

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Carlease M. Forbes,)

Complainant,)

and)

International Brotherhood of Teamsters,)
Local Union Nos. 246 and 1714,)

Respondents.)

PERB Case No.87-S-02
and No.87-S-03
Opinion No. 193

DECISION AND ORDER

On March 16, 1987 and April 6, 1987 Carlease M. Forbes, the Complainant, filed two separate Standards of Conduct Complaints with the District of Columbia Public Employee Relations Board (Board), pursuant to D.C. Code, Section 1-618.3(a)(1) and the Board's Interim Rule 108.2. 1/ On June 12, 1987 an "Amendment to Complaint" was filed amending the remedy requested in both cases. The Board, sua sponte, consolidated the cases because the facts in the cases are similar and related and the parties are identical.

I. The Complaints

The Complaints, as amended, allege that Local Union Nos. 246 and 1714, International Brotherhood of Teamsters (Local 246 and Local 1714, respectively) (collectively referred to as the Union) violated the Standards of Conduct provisions of the CMPA (Section 1-618.3, as codified) by violating provisions of Local 246's Bylaws, the Constitution of the International Brotherhood of Teamsters (International Constitution), the U.S. Constitution

1/ Complainant also refers to the Unfair Labor Practice provisions of the Comprehensive Merit Personnel Act (CMPA) (D.C. Code, Section 1-618.4) and the Board's Interim Rules (103.1). However, the Complaints allege violations of only the Standards of Conduct provisions.

and various federal statutes and executive orders. 2/ The Complaints allege that the Respondents violated these provisions by temporarily removing three individuals, including Complainant, from their positions as shop stewards without first filing formal charges against them, and by conducting a referendum vote on the issue of a separate union local for the bargaining unit at the D.C. Department of Corrections (DOC) without sufficient notice.

The removals of the members as shop stewards are claimed to be without "just and probable cause" and in violation of Article XIX, Section 1(b) of the International Constitution and Section 40 of Local 246's Bylaws because Local 246 failed to bring charges against the shop stewards and interfered with and restrained their "elected" right to duly serve the membership. 3/

In regard to the referendum vote, the Complaints allege several violations: (1) that the referendum vote violated Section 1-618.3(a) of the D.C. Code because it "prohibited 'the right of individual members to participate in the affairs of the organization' and 'to fair and equal treatment'", since the vote was held with only two days notice; (2) that the notices advising members of the referendum vote were posted on the Union bulletin board in violation of Article 8, Section 7 of the agreement between Local 246 and DOC; and (3) that the Teamsters' International President violated Article XVII, paragraph 4 of the International Constitution by calling the referendum vote meeting because under this Article only the General Executive Board has the authority to conduct referendum votes. 4/

2/ The Board's jurisdiction is limited to interpreting and enforcing specific provisions of the D.C. Code. Complainant must seek redress for any violation of the Federal Constitution or laws in another forum.

3/ Article XIX of the International Constitution establishes the procedures to be followed when a member is charged with violating the International Constitution. Section 40 of Local 246's Bylaws provides that a member charged with a violation of the International Constitution or local Bylaws shall be tried by the Local Executive Board. It also sets forth the procedures to be followed in such instances.

4/ Article XVII of the International Constitution grants to the General Executive Board the authority to approve the issuance of a separate charter and provides that the General Executive Board, at its discretion, may conduct a referendum vote. Under this Article, such a vote is only advisory.

In addition, the Complaints allege that "the Teamsters Council No. 55 and the General President [were] working in tandem with [Local 246]" in an overall scheme to mislead and intimidate certain members of Local 246 in an attempt to cover-up leadership mismanagement and financial irregularities by silencing the Complainant and the other two shop stewards.

Complainant seeks an order (1) directing the reinstatement of the former shop stewards to their positions as stewards; (2) overturning the Board's certification of Local 1714; and (3) directing a new referendum to determine the issue of a separate chartered Local 1714.

II. Background

The relevant background of these Complaints is undisputed. Local 1714 is the exclusive representative of the DOC's employees. Prior to Local 1714's certification on April 15, 1988, this unit was represented by Local 246, which had 2,500 members including employees in the private sector.

