UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SOCCER FEDERATION, INC.,	)	
Plaintiff,	)	Case No. 1:16-cv-01923
v.	)	Judge Sharon Johnson Coleman
UNITED STATES WOMEN'S NATIONAL SOCCER TEAM PLAYERS ASSOCIATION,	)	
Defendant.	)	

UNITED STATES WOMEN'S NATIONAL SOCCER TEAM PLAYERS ASSOCIATION'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

The United States Women's National Soccer Team Players Association ("WNTPA") respectfully submits this Memorandum of Law in Support of its Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1.

INTRODUCTION

The record developed during discovery makes one point incontrovertible—the WNTPA is entitled to judgment as a matter of law as there is no valid "no strike, no lockout" clause in place between the WNTPA and the United States Soccer Federation, Inc. ("USSF"). Specifically, the undisputed facts establish that there is no collective bargaining agreement in effect containing a "no strike, no lockout" clause that has been majority approved by the players and executed by the union. Absent such an approved and executed collective bargaining agreement containing such a provision, the Constitution and By-Laws of the union—which the USSF has had in its possession since at least 2004—unequivocally provides that no claimed provision of a CBA can have any legal effect. *See* WNTPA's L.R. 56.1 Statement of Material

Facts ("SMF") ¶¶ 9-10. As the USSF was long aware of this limitation on the union's authority, these facts alone compel summary judgment in favor of the WNTPA.[1]

Both parties acknowledge that the only collective bargaining agreement formally executed by the parties after the expiration of the previous 2005-2012 collective bargaining agreement (the "Expired CBA") is the Memorandum of Understanding ("MOU") dated March 19, 2013. This fact is made clear by the USSF's own 2014 and 2015 financial statements, which state: "[t]he Women's National Team CBA expired on December 31, 2012. There is currently a signed Memo of Understanding in place while the details of the new Women's National Team CBA are being negotiated." SMF ¶ 46. No reference is made to the false assertion, contained in the Complaint, that the parties "memorialized a new collective bargaining agreement" that was "comprised of two documents: (i) the prior collective bargaining agreement, to the extent not otherwise supplemented or modified, which included a 'no strike' clause, and (ii) a new Memorandum of Understanding." *See* Compl. ¶ 2. Indeed, the undisputed facts establish that the MOU is the sole collective bargaining agreement in effect, and the MOU does not make any reference to incorporating the terms of the Expired CBA "to the extent not otherwise supplemented or modified." SMF ¶¶ 30; 40-41.

On its face, the MOU, which was collectively bargained by the parties, does not contain a "no strike, no lockout" clause. The USSF readily admits this fact. Equally importantly, the MOU does not contain any provision incorporating by reference the "no strike, no lockout" clause of the Expired CBA. The USSF readily admits this fact as well.

[1] The WNTPA has informed the USSF that it does not contest that the MOU is still in effect until the end of this calendar year. The dispute before this Court, therefore, is now confined to whether the MOU includes a "no strike, no lockout" clause approved by the players and signed by the union.

Faced with these incontrovertible facts, the USSF argues that John Langel, the former Acting Executive Director and General Counsel for the WNTPA, had "apparent authority" to unilaterally bind the WNTPA to the "no strike, no lockout" clause from the Expired CBA and did so orally and in an exchange of e-mails. This argument has no legal merit. Even assuming, *arguendo*, that the USSF could raise a genuine issue of material fact as to whether Langel agreed to such a clause through e-mails or by orally discussing the "concept" of continuing various terms from the Expired CBA, and that the USSF accepted the same, the USSF knew that Langel had no authority to bind the union to such Expired CBA terms without a majority player vote and a formal CBA containing such a clause executed by the parties (not an oral or e-mail exchange). Specifically, since 2004, the USSF has had in its possession the Constitution and By-Laws of the WNTPA, which provides in relevant part:

> All Collective Bargaining Agreements between this Association and the Federation, and any amendments or modifications thereto, shall be **signed** by a designated Players Representative or the Executive Director and **shall require the approval of a majority of the voting members**.

