

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

DANIEL S. O'SHEA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOCAL UNION NO. 639	)	Case No. 1:04-cv-00207-RBW
INTERNATIONAL	)	
BROTHERHOOD OF TEAMSTERS,	)	
and	)	
UNITED PARCEL SERVICE, INC.	)	
	)	
Defendants.	)	
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**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER THIS  
MATTER TO THE UNITED STATES DISTRICT COURT OF MARYLAND**

**(Request for Hearing)**

Plaintiff, Daniel S. O'Shea ("Mr. O'Shea"), by and through his counsel, Farber Taylor, LLC, Mindy G. Farber and James E. Rubin, pursuant to Local Rule 7.1(b) and 28 U.S.C. §1404(a), herein opposes Defendants Motion to Transfer this Matter to the United States District Court of Maryland. Mr. O'Shea respectfully refers this Court to the accompanying memorandum of points and authorities and affidavit and exhibits in support hereof, which are incorporated herein by reference.

WHEREFORE, for these reasons, Mr. O'Shea respectfully requests that the Court deny defendants' motion to transfer this matter to the United States District Court for the District of Maryland and grant him such other and further relief as the nature of this matter may require, including his costs and attorney's fee attendant to having to oppose defendants' motion.

Respectfully submitted,

FARBER TAYLOR, LLC

/s/  
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Counsel for plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of May, 2004, a copy of the foregoing was forwarded via first-class mail, postage prepaid, to:

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/s/  
James E. Rubin

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Defendants.	)	
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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS  
MOTION TO TRANSFER THIS MATTER TO THE UNITED STATES DISTRICT  
COURT OF MARYLAND**

Plaintiff, Daniel S. O'Shea ("Mr. O'Shea"), by and through his counsel, Farber Taylor, LLC, Mindy G. Farber and James E. Rubin, pursuant to Local Rule 7.1(b) and 28 U.S.C. §1404(a), herein opposes Defendants Motion to Transfer this Matter to the United States District Court of Maryland, and in support thereof states as follow:

**INTRODUCTION**

Defendants seek to move this case thirteen miles north to the Federal Court in Greenbelt, Maryland. This despite the fact that one defendant, International Brotherhood of Teamsters Local 639 (the Union), is just four miles from the courthouse in Washington, DC.<sup>1</sup> Moving the case to Greenbelt would actually be less convenient to the Union than trying this matter in the District of Columbia. Many of the significant events occurred in this city. Transfer is unjustified and contrary

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<sup>1</sup> The Union's counsel is also located in Washington, DC.

to the interests of justice.

Notably, these same three parties – Mr. O’Shea, the Union, and UPS, Inc. (“UPS”) – previously litigated a similar suit in this Court. They settled the matter on the sixth day of jury trial. During the five years that the prior suit was pending, neither UPS nor the Union objected to Mr. O’Shea’s forum choice.

The above reveals that defendants’ motion has little merit. It is the type of motion litigants file when they are seeking to ramp up attorney’s fees. Even if the defendants were to win their motion, the cost savings and added convenience of having this case heard in Greenbelt is minimal. Defendants true intention, therefore, is not the convenience of any witness, or concerns about access to evidence, but a belief that Greenbelt a better forum for them than the District of Columbia. This is not what is meant by in “the interest of justice.” 28 U.S.C. §1404.

## **FACTS**

Mr. O’Shea began working for UPS on January 20, 1979 as a part-time employee in its metropolitan Washington, DC District. (“DC District”). The DC District encompasses Washington, D.C., Northern Virginia, and the Maryland suburbs. After Mr. O’Shea began working for UPS, he joined the Union. The Union’s offices are located in Washington, D.C. Mr. O’Shea paid dues to the Union for more than twenty years. UPS and the Union are parties to a collective bargaining agreement (“CBA”). Affidavit of Daniel S. O’Shea at ¶ \_\_ (hereinafter “Affidavit at ¶ \_\_.”)

In 1988, UPS promoted Mr. O’Shea to “qualified feeder driver.” As a qualified feeder driver, he drove a tractor trailer throughout the D.C. District. Later in 1988, he suffered an on-the-job injury and filed a claim for workers’ compensation benefits. After he filed this claim, UPS denied Mr. O’Shea several rights available to under the CBA, including the right to bid on

certain light duty jobs. Affidavit at ¶ \_\_.

Mr. O'Shea filed several grievances and asked the Union for assistance. The Union officers at that time – specifically Phil Feaster, John Steger and John Catlett (collectively referred to herein as “CMS slate”) – refused to process Mr. O'Shea's grievances. The Union and its officers operated out of its headquarters in Washington, DC. Affidavit at ¶ \_\_.

