

Negotiating Committee as its collective bargaining representative. Thus, the complaint alleges, the Negotiating Committee is also a representative of the Hook Up employees with standing to sue under WARN. Plaintiffs claim that Hook Up violated WARN by closing the terminal without providing the Hook Up employees with appropriate notice, and seek to recover back pay and benefits for each employee, a civil penalty of \$500 for each day of violation, costs, interest, and attorneys' fees. Hook Up moves to dismiss the Negotiating Committee from this case on the grounds that the Negotiating Committee lacks standing to sue. Hook Up also moves to strike plaintiffs' claim for civil penalties. The court will consider these motions, in turn.

II.

Hook Up argues that the Negotiating Committee lacks standing as a party to this action because it is not an "exclusive representative" of the aggrieved employees under WARN.¹ As a practical matter, Hook Up seeks to avoid the possibility of plaintiffs serving separate interrogatories and discovery requests, and claiming double attorneys' fees. The court finds it unnecessary to decide whether the Negotiating Committee has standing to sue under WARN, and therefore declines to do so.

As Hook Up agreed at oral argument, the Negotiating Committee's presence in this

¹Section 2104(a)(5) of the Act provides for standing to sue, stating in pertinent part that a party seeking to enforce liability "including a representative of employees . . . aggrieved under paragraph (1) . . . , may sue either for such person or for other persons similarly situated, or both, [in an appropriate district court]." 29 U.S.C. § 2104(a). The Act defines the term "representative" as "an exclusive representative of employees within the meaning of section 159(a) or 158(f) of this title or section 152 of Title 45." 2101(a)(4). Section 159(a), in turn, provides: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining" 29 U.S.C. § 159(a). The parties disagree as to whether the Negotiating Committee is one of the employees' "exclusive representatives" under § 159(a).

action does not prejudice Hook Up, so long as plaintiffs do not serve separate discovery requests and claim separate attorneys' fees. Plaintiff's stated at oral argument that they are jointly represented and that they do not intend to serve separate discovery requests. Accordingly, the court finds it unnecessary to decide the issue at this juncture.

III.

Hook Up contends that the court should strike plaintiffs' claims for civil penalties because WARN does not allow private parties to recover civil penalties. The court agrees. The Act expressly provides that the remedies delineated by the Act "shall be the exclusive remedies for any violation" of the Act. 29 U.S.C. § 2104(b). Section 2104(a)(1) expressly provides a cause of action for an "aggrieved employee" harmed by a violation of § 2102, but limits recovery to back pay and benefits. A separate remedy provision, § 2104(a)(3), provides for civil penalties in suits by units of local government but does not provide for civil penalties in suits by private individuals. Specifically, § 2104(a)(3) provides:

Any employer who violates the [notice] provisions of section 2102 of this title with respect to a unit of local government shall be subject to a civil penalty of not more than \$500 for each day of such violation, except that such penalty shall not apply if the employer pays to each aggrieved employee the amount for which the employer is liable to that employee within 3 weeks from the date the employer orders the shutdown or layoff.

29 U.S.C. § 2104(a)(3). In Marques v. Telles Ranch, Inc., the Ninth Circuit squarely addressed the question before the court today, and concluded that the Warn Act "does not provide a private right of action to enforce its requirement under § 2101(a)(2) that notice of a plant closing or mass layoff be given to state and local government." 131 F.3d 1331, 1335 (9th Cir. 1997). The court agrees with the reasoning in Marques; unlike § 2104(a)(1), the language of § 2104(a)(3) simply

does not provide private parties with a right of action.

IV.

For the foregoing reasons, the court will deny Hook Up's motion to dismiss the Negotiating Committee for lack of standing and grant Hook Up's motion to strike plaintiffs' claim for civil penalties.

ENTER: This ____ day of May, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

TEAMSTERS NATIONAL AUTOMOBILE)	
TRANSPORTERS INDUSTRY)	
NEGOTIATING COMMITTEE, et al.,)	
)	
Plaintiffs,)	Civil Action No.7:02CV00035
)	
v.)	<u>ORDER</u>
)	
HOOK UP, INC.)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendant.)	

In accordance with the memorandum opinion entered this day, it is

ORDERED AND ADJUDGED

- (1) that defendant's motion to dismiss Teamsters National Automobile Transporters Industry Negotiating Committee for lack of standing is **DENIED**;
- (2) that defendant's motion to strike plaintiffs' claim for civil penalties is **GRANTED**; and
- (3) that plaintiffs shall not serve defendant with separate discovery requests.

ENTER: This ___ day of May, 2002.

CHIEF UNITED STATES DISTRICT JUDGE