SMF ¶¶ 9-10 (emphases added). The USSF thus clearly knew that a majority player vote and executed agreement was required for any new CBA terms, and, in fact, exchanged a number of e-mails with Langel inquiring anxiously about the player vote on the MOU and the need for a signed agreement. There can be no genuine material dispute that: (i) the majority of players never voted to approve any collective bargaining agreement terms other than those in the MOU; (ii) there is no existing collective bargaining agreement formally executed by the union other than the MOU; and (iii) the executed and approved MOU says nothing about any "no strike, no lockout" clause. These undisputed facts require that summary judgment be granted in favor of the WNTPA.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The History and Governing Documents of the WNTPA

In late 1999, members of the Women's National Soccer Team began a successful union organization campaign, and in 2000, the USSF recognized the WNTPA as the players' exclusive bargaining representative. In connection with its formation, on March 23, 2001, the WNTPA ratified its Constitution and By-Laws and appointed Langel as Acting Executive Director. SMF ¶ 4. Pursuant to Article VIII of the WNTPA Constitution and By-Laws, as Acting Executive Director, Langel had authority only to negotiate with the USSF on behalf of the players; he could not go beyond negotiations and execute a collective bargaining agreement without the majority approval of the players:

> All Collective Bargaining Agreements between this Association and the Federation, and any amendments or modifications thereto, **shall be signed by a designated Players Representative or the Executive Director and shall require the approval of a majority of the voting members**.

SMF ¶ 9 (emphasis added).

The USSF, since at least 2004, has been in possession of, and thus clearly aware of, this unequivocal limitation on the Executive Director's authority, and the fact that any collective bargaining agreement term would *not* be legally effective absent the majority approval of the players and a formal CBA containing the terms executed by the parties. SMF ¶ 10. Indeed, the same legal counsel representing the USSF in this case received the union's Constitution and By-Laws in 2004. SMF ¶ 11.

B. The Collective Bargaining History Between the USSF and the WNTPA

After a period of negotiations, the USSF and the WNTPA entered into the parties' first collective bargaining agreement in March 2001 (the "2001 CBA"). SMF ¶ 12. The 2001 CBA, which was retroactive, was effective from February 1, 2000, through December 31, 2004. *Id.*

The 2001 CBA was majority approved by the players and signed by Langel on the WNTPA's behalf. *Id.*

Before the 2001 CBA expired in 2004, the parties again entered negotiations for a collective bargaining agreement and reached a new collective bargaining agreement on January 12, 2005 (the "Expired CBA"). SMF ¶ 13. That agreement was similarly retroactive and was effective January 1, 2005, through December 31, 2012. *Id*. Among various provisions in the Expired CBA was a "no strike, no lockout" clause. SMF ¶ 14. Moreover, the Expired CBA contained an integration clause. SMF ¶ 15. This agreement was majority approved by the players and signed on behalf of the WNTPA by Langel. SMF ¶ 16.

C. The 2012-2013 Negotiations Between the USSF and the WNTPA

In the fall of 2012, prior to the expiration of the Expired CBA, the parties started negotiations for a new collective bargaining agreement. Langel, along with his colleague Ruth Uselton from the Philadelphia law firm Ballard Spahr LLP, negotiated on behalf of the WNTPA (subject to player approval of any proposed deal) while Sunil Gulati, USSF President, and Lisa Levine, USSF General Counsel, negotiated on behalf of the USSF. SMF ¶ 17.

Prior to significant talks between the parties, Langel informed Levine that he believed the USSF was obliged to maintain the status quo of the players' terms and conditions of employment after the expiration of the Expired CBA on December 31, 2012. SMF ¶ 18. The USSF, however, rejected this position, stating that the Expired CBA provisions would not continue to apply based on USSF's "reading of the plain language of the CBA" that it expired on December 31, 2012. SMF ¶ 19.