On October 17, 1989, Mr. O'Shea filed suit in the U.S. District Court for the District of Columbia alleging that the Union failed to represent him and that UPS breached the collective bargaining agreement. (Case #: 1:89-cv-02864-JJG, United States District Court for the District of Columbia). Mr. O'Shea's case was pending in this Court for five years. During the time his claim was pending, UPS engaged in a lengthy pattern of harassment and retaliation directed at Mr. O'Shea. He responded by filing several grievances and amending his complaint. The Union led by the CMS slate, however, refused to offer him any assistance, allowing UPS free reign to pursue their harassment and retaliation.

On November 8, 1994, Judge Harold Green presided over a jury trial. On the sixth day of the trial, the parties reached a settlement.

Before, during and after Mr. O'Shea's prior suit, he actively campaigned against the CMS slate. He campaigned (mostly by passing out literature) throughout the D.C. District. Even after the parties resolved Mr. O'Shea's prior lawsuit, the Union led by the CMS slate continued to show animosity toward Mr. O'Shea by among other things, refusing to process grievances he filed. Affidavit at ¶ \_\_.

In the most recent Union election, a group of union members known as the “Members United” slate successfully challenged the incumbent CMS slate. The Members United slate printed and distributed to the membership 3,000 copies of Mr. O'Shea's

website(<http://mysite.verizon.net/dsoshea>) as campaign literature. The website describes how the Union – as run by the CMS slate – failed to represent him. The Members United Slate distributed this literature throughout the D.C. District. Affidavit at ¶ \_\_.

In January 2002, Mr. O’Shea sustained an on-the-job injury. After the injury, UPS to engaged in a pattern of harassment and retaliation very similar to what occurred during Mr. O’Shea’s prior lawsuit. Each time, in 1988 and 2002, after the harassment and retaliation began, Mr. O’Shea believed his job was in jeopardy. This was because UPS's activity involved policies applied to him that were discriminatory, changed without notice and/or were non-existent. Affidavit at ¶ \_\_.

Between January of 2002 and May 13, 2003 (the date of Mr. O’Shea’s termination), he filed twenty-four grievances and letters with UPS and the Union to protest the harassment. With respect to the Union, he sent these letters and grievances by certified mail to its offices in the District of Columbia. He frequently asked the Union to investigate his claims. The Union never followed through. Affidavit at ¶ \_\_.

The harassment culminated on May 12, 2003, when UPS terminated Mr. O’Shea’s employment. UPS asserts that it terminated Mr. O’Shea for, among other things, failing to notify management that he could not deliver his assigned packages on May 12, 2003. This is not true. Mr. O’Shea did properly notify UPS by using the company’s electronic communication system. Significantly, Mr. O’Shea sent a letter to the Union’s headquarters in Washington, DC, asking it to obtain a record of the electronic communication. The Union, however, failed to obtain the records. Affidavit at ¶ \_\_.

UPS also alleges that it terminated Mr. O’Shea because he “secreted a tape recorder and recorded . . . conversation without the prior knowledge or consent of . . . particular management employees.” This is also false. Mr. O’Shea did notify UPS that he carried and used a tape

recorder. He did this to keep a record of the company's harassing actions. Before UPS terminated Mr. O'Shea, he sent letters to the company and the Union (in Washington, DC), notifying them that he was using a tape recording. Further, he has used a tape recorder at work for fifteen years. UPS employees and supervisors throughout the D.C. District knew that Mr. O'Shea carried a tape recorder and often joked about it. The company never told Mr. O'Shea that there it had a policy against tape recording or that he was violating company policy by carrying a tape recorder. Affidavit at ¶ \_\_.

After his termination, Mr. O'Shea sent several letters to the Union's headquarters in Washington, DC, asking it to investigate and acquire the UPS policy on tape recording workplace conversations. The Union never initiated an investigation. He also sent several letters to the Union, asking it to get in touch with several key witnesses who knew he had carried a tape recorder. The Union, however, refused to call these witnesses on Mr. O'Shea's behalf. Affidavit at ¶ \_\_.

### **MR. O'SHEA'S UNDERLYING CLAIMS**

Mr. O'Shea filed this action on February 12, 2004, alleging that the Union breached its duty to fairly represent him and that UPS breached the CBA when it terminated his employment. Mr. O'Shea is pursuing what the Supreme Court has referred to as a "hybrid § 301/fair representation claim," i.e., a claim where he simultaneously charges the employer with breach of the collective bargaining agreement and the union with a breach of its statutory duty of fair representation. DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 165 (1983). In such a hybrid claim, "[t]o prevail against either the company or the Union, ... [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union." Id. at 165, 103 S.Ct. at 2291 (internal quotations omitted).

