

Allegro
Volume CIV No. 12
December, 2009

He Said, She Said
Unions enjoy free speech during a labor dispute

by [Harvey Mars, Esq.](#)

During many labor disputes, tempers and emotions run high on both sides of the fence.

Rhetoric exchanged between labor and management often becomes imbued with heated invective and hyperbole.

Unfortunately, this renders the situation ripe for defamation claims.

Fortunately, however, the law extends a great deal of protection to both the written and spoken word during a labor dispute.

Local 802, in fact, learned both these facts during a 1997 labor dispute involving Gateway Theatrical Playhouse.

During the union's organizing campaign, Local 802 created some literature that Gateway objected to.

Gateway sued Local 802, claiming that our literature contained false statements that had damaged their business reputation.

As I've written here previously, a defamation claim exists where litigants can prove that they have been subjected to a false statement – written or spoken – that is not protected by some form of immunity and that has caused them damage, either financial or to their reputation or both.

(See my article "Some Blogger Called Me A Jerk," which is up at www.TinyURL.com/BloggerJerk)

In order to prevail, Gateway ultimately had to prove that Local 802 made the allegedly defamatory statements with actual malice.

Further, Gateway had to prove they had sustained actual quantifiable damages.

They couldn't prove either, so they lost. *Gateway v. Associated Musicians of Greater New York*, 240 A.D. 2d 538 (2nd Dept., 1997).

This standard, which requires that a litigant prove that the statements at issue made during a labor dispute were motivated by the intent to harm, was first enunciated by the U.S. Supreme Court in *Linn v. United Plant Guard Workers of America, Local 114*. 383 U.S. 53 (1965).

As result of the high degree of protection given communications involving labor disputes, the Gateway suit was ultimately dismissed.

In New York, defamation claims are even harder to win.

In order to successfully sue a labor organization on a defamation claim in New York, the plaintiff must prove that the entire membership ratified the defamatory statement, in addition to proving that it was made with actual malice. *Roth v. United Federation of Teachers*, 5 Misc. 3d 888 (S. Ct. Kings, 2004).

In this suit, Roth sued the UFT because it adopted a resolution during a delegate's assembly that Roth was a "principal from Hell."

This statement was not deemed actionable because Roth could not prove that it had been adopted and approved by the entire membership of that union.

In other words, if Local 802 produces a piece of campaign literature (for instance) or writes an article in *Allegro* that an employer doesn't like (for instance), the employer cannot successfully sue Local 802 for defamation unless it can be proven that the entire membership of Local 802 ratified the statement, which is never the case. (How many times does the entire membership of Local 802 agree on anything?)

The protection accorded to communications made during the course of labor conflict represents the Supreme Court's acknowledgement that state libel suits have the effect of chilling and dampening the free discussion envisioned by the National Labor Relations Act.

This policy implicitly recognizes that libel suits may be used as weapons of economic coercion.

Local 802's success in ultimately organizing Gateway proves the wisdom of this policy.