Thereafter, on October 29, 2012, the USSF invited the WNTPA to provide topics and issues to be addressed as the parties began negotiations for a new CBA. SMF ¶ 20. In response,

on November 1, 2012, the WNTPA sent a memorandum regarding "WNT 2012 Negotiations with U.S. Soccer" setting forth "the issues to be addressed during the negotiations between Women's National Team Players Association (Players Association) and US Soccer for a collective bargaining agreement for the 2013 season and beyond." SMF ¶ 21. Among the topics were compensation, play, and the terms under which WNT players would participate in the yet to-be-formed National Women's Soccer League ("NWSL"). SMF ¶ 22. Nowhere in the memorandum were negotiations of a "no strike, no lockout" clause mentioned. *Id.* Nor was such a clause mentioned in any of the subsequent collective bargaining memoranda exchanged by the parties. *Id*.

On December 14, 2012, the WNTPA again requested the USSF to clarify whether it agreed that the USSF would continue "to have the same responsibilities post-contract expiration as it has under the existing CBA." SMF ¶ 23. The USSF responded that it did not agree and that it would only provide the 27 WNT players under contract with their then-current salaries through January 2013. SMF ¶ 24. Therefore, the USSF and the WNTPA continued to negotiate the terms of a new CBA.

D. The Parties Reach Agreement on a Memorandum of Understanding, Which Is Approved by a Majority Vote of the Players

After extensive bargaining, representatives of the USSF and the WNTPA reached an agreement in principle on the terms of the MOU, which were subsequently incorporated into a final, executed document and subject to majority player approval. SMF ¶ 25. The USSF was well aware of the terms of the WNTPA Constitution and By-Laws, and that although it had reached an agreement in principle with the WNTPA's Acting Executive Director, majority player approval and then an executed CBA were necessary prerequisites to having a valid and enforceable agreement. SMF ¶ 26. Indeed, the recognition by the USSF that a majority player

vote was required to approve any terms of a new CBA is explicitly set forth in various e-mail exchanges between Langel and Gulati, in which Gulati anxiously inquired about the status of the player vote.[2] The USSF also knew that the MOU needed to be signed to be effective, beyond the e-mails the parties were exchanging. Indeed, Langel informed Gulati that he had told the players:

- We sent US Soccer a memorandum of understanding and are awaiting the response.
- The memorandum of understanding would lead to the new collective bargaining agreement.
- **I am expecting there will be no problems with the memo and that it will be signed tonight or early tomorrow morning.**
- They should make arrangements to go to camp to arrive on the 20th and, if they already are in their location, they cannot practice on the 19th until they hear from me that we have finalized the memorandum of understanding.

SMF ¶ 28 (emphasis added).

The final version of the MOU focused on a number of topics: Women's National Team financial terms; lifestyle concerns; and NWSL issues. SMF ¶ 29. *The MOU did not, however, contain any term relating to a "no strike, no lockout" clause. Id.* In addition, the MOU did not contain any provision incorporating by reference any of the terms of the Expired CBA "to the extent not otherwise supplemented or modified." SMF ¶ 30.

[2] *See* SMF ¶ 27 ((a) 3/7/13, 1:35 p m. e-mail from Langel to Gulati ("I think this is the best we can recommend"), including attachments; (b) 3/13/13, 6:01 p.m. e-mail from Gulati to Langel ("are we both waiting for the smoke to rise from the conclave in Portugal [where the players were meeting to vote on the MOU]"); (c) 3/13/13, 6:10 p.m. e-mail from Langel to Gulati ("Waiting for smoke to rise."); (d) 3/14/13, 10:06 a.m. e-mail from Gulati to Langel ("Black or white smoke."); (e) 3/14/13, 10:30 a.m. e-mail from Langel to Gulati ("No smoke. I will be talking to them when they land late this afternoon."); (f) 3/14/13, 11:34 a.m. e-mail from Gulati to Langel ("I have people with chainsaws standing under the limb I am standing on."); (g) 3/15/13, 9:41 p.m. e-mail from Langel to Gulati ("To be clear, I do not have approval for no annual increases to the WNT salary. That will need player approval but the leadership told me to proceed."); (h) 3/17/13, 8:54 p m. e-mail from Langel to Gulati ("**Votes going our way but slowly.**"); (i) 3/17/13 9:36 p.m. e-mail from Langel to Gulati ("**The players will decide tomorrow**"); and (j) 3/18/13, 8:59 a.m. e-mail from Langel to Gulati ("It includes options 1 and 2 although we do not have approval for that yet.").

