F.2d 512, 520 (2d Cir. 1967)). "These rights are meaningless and Title I's enforcement provision is rendered superfluous if courts are powerless to enforce these rights prior to their deprivation." *Sickman v. CWA Local 13000,* 162 LRRM 2935, 2940, 1999 WL 1045145 (E.D. Pa. 1999).

Additionally, several of the existing BMWED-IBT System Federations and

Divisions maintain disability and other welfare benefit funds for the benefit of their members and are financed by special dues assessments approved by those members. Defendant Simpson's forced consolidation scheme does not account for those assessment monies any more than it accounts for the continuation of the underlying disability and other welfare benefit trusts maintained by the current system federations and divisions. The implementation of the forced consolidation scheme will, or likely will, result in the termination of those benefit trusts and the loss of disability and other welfare benefit coverage by the affected System Federation and Division members. *See* V. Compl. ¶ 75.

Defendants' forced consolidation scheme also decimates the financial stability of BMWED-IBT local lodges. The vast majority of local lodges maintain at most a few thousand dollars in their local treasuries. The Defendants' demand that the local lodges elect and send delegates to a "founding convention" less than a year before their quadrennial convention requires the local lodges to incur costs not once, but twice, in less than one year, for the payment of lost time and travel expenses for the delegates. Those additional costs will severely deplete many of their accounts, or in many cases require them to secure loans from the National Division to cover their unexpected expenses. Forcing the local lodges to expend resources in this way will make the local lodges vulnerable to forced mergers or dissolution under the BMWED-IBT Bylaw Article XIX, which permits in cases of financial insolvency.

Defendants' forced consolidation scheme will also impede local lodges from fully participating in the quadrennial convention in 2022 which will decide the leadership of the BMWED-IBT National Division after Defendant Simpson retires. *See* V. Compl. ¶ 76.[2] In sum, therefore, based on the above and the claims set forth in the Verified Complaint, the risk of irreparable harm weighs heavily in favor of ordering preliminary injunctive relief against the Defendants.

## III. THE PROBABILITY OF SUBSTANTIAL HARM TO OTHERS IS MINIMAL.

This factor involves a balancing of the potential harm caused to the defendant if an injunction issues and the harm caused to the plaintiffs if an injunction does not issue. In *Mamula v. Satralloy, Inc.,* 578 F. Supp. 563, 578 (S.D. Ohio 1983), the court found that "as a result of the irreparable injury that plaintiffs would suffer in the absence of injunctive relief and the inadequacy of any remedy at law, a denial of their motion for a preliminary injunction will cause far greater harm to the plaintiffs than the harm that would be suffered by the defendant upon the granting of a preliminary injunction." *See also, Golden v. Kelsey-Hayes Co.,* 845 F. Supp. 410, 416 (E.D. Mich. 1994), *aff'd* 73 F.3d 648 (6th Cir. 1996).

[2] We also note that the BMWED-IBT federations and divisions will themselves be forced to spend considerable time, expense and resources having to conduct and oversee the delegate elections across the country so that they can certify the delegate election result and thereby ensure that the elected delegates may participate in the conventions and that the votes of the members who voted for them will be counted.

In balancing the potential harm, an injunction would only positively affect the democratic rights of all BMWED-IBT officers and members by ensuring that BMWED-IBT will not infringe upon Title I rights under LMRDA, that BMWED-IBT's elected leadership will adhere to the organization's governing documents, uphold the institution's more than one-hundred-thirty-year tradition of transparency and democratic participation, and that BMWED-IBT may utilize the proper processes under the National Division Bylaws, and the bylaws of the other system federations and divisions, to openly discuss and consider whether any merger, consolidation, or reorganization would be in the best interests of BMWED-IBT.

## IV. THE PUBLIC INTEREST FAVORS ISSUANCE OF AN INJUNCTION.

As to the public interest, granting injunctive relief in this case will serve the public interest by promoting the purposes of the LMRDA, one of which is "to eliminate or prevent improper practices on the part of labor organizations." 29 U.S.C. § 401(c). The Sixth Circuit agrees with the public interest weighing in favor of protecting Plaintiffs' LMRDA rights. *Babler,* 618 F.3d at 524. The public interest is also served by requiring labor organizations to adhere to their own bylaws and constitutions.

## V. PLAINTIFFS REQUEST THAT THE COURT WAIVE THE POSTING OF A BOND.

In *Crowley v. Teamsters Local 82*, 679 F.2d 978, 999-100 (1st Cir., 1982), *rev'd on other grounds*, 467 U.S. 526 (1984), the court held that the public interest

would be disserved by a bond requirement that could inhibit union members from seeking injunctive relief to vindicate rights whose enforcement Congress elected to entrust to those members. We respectfully submit that the same consideration applies with equal force here and request that the Court waive the posting of a bond.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully urge the Court to grant their Motion for Preliminary Injunction.

Dated: August 16, 2021

Respectfully submitted,

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By: /s/ Edward M. Gleason, Jr.

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**CERTIFICATE OF SERVICE**

It is hereby certified that on August 16, 2021, the foregoing was filed using the Court's e-Filing system which will send a Notice of Electronic Filing along with a hyperlink to all the parties of record.

/s/ Edward M. Gleason, Jr.