

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, November 1, 2021

-----X  
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §2221 seeking to  
reargue a decision and order dated October 19, 2021 which  
essentially held that plaintiff was not eligible to run for a  
union election position. The plaintiff asserts that conclusion  
was patently unreasonable and the court erred in reaching that  
determination. The defendants oppose the motion. The court has  
reviewed the emergency request and now issues the following  
decision.

The facts of this case were recited in the prior decision  
and need not be repeated here.

The plaintiff argues the court relied upon the decision of  
the Neutral Monitor and that in fact the monitor is not neutral  
undermining any weight given her conclusions. Further, plaintiff  
argues the neutral monitor was never officially installed as such  
monitor and that consequently any decision she reached was not

binding thereby. The plaintiff further argues that in light of the above infirmities, and the court's reliance upon the neutral monitor's decisions, the court compounded the patently unreasonable interpretation of the neutral monitor and therefore such error must be corrected. The plaintiff points out that "the issue squarely before the Court is whether Defendant's are in breach of their contract with Plaintiff based on whether the Union's interpretation through its officers, not Defendant Deinhardt's interpretation, is patently unreasonable" (Memorandum of Law in Support of Motion to Reargue, page 4):

The thrust of plaintiff's reargument motion essentially is that the court blindly followed earlier decisions that were not pertinent, were ultra vires and were patently unreasonable. A carefully reading of the earlier decision of this court demonstrates the court, while giving deference to earlier decisions, conducted an independent analysis of the constitutional provision at issue and concluded the interpretation presented by the defendants was not patently unreasonable. Thus, in addressing a decision to which the plaintiff raises such strong objections, the court stated that "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" (see, Decision and Order dated October 19, 2021, page 5). The court then proceeded to explain, without the guidance of any other decisions, why two key arguments proposed by the plaintiff arguing the interpretation offered is patently unreasonable is without merit. Further, the court, again without guidance from any prior decisions, concluded plaintiff's argument that the interpretation proposed would change the status of the employee to a no authorization check-off status was likewise without merit. Moreover, the court considered the affidavits of individuals who opined the interpretation proposed had never been adopted. The court explained that even if true that did not mean a contrary interpretation was patently unreasonable and concluded based on the above analysis the interpretation of the defendants was not patently unreasonable. The court did quote from an earlier decision of the neutral monitor to rebut the plaintiff's assertion the constitutional provision at play was more than a mere notice provision and provided substantive protective rights. However, that single reference to an earlier decision is a far cry from asserting the court merely mimicked earlier faulty determinations.

In any event, another examination of the provision does not demand a contrary result. The plaintiff argues that under ordinary rules of contract interpretation the defendant's interpretation is patently unreasonable. The plaintiff argues

that it is "patently absurd" to interpret the provision that a thirty day notice is required only if the employer is the cause of the non-payment, however, if the non-payment of dues is because the employee did not receive any paycheck then no such thirty day notice is required. The plaintiff contends that "there is nothing in any of the wording of Article XIII section 3 which says that a member who does not get a paycheck in a given pay period renders that member no longer on dues checkoff requiring the member to pay dues directly by the 15th of that month" (Memorandum of Law in Support of Motion to Reargue, page 8). However, as explained in the prior decision, the provision at issue states that a thirty day notice is only required "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). It is reasonable to conclude this provision is inapplicable where no pay-check has been issued and there is nothing for the employer to check-off. Thus, the provision only applies where for whatever reason the employer did not check off the dues where the employee has elected such checkoff authorization.

Furthermore, the plaintiff argues the defendant's interpretation renders any indebtedness contemplated by the constitution meaningless. Article 13 Section 3 of the Constitution of the Transit Workers of America 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, 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" (id). The plaintiff wonders: "a member's indebtedness does not occur where the employer has made a mistake and not checked off the proper amount or does not check off dues at all from the employees' check. Employer mistakes are recouped from the employer, not the member as it was not the members' fault. So where else could an indebtedness referenced in Article XIII section 3 come from?" (Memorandum of Law in Support of Motion to Reargue, page 8).


However, even if the employer made a mistake, the indebtedness, ie., the dues owed is still the responsibility of the employee. To be sure, the thirty day notice is not issued to the employer, rather to the employee. Indeed, this faulty argument further supports the reasonable interpretation that the entire provision only deals with situations where the employer made a mistake. Thus, in the event the employer makes a mistake, notice is sent to the employee, the party who is obligated to pay the dues. The employee then notifies the employer and raises the issue and surely apprises the employer of the thirty day letter received. Thus, this interpretation does not "excise" any language from the constitution.

The sum, the plaintiff argues the interpretation reached by the court is patently unreasonable. However, the court, on its own analysis, has concluded the interpretation of the defendants is not patently unreasonable. There has been nothing presented to demand a contrary result. Therefore, the motion seeking to reargue the prior determination is denied. Likewise, the order to show cause filed on October 29, 2021 is similarly denied.

So ordered.

ENTER:

DATED: November 1, 2021  
Brooklyn N.Y.

  
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Hon. Leon Ruchel'sman  
JSC