The Players thus voted on and approved the MOU, without any reference to a "no strike, no lockout" clause. SMF ¶ 31. The final, executed version of the MOU was subsequently dated March 19, 2013, after receiving majority player approval. SMF ¶ 32.

E. A Majority of the Players Never Approved Continuing the "No Strike, No Lockout" Clause of the Expired CBA

The USSF now contends that Gulati and Langel reached an agreement, purportedly reflected in various e-mails and orally, that the terms of the Expired CBA, including the "no strike, no lockout" clause, would continue in effect "to the extent not otherwise supplemented or modified" by the MOU. (Compl. ¶ 2). The cited e-mails themselves do not reflect any such agreement:

> Langel: Please review. Terms from the old CBA that we have not addressed remain unchanged unless inconsistent with the memo we will sign. Please review my list of items that carry over which I am sure is not complete. Ruth and I should discuss all of the items with Lisa.
>
> Gulati: I am copying my colleagues in on this response. The general principle that stuff that we have not specifically covered would remain the same (or be appropriately adjusted) as in the previous CBA *seems sensible*. *We will of course need to address all of the specifics to make sure. And you are correct—your list may be non-exhaustive. It's also the case that other changes may be needed (I don't have any specifics in mind) in language, etc.*"

SMF ¶ 34 (emphasis added). Moreover, the terms from the Expired CBA listed by Langel in his e-mail did not include the "no strike, no lockout" clause. *Id.*[3]

However, even assuming, *arguendo*, that the USSF can raise a genuine issue of material fact in support of its claim that Langel and Gulati agreed that the new CBA would consist of the

[3] The USSF also attempts to rely on e-mails from Langel and Uselton, which include language stating: "As we previously agreed, the *general principle* we are working under is that the items we have not specifically covered in the Memorandum of Understanding would remain the same as under the prior CBA, *but with appropriate increases/adjustments/changes*. We will address the specifics *when we get to drafting the new CBA*." SMF ¶ 35 (emphases added). The USSF, however, never responded to a single one of these e-mails stating there was such an agreement. *Id.* And in any event, the USSF knew such an agreement did not meet the requirements of the WNTPA's Constitution and By-Laws. SMF ¶¶ 9-11.

terms contained in the Expired CBA, including the "no strike, no lockout" clause, as modified, altered, or amended by the terms of the MOU, there can be no genuine dispute that the WNTPA members never were presented with any CBA terms to vote upon other than those set forth in the MOU. SMF ¶ 37. While Langel testified that he communicated the "concept" of continuing other Expired CBA terms with the players, the record is undisputable that only the MOU was voted upon (SMF ¶ 38) and the MOU clearly does not reference continuing or incorporating any terms from the Expired CBA "to the extent not otherwise supplemented or modified." This does not come close to satisfying the USSF's burden to prove the existence of a legally valid "no strike, no lockout" clause. *Id*. Indeed, the e-mails sent by Langel to the Players describing the terms of the MOU and the terms being voted on confirm that a "no strike, no lockout" clause was never put up for a player vote. SMF ¶ 39.

