SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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EVANGELINE BYARS, on behalf of all similarly situated,

Plaintiff, Decision and order

- against - Index No. 524721/21

TRANSPORT WORKERS UNION OF AMERICA, a Labor Organization, TRANSPORT WORKERS UNION, LOCAL 100, a Labor Organization, JOHN SAMUELSEN, ANTHONY UTANO, AQUILLINO CASTRO, ANGELLA FONTE, RON GREGORY, ARTHUR SCHWARTZ and BARBARA DEINHARDT,

Defendants, October 19, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a preliminary injunction stopping the election from taking place without a judicial determination the union's interpretation of the rules declaring her a member in bad standing are patently unreasonable. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

In 2021 the plaintiff sought to run in a union election seeking an internal union position. The election takes place every three years. In September 2021 it was determined the plaintiff was ineligible to run since she was a member in bad standing. Specifically, the decision noted the plaintiff was out sick from January 26, 2021 through February 24, 2021 and except for one sick day received no compensation during that time and thus no dues were paid to the union during that time. She paid

her dues on April 21, 2021 and resumed her good standing status. However, she was deemed a member in bad standing because she did not have twelve months of continuous good standing as required by the Constitution. Indeed, there is no dispute that to run as an officer of the Local 100 the person must be a member in good standing for twelve consecutive months. The plaintiff now moves seeking a determination essentially that decision was patently unreasonable. As noted the motion is opposed.

Conclusions of Law

The court will only address whether the interpretation of Article 13 Section 3 was patently unreasonable.

It is well settled that a union's interpretation of its own constitution is entitled to deference and will be sustained unless patently unreasonable (Brodsky v. Union Local 306, 1999 WL 102763 [S.D.N.Y. 1999], aff'd 205 F3d. 132 [2d Cir. 2000]). Article 13 Section 3 of the Constitution of the Transit Workers of America states that "membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing. Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization shall be considered in good

standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union. Where for any reason the dues of a member who pays his/her dues by checkoff authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness. Failure to pay within said thirty day period shall cause said member to become in bad standing. Any member, or group of members, to which dues check-off is not available may, on the application of the Local Union to the International Administrative Committee, and for good cause shown, secure an extension of the grace period beyond the month covered by the dues payment for not more than one further month during which the member will not lose his/her good standing" (id).

The plaintiff has authorized to pay her union dues via union check-off. Thus, she argues that pursuant to the above language "where for any reason the dues of a member who pays his/her dues by checkoff authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness" and that since no such thirty day notice was ever sent to the plaintiff she never fell out of good standing. The plaintiff stresses

that the phrase "any reason" means exactly what is says and that since being sick is a reason for the non-payment of dues, she could not be a member in bad standing unless a thirty day notice was first sent. The decision dated September 12, 2021 disagreed. The decision, quoting the opinion of the Transit Worker's Union International President, held that "a member whose pay stub reflects that Union dues are begin [sic] deducted would have no way of knowing that the Employer has not forwarded such remittances to the Union. On the other hand, a member who is not receiving wages because of injury, illness or layoff does not have dues check-off available. S/he is on notice that no wages are being earned that could be used to pay union dues. As such, the provision of Article XIII, section 3 relating to written notice to the member from the Union by registered mail does not apply…In these circumstances, the member's obligation is to make the dues payment directly, or request an exoneration (in cases involving illness, injury or layoff" (see, Decision, page 4). Thus, the decision differentiates between a situation where the member has no way of knowing the dues were not forwarded to the union and if for whatever reason such event occurred the member cannot be deemed in bad standing unless afforded thirty days to cure the deficiency, and situations where the member knows full well the dues were not paid where no such thirty day cure period is available. The decision continued and pointed out this

interpretation was consistent with two prior decisions, one from 2015, one from 2018, as well as guidance from the Department of Labor.

Although the decision did not address the argument raised here that the distinction drawn undermines the phrase "any reason" since some reasons do not warrant a thirty day notice, a carefully reading of the provision demonstrates that argument has no merit. The clause actually states that "where for any reason the dues of a member who pays his/her dues by checkoff authorization are not checked off by the employer for any month or months..." (supra) then a thirty day notice is required. Thus, the notice is only required where for any reason the employer fails to submit the dues of a member who authorized check-off. As the decision noted, the provision is "designed to protect the member from mistakes/misdeeds of the employer" (supra, at page 5) and is not meant "to deal with a situation where nothing is checked off because there is no income to check it off from because the member is, for example, sick, laid off, suspended or on strike" (id). Thus, the remainder of the sentence qualifies the "any reason" available and limits the reasons to only situations where the employee would have no knowledge of the failure to submit such dues.