Mr. O'Shea's claim against the Union arises because it was his exclusive agent for dealing

with UPS. Because of its exclusive status, the Union has an obligation "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Vaca v. Sipes, 386 U.S. 171, 177, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). Accordingly, a breach of this duty of fair representation occurs when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca, 386 U.S. at 190, 87 S.Ct. 903.

Mr. O'Shea claims here that the Union breached they duty of representation it owed him by, among other things:

- failing to process his grievances;
- failing to obtain critical documents;
- refusing to conduct any meaningful investigation;
- ignoring his attempts to save his job.

Complaint ¶ 32. All of this occurred in Washington, DC.

### **ARGUMENT**

Section 1404(a) authorizes a court to transfer a civil action to any other district where it could have been brought "for the convenience of parties and witnesses, in the interest of justice [.]" 28 U.S.C. § 1404(a). Section 1404(a) vests "discretion in the district court to adjudicate motions to transfer according to individualized, case-by-case consideration of convenience and fairness." Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 27, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988) (quoting Van Dusen v. Barrack, 376 U.S. 612, 622, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964)). Under this statute, the moving party bears the burden of establishing that transfer is proper. Trout Unlimited v. Dep't. of Agric., 944 F.Supp. 13, 16 (D.D.C.1996).

Defendants must demonstrate that considerations of convenience and the interest of justice



weigh in favor of transfer to that court. Trout Unlimited, 944 F.Supp. at 16. The statute calls on the court to weigh a number of case-specific private and public interest factors. Stewart Org., 487 U.S. at 29, 108 S.Ct. 2239. The private interest considerations include: (1) the plaintiff's choice of forum, unless the balance of convenience is strongly in favor of the defendants; (2) the defendants' choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the ease of access to sources of proof. Trout Unlimited, 944 F.Supp. at 16 (citations omitted). The public interest considerations include: (1) the transferee's familiarity with the governing laws; (2) the relative congestion of the calendars of the potential transferee and transferor courts; and (3) the local interest in deciding local controversies at home. Id.

With respect to the private interests, witnesses, evidence, the Union, and its counsel are in the District of Columbia. Mr. O'Shea repeatedly sent correspondence to the Union in Washington, DC, asking it to intervene. It ignored his pleas to obtain exculpatory evidence, question witnesses, and perform its job. The Union's has a decade long history of animosity toward Dan O'Shea which emanated from its offices in Washington, DC. The conflict between Mr. O'Shea and the Union was the subject of a lawsuit pending in this Court for five years. Mr. O'Shea chose this forum because his claim against the Union arose here. Because this is a hybrid action, Mr. O'Shea's claim against UPS also arose here.

Mr. O'Shea admits that he had an argument with a UPS official on May 12, 2003, in Laurel, Maryland. UPS argues that it has identified sixteen witnesses to this incident who live in Maryland. The important issues regarding Mr. O'Shea's termination, however, have little to do with what occurred on May 12, 2004. The relevant questions are what policy, if any, did UPS have and

communicate to its employees regarding: (1) tape recording conversations;<sup>2</sup> and (2) notifying management of their inability to deliver packages. The answers to these questions have nothing to do with Maryland.

As for public interest considerations, defendants admit that federal law governs Mr. O'Shea's hybrid claims. The District of Columbia has a strong interest in insuring that unions based here are held responsible for their failures here. Further, this Court has a five year record of the parties' dispute over similar issues. Because connections to the District of Columbia predominate over the connections to Maryland, Mr. O'Shea chose the proper forum to bring this action. For these reasons, Mr. O'Shea respectfully requests that Court deny defendants' motion to transfer.

Respectfully submitted,

FARBER TAYLOR, LLC

/s/

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Counsel for plaintiff

**CERTIFICATE OF SERVICE**

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<sup>2</sup> UPS contends that this cases involves Mr. O'Shea's illegal taping of individuals without their prior consent in violation of Maryland state law. This is incorrect. The decision upholding Mr. O'Shea's termination relied exclusively on UPS's purported internal policy against taping, not Maryland state law. UPS, however, failed to disclose this policy, and failed to apply to other UPS employees. Further, Mr. O'Shea openly used a tape recorder for 15 years and repeatedly notified UPS of this fact. Contrary to taping them without their consent, UPS's managers often joked about being recorded by Mr. O'Shea. Affidavit at ¶\_\_

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