Moreover, while the USSF now claims that e-mails from Langel to Gulati satisfy the requirement of a signed collective bargaining agreement (Compl. ¶¶ 2, 31), the undisputed fact is that Langel wrote to Gulati on March 18, 2013, that he had informed the players that despite the majority player vote approving the MOU, they still had to wait for the MOU to be finalized and "signed." SMF ¶ 42. In short, a signed collective bargaining agreement voted on by the players was required to be enforceable against the parties. SMF ¶ 9. And, Gulati knew that the signing of the MOU was something different than the parties exchanging e-mails. SMF ¶¶ 9-10, 42-43.

F. Negotiations on Additional CBA Terms Beyond the MOU Never Come to Fruition

After the MOU was majority approved by the players and executed by the parties, negotiations continued on additional CBA terms. SMF ¶ 44. However, no CBA terms other than those contained in the MOU were ever finalized, presented to the players for majority approval, or embodied in a signed CBA. SMF ¶ 45. The situation was thereafter reported by the

USSF in its 2014 and 2015 financial statements as follows: "[t]he Women's National Team CBA expired on December 31, 2012. *There is currently a signed Memo of Understanding in place while the full details of the new Women's National Team CBA are being negotiated.*" SMF ¶ 46 (emphasis added). The parties never agreed upon, drafted, nor executed a new CBA containing any terms outside of those in the MOU. SMF ¶ 47.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when the record shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party is not required to disprove the nonmovant's claim, but rather "can prevail just by showing that the other party has no evidence on an issue on which that party has the burden of proof." *Kirsch v. Brightstar Corp*., 78 F. Supp. 3d 676, 696 (N.D. Ill. 2015) (quoting *Brazinski v. Amoco Petroleum Additives Co*., 6 F.3d 1176, 1183 (7th Cir. 1993)); *see also Logan v. Commercial Union Ins. Co.*, 96 F.3d 971, 979 (7th Cir. 1996) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

After "a properly supported motion for summary judgment is made, the adverse party 'must set forth specific facts showing that there is a genuine issue for trial.'" *Siegel v. Shell Oil Co.*, 656 F. Supp. 2d 825, 831 (N.D. Ill. 2009), *aff'd*, 612 F.3d 932 (7th Cir. 2010) (quoting *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255 (1986)). "[T]he mere existence of some alleged factual dispute between the parties will not" suffice, nor may the nonmoving party meet this burden by relying on "mere conclusions and allegations" that a genuine issue of fact exists. *Balderston v. Fairbanks Morse Engine Div. of Coltec Indus*., 328 F.3d 309, 320 (7th Cir. 2003); *Logan*, 96 F.3d at 978 ("Irrelevant or unnecessary facts do not preclude summary judgment even when they are in dispute."). It must instead counter the evidence submitted by the movant by providing "materials of evidentiary quality" to create material factual issues. *Wilson v. Comtrust*

LLC, 249 F. Supp. 2d 993, 996 (N.D. Ill. 2003) (quoting *Adler v. Glickman*, 87 F.3d 956, 959 (7th Cir. 1996)).

As this Court has explained, "[a] non-movant must do more than raise mere 'metaphysical doubt' concerning the existence of a genuine issue of fact, and must present more than a 'scintilla of evidence' in order to oppose a motion for summary judgment." *Id*. (citations omitted). In determining summary judgment motions, "district courts are not required to draw every requested inference" in favor of the nonmoving party; "they must only draw reasonable ones that are supported by the record." *Omnicare, Inc. v. UnitedHealth Grp., Inc*., 629 F.3d 697, 704 (7th Cir. 2011); *see also Siegel*, 656 F. Supp. 2d at 831 (the "facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts").