The plaintiff argues that interpretation is patently unreasonable for two reasons. First, it would allow the employer

to maintain indirect and illegal control over who may run by fabricating a disciplinary proceeding against employees they disfavor thereby stopping any paycheck from flowing to the employee and stopping the union dues from being remitted to the union. However, even if that far-fetched fear would ever materialize the employee can easily remain in good standing by simply paying the union dues himself or herself. It is not reasonable to argue that an employee would be placed upon some disciplinary leave of absence without any knowledge of such determination.

Second, the plaintiff asserts this interpretation would permit an employer to delay the processing of an injured employee's worker's compensation claim rendering the employee in a 'no-pay' limbo until the claim is processed. However, were that to happen then surely such delay, even if inadvertent on the part of the employer, would require the employer to provide the thirty day notice since in that scenario the employer is the reason for the delay of which the employee would have no knowledge.

The plaintiff further argues that the provisions of the Constitution under discussion are "not merely a notice provision. They are an expression of the Union's intent to protect the good standing of a member who has authorized dues check-off even when the member knows he or she is not getting paid. It further

recognizes that the Union has the ability to recoup dues from future wages and puts the onus on the union, not the member to protect the member's good standing in the case of temporary no-pay status" (Memorandum of Law in Support, page 11). However, the Decision of the Neutral Monitor concluded the exact opposite noting that "this provision is about notice" (Decision, page 4) and held the provision is not available where the employee is aware he or she is not being paid.

The plaintiff next argues that if the interpretation of the union is correct then when a member such as plaintiff receives no paycheck, she then becomes a no authorization check-off member which deprives her of her specific right to maintain check-of authorization. Morever, argues the plaintiff, the change in status from check-off to non check-off occurs without the member's authority altogether. This anomaly therefore produces a result that is patently unreasonable which must be rejected. However, in truth, no such impermissible change of status occurs. Rather, there can be no check-off without an accompanying paycheck. The plaintiff argues that "checkoff remains available to a member in no-pay status, it is only the member's check that is not available" (Memorandum of Law in Support, page 12). While that is surely true in a theoretical and abstract sense, practically, without a paycheck there are simply no dues that are forwarded to the union. That does not mean the member's status

has changed, rather, there can be no physical delivery of any dues without an accompanying paycheck. If the plaintiff were correct then upon resumption of her duties and her return to work she would then have to choose whether to continue to accept her new no check-off status or rejoin and re-authorize check-off again and there is no evidence a new authorization was ever contemplated or required. Thus, it is of no moment as to the characterization of the status during this no-pay period since in any event the check-off authorization is not minimized thereby.

Lastly, while the historical interpretations of these provisions surely informs on their reasonableness, they are not dispositive. In any event, as the decision noted there are no cases that have been presented which held that such break in the payment of dues still rendered such member eligible to run as a member in good standing (<u>see</u>, Decision, page 6). The affidavits of Mr. Toussaint and Mr. James Mitchell who both assert to the contrary, namely, that in the past members were in good standing despite periods where dues were not paid does not mean a different interpretation is patently unreasonable. A patently unreasonable interpretation means one that "conflicts with the 'stark and unambiguous' language of the Constitution or reads out of the Constitution important provisions" (<u>District Council No. 9 v. Empire State Regional Council of Carpenters</u>, 589 F.Supp2d 184 E.D.N.Y. 2007]). In <u>Local 100 Transport Worker's Union of</u>

Greater New York v. Transport Worker's Union of America, 2005 WL 2230456 [S.D.N.Y. 2005] the court explained that whether an interpretation is patently unreasonable depends upon "whether there was arguable authority for the officer's act from the officer's viewpoint at the time...if this query is answered in the affirmative, further judicial scrutiny of the decision, absent bad faith, is foreclosed" (id).

Thus, the plaintiff has failed to present any evidence the interpretation of the provisions are patently unreasonable. Consequently, the plaintiff cannot therefore establish a likelihood of success on the merits and a reasonable probability of success (Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430, 33 NYS3d 43 [2d Dept., 2016]). Consequently, the motion seeking an injunction is denied.

So ordered.

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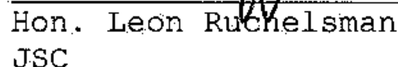

DATED: October 19, 2021
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC