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U. S. DISTRICT COURT
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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HERMILO MOJICA, et al.,)
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 Plaintiffs,)
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 vs.)
)
 UNITED FARM WORKERS OF AMERICA,)
 AFL-CIO, et al.,)
)
 Defendants.)

No. C 82-0512 WAI

ORDER

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The court hereby ORDERS that defendants' motion for summary judgment is GRANTED as to the first claim for relief, and that plaintiffs' motion for partial summary judgment is GRANTED as to the second and third claims for relief. Although plaintiffs have styled their motion as one for total summary judgment, it is clear that their motion is necessarily partial in nature as the issue of what relief is proper remains in dispute.

A. First Claim for Relief

In their first cause of action, plaintiffs allege that defendants violated their rights under Sections 101(a)(1), 101(a)(2), and 609 of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 411(a)(1),

1 411(a)(2), and 529, when defendant Chavez summarily removed them
2 from their positions as elected, paid union representatives.

3 More specifically, plaintiffs argue that the terminations
4 unlawfully deprived them of their right to vote for themselves.

5 On this point, the court chooses to follow the analysis
6 set forth in Adams-Lundy v. Flight Attendants, __ F.2d __, 116
7 LRRM 2394 (5th Cir. 1984). The LMRDA was enacted to protect the
8 rights of the union rank and file, not its officers. Therefore,
9 summary removal of union officers, even elected officials, does
10 not create jurisdiction under the LMRDA unless the acts of the
11 defendants rise to "a purposeful and deliberate attempt to
12 suppress dissent within the union." Id. at 2397, quoting
13 Schoenfeld v. Penza, 477 F.2d 899, 904 (2d Cir. 1973). The
14 removal of plaintiffs in the case at bar reflects only that
15 suppression of dissent which naturally inheres to any political
16 struggle within any institution. The facts do not indicate that
17 a mass attack on the union's democratic institutions was involved.
18 Moreover, the court notes that plaintiffs have not seriously
19 argued that the Schoenfeld scenario exists here.

20 Plaintiffs' argument that this court has already
21 decided this issue in the opposite direction suggests a
22 misreading of this court's prior orders in this case. In the
23 order dated November 16, 1982, this court found that plaintiffs
24 were elected officials and thus not directly within the holding
25 of Finnegan v. Leu, 456 U.S. 431 (1982). As made explicit in
26 this court's order dated June 24, 1983, the prior order did not
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1 address whether the principles underlying Finnegan should apply
2 to elected officials.

3 B. Second and Third Claims for Relief

4 Plaintiffs' second cause of action alleges that their
5 summary removal violated their rights under the union
6 constitution. The third claim alleges that this deprivation of
7 constitutional rights is a violation of Section 501(a) of the
8 LRMDA, 29 U.S.C. § 501(a), which imposes a fiduciary duty on
9 defendant Chavez as president of the union.

10 Summary judgment is appropriate for plaintiffs because
11 the material facts are not in dispute and the court finds that
12 summary removal of any elected union official is an unreasonable
13 breach of fiduciary duty. Although the court is hesitant to
14 involve itself in intra-union disputes, Phillips v. Osborne, 403
15 F.2d 826, 830 (9th Cir. 1968), the magnitude of the issues
16 involved justifies such intervention.

17 As to the facts, this court has ruled that plaintiffs
18 were elected officials in its order dated November 16, 1982, and
19 there is no dispute that plaintiffs were not granted a hearing
20 nor subject to a recall election before they were terminated.

21 The court finds that, as elected officials, plaintiffs
22 were entitled to the same procedural due process rights as every
23 other elected union official. While the procedural protections
24 in Articles 66 and 67 of the union constitution apply only to
25 Ranch Community Officers, Siegel declaration, Ex. C, the rights
26 therein are simply one specific example of the general
27 protections accorded all elected union officials. Id., Articles
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1 54-55 (union national officers) and 61-63 (union board of
2 auditors). Elected union representatives such as plaintiffs
3 should be treated no differently.

4 The fact that this violation of the union violation is
5 a breach of fiduciary duty under Section 501(a) of the LMRDA is
6 established by Stelling v. Intern. Broth. of Elec. Workers, Etc.,
7 587 F.2d 1379 (9th Cir. 1978). In Stelling the court held that a
8 fiduciary breach occurs when a union officer fails to comply with
9 the union constitution, regardless of whether the action violates
10 another section of the LMRDA. Id. at 1389. Whether the breach
11 is a Section 501(a) violation depends on whether the officer's
12 interpretation of the constitution was reasonable at the time.
13 Id. at n.10. The court finds that defendant Chavez's
14 interpetation was not reasonable. Summary removal of elected
15 union officials is not warranted under any reading of the
16 constitution.

17 C. Miscellaneous Issues

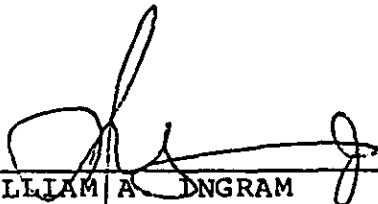
18 Defendants have raised two peripheral arguments as to
19 why plaintiffs' motion is deficient. Neither of these has merit.

20 First, the fact that some plaintiffs are not members of
21 the union at this time is irrelevant as to whether they may
22 complain of past actions which occurred while they were members.
23 Defendants reliance on Phillips v. Osborne, 403 F.2d 826 (9th
24 Cir. 1968) is misplaced. In Phillips the plaintiff was denied a
25 LMRDA claim because he was not a member of the union at the time
26 he filed suit, there was evidence that he was acting on behalf of
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1 a rival union, and he did not seek relief for himself. None of
2 these factors are present in the instant case.

3 Second, it would serve no useful purpose to require.
4 plaintiffs, at this late date, to pursue additional internal
5 remedies. Plaintiffs did appeal their terminations to the
6 Secretary-Treasurer of the union; any further appeals to
7 decisionmakers dominated by defendants would be futile.

8 DATED: 11 30 84

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12 WILLIAM A. DNGRAM
13 United States District Judge
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