ARGUMENT

A. The Undisputed Facts Establish That the MOU, the Only CBA Agreement Approved by the Players and Executed by the WNTPA, Does Not Contain a "No Strike, No Lockout" Clause

Collective bargaining agreements are generally to be interpreted according to ordinary contract principles. *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926, 933 (2015); *see also Cent. States, Se. & Sw. Areas Pension Fund v. Standard Elec. Co.*, 87 F. Supp. 3d 810, 814 (N.D. Ill. 2015). Under well-established rules of contract interpretation, "'[a]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence.'" *Davis v. G.N. Mortg. Corp.*, 396 F.3d 869, 878 (7th Cir. 2005) (quoting *Air Safety, Inc. v. Teachers Realty Corp.*, 706 N.E.2d 882, 884 (Ill. 1999). Thus, if the language of the contract is facially unambiguous and appears to be a "complete expression of the whole agreement, it is presumed that the parties introduced into it

every material item, and parol evidence cannot be admitted to add another item to the agreement." *Id.*; *see also PPM Fin., Inc. v. Norandal USA, Inc.*, 392 F.3d 889, 892 (7th Cir. 2004) ("Under Illinois law, courts must ascertain parties' intentions exclusively from an agreement's language if it is clear and unambiguous. And if clear and unambiguous, one party's particular interpretation of its terms at the time of execution is immaterial.") (internal citations omitted). To that end, a contract does not incorporate another agreement unless the contract expressly shows "an intent to incorporate the other document and make it part of the contract itself." *Rosenblum v. Travelbyus.com Ltd.*, 299 F.3d 657, 664 (7th Cir. 2002).

Here, it is undisputed that the MOU does not expressly contain a "no strike, no lockout" clause. SMF ¶ 29. Likewise, it is undisputed that the MOU does not contain a provision incorporating the terms of the Expired CBA to the extent not otherwise supplemented or modified, including the "no strike, no lockout" clause. SMF ¶ 30. The MOU also does not contain any terms creating any ambiguities as to these provisions. Accordingly, interpretation of the MOU is limited to the four corners of the agreement. A reading of the MOU thus leads to only one permissible conclusion—that it does not contain a "no strike, no lockout" clause.

B. Even If the USSF Could Use Parol Evidence to Create a Genuine Issue That Langel and Gulati Agreed to Continue in Effect the Terms of the Expired CBA That Were Not Modified by the MOU, Such an Agreement Would Have No Legal Effect Because It Was Never Approved by a Majority of the Players or Memorialized in a Signed CBA by the Parties

Assuming, *arguendo*, that the USSF could raise a genuine issue of material fact as to whether Langel and Gulati agreed in various e-mails between themselves to continue in effect the terms of the Expired CBA to the extent not otherwise supplemented or modified by the MOU, such an "agreement" would be invalid as a matter of law and of no legal effect. The reason is that there can be no genuine dispute that such an agreement was never embodied in a CBA signed by the parties, that was approved by a majority of the players, as expressly required

by the Constitution and By-Laws of the WNTPA. SMF ¶¶ 37-40. Nor can the USSF claim good-faith reliance on any "apparent" authority of Langel to enter into such an agreement for the union on his own, as it is also undisputed that the USSF and its lead negotiating counsel has been in possession of the WNTPA Constitution and By-Laws since at least 2004, and Gulati was well aware of the need for a player vote on a signed CBA for it to be effective. SMF ¶¶ 10, 27.

As the Seventh Circuit has held, for a new collective bargaining agreement to be created, it generally must be approved by a vote of the membership of the union. *Michels Corp. v. Cent. States, Se. & Sw. Areas Pension Fund*, 800 F.3d 411, 420 (7th Cir. 2015). This rule is absolutely unwavering where the union's constitution, by-laws, or rules and regulations express such a voting approval requirement. *See Deboles v. Transworld Airlines, Inc.*, 552 F.2d 1005, 1018 (3d Cir. 1977) ("[F]ederal law does require a ratification vote if the union constitution or by-laws require it."); *see also Moriarty v. Pepper*, 256 F.3d 554, 556-59 (7th Cir. 2001) (holding employer in multi-employer group was not liable under collective bargaining agreement where evidence did not establish that employer had unequivocal intent to be bound). Further, in determining whether a union's constitution or by-laws require ratification by the union's members, "a court must pay great deference to a union's interpretation of its own governing documents, and a reasonable interpretation of those documents will ordinarily be upheld." *Meyerson v. Contracting Plumbers Ass'n of Brooklyn & Queens, Inc.*, 606 F. Supp. 282, 287 (S.D.N.Y. 1985).

Here, the WNTPA Constitution and By-Laws explicitly require any and all collective bargaining agreements to be approved in a vote by the majority of its members. SMF ¶ 9. But, as established *supra* at 6-9, there can be no genuine dispute that the WNTPA members never were even asked to vote upon or approve any CBA terms other than those set forth in the MOU.

SMF ¶¶ 37-39. Further, the WNTPA's Constitution and By-Laws also expressly required that any collectively bargained terms be formally memorialized in a writing signed by the Executive Director or designated Player Representative. SMF ¶ 9. No such signed collective bargaining agreement containing a "no strike, no lockout" clause exists in the record of this case.

Nor can the USSF evade these legal requirements by claiming that it relied on claimed "apparent" authority of Langel to bind the union without having to present any additional CBA terms, not contained in the MOU, to the players for their majority approval and formal memorialization in a signed CBA. At all relevant times, the USSF and its lead negotiating counsel had in its possession the WNTPA's Constitution and By-Laws, thus negating any possible claim that it relied in good faith on any apparent authority of Langel to bind the union without a player vote on a signed CBA, and Gulati was well aware of these requirements. SMF ¶¶ 9-10, 27.

Again, traditional contract principles preclude reliance on apparent authority where the party claiming reliance had notice that an agent has no actual authority or where the party lacks a good-faith basis for believing otherwise. *Mason & Dixon Lines, Inc. v. Glover*, 975 F.2d 1298, 1304 (7th Cir. 1992). Specifically, it is well-established law that an employer may only rely upon the apparent authority of a union representative "where there is a basis for such reliance." *Cent. States Se. & Sw. Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1112 (6th Cir. 1986); *see also Goclowski v. Penn Cent. Transp. Co.*, 571 F.2d 747, 759 (3d Cir. 1977) ("an employer has no right to rely on the appearance of authority of the bargaining agent if it has knowledge to the contrary.").

In this case, Langel's authority as Acting Executive Director was expressly limited to negotiations on behalf of the WNTPA. According to the terms of the WNTPA Constitution and

By-Laws, Langel had no actual authority to approve a collective bargaining agreement; that ability belonged solely to WNTPA members by a majority vote of a signed agreement. SMF ¶ 9. Because the USSF has possessed this knowledge of the union's Constitution and By-Laws for over 12 years (since at least 2004), it is barred from even advancing any claim that it relied on any purported apparent authority of Langel to bind the union without player approval. Nor can it claim ignorance of the requirement that any CBA terms approved by the players must be memorialized in a signed CBA agreement. Gulati was well aware of the need for a player vote, and Langel told Gulati that the MOU would have to be "signed" apart from any e-mails the parties exchanged. SMF ¶¶ 27-28. The undisputed fact that neither of these requirements were satisfied with respect to the "no strike, no lockout" clause contained in the Expired CBA requires that this Court grant summary judgment in favor of the WNTPA and declare that there is no such "no strike, no lockout" clause in effect. *See Merk v. Jewel Food Stores Div. of Jewel Cos., Inc.*, 945 F.2d 889, 896 (7th Cir. 1991) ("Failure to ratify under circumstances where an employer is aware both of the ratification requirement and of the failure to comply with it may invalidate an employer's claims under the unratified agreement.").

CONCLUSION

For all of the foregoing reasons, the WNTPA respectfully requests that the Court grant summary judgment in favor of the WNTPA and declare there is no valid "no strike, no lockout" clause in effect as part of any collective bargaining agreement.

Dated: April 12, 2016

Respectfully submitted,

UNITED STATES WOMEN'S NATIONAL SOCCER TEAM PLAYERS ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to counsel of record for all parties via the court's electronic filing system.

/s/ Samuel Mendenhall