In a letter dated March 12, 1987 from Ernest Jumalon, Secretary-Treasurer of Local 246, the Complainant and two other stewards, Richard A. Landecho and Edward L. Smith, were advised that they were being removed as shop stewards because the three allegedly interfered with agents of Local 246 in the performance of their union duties, and disseminated false and misleading information about Local 246 to the membership. The letter cites, as an example, an instance in which the steward posted notices stating that Jumalon and Local 246 wanted to divide the membership by conducting separate meetings to discuss amendments to Local 246's Bylaws. The stewards were advised that their removal was temporary pending a hearing.

On March 17, 18 and 19, 1987, the Union posted notices at the various DOC facilities, advising members of a general meeting and referendum vote to be conducted on March 22, 1987 on the question whether DOC employees should be transferred to a local comprised exclusively of them. The March 17th notice was not on Local 246's letterhead and the March 18th notice gave notice of only two meeting times. The March 19th notice was on Local 246's letterhead and gave notice of a third meeting. On March 22, 1987, eighty employees voted in the secret ballot election, the majority of whom voted in favor of the establishment of a separate local. It is undisputed that the Complainant attended the meetings and participated in the election.

Subsequent to the referendum, the Union filed a petition with the Board to amend the certification to reflect the transfer of the DOC employees to Local 1714. After an investigation by the Board, Local 1714 became the new exclusive representative of these DOC employees (Certification No. 33, PERB Case No. 84-R-09, as amended April 15, 1987).

III. Issues

The issues before the Board are 1) whether the Union's conduct was violative of the cited provisions of the Union's International Constitution or Local 246's Bylaws; and (2) if so, whether the Union thereby violated D.C. Code Section 1-618.3(a) (1); and (3) whether the Union's notice of the referendum vote violated the Standards of Conduct provisions of the CMPA by denying members their right to participate in the affairs of the Union and to fair and equal treatment under the Union's governing documents.

The Board finds that the alleged conduct of the Union did not violate these provisions of the Union's governing documents and thus provides no basis for a violation of the Standards of Conduct provisions of the CMPA.

IV. Discussion

A. Complainant's Allegations Concerning the Shop Stewards' Removal Do Not State a Violation of the International Union Constitution or Local 246 Bylaws

Forbes' Complaints and supporting documentation concerning his and two other union members' removal from the position of shop steward do not state a violation of the International Union Constitution or the Local 246 Bylaws. The provisions upon which Forbes relies, Article XIX of the Constitution and Section 40 of the Bylaws, concern only trials and appeals of local union members who are charged with violating the Union's Constitution. However, neither document requires charges as a precondition to removal from the post of shop steward. Thus, the Board cannot find that the failure of the Union to do so violates its governing documents.

Similarly, the allegation that the Union interfered with or restrained union members in exercising their "elected" right to serve the membership does not state a violation of the

International Constitution or Local 246's Bylaws. Contrary to the Complainant's assertion that the shop stewards are elected, Section 42A of Local 246's Bylaws grants to the Secretary-Treasurer the authority to appoint shop stewards and does not give stewards a stated term in office. This Bylaws provision is consistent with the International Constitution. ^{5/} Forbes, as well as the other shop stewards, thus served at the pleasure of the Secretary-Treasurer. Their removal from this position, therefore, was consistent with Local 246's Bylaws and the International Constitution.

B. Complainant's Allegations Concerning the Referendum Vote Do Not State a Violation of the International Constitution or of Local 246 Bylaws

The Union's alleged conduct involving the referendum vote does not violate the Union's International Constitution or the Local's Bylaws. Under Article VI of the Constitution, the General President has the authority to direct a secret ballot vote by membership of local unions on any matter when "in his opinion, the welfare of such membership or the subordinate body of the local Union or the International Union will be served thereby." In addition, contrary to the Complainant's contention, there is nothing in the Union's Constitution which grants the General Executive Board the sole power to conduct a referendum vote. Therefore, even assuming the correctness of the Complainant's allegation that the President, and not the General Executive Board, instituted and sanctioned the referendum, such action by the General President would not be inconsistent with the Union's International Constitution.

Moreover, neither the International Constitution nor the Bylaws requires Local 246 to give as notice a specified number of days in advance of meetings held for purposes of voting in a

^{5/} See Article XXII, Section 1 of the International Constitution and Section 33 of Local 246's Bylaws, which grants to the Secretary-Treasurer the authority to control all the affairs of the local union and its officers and employees.

referendum. Accordingly, Local 246 did not violate its Bylaws or the International Constitution by conducting a referendum vote under the circumstances alleged in the Complaint. 6/

C. The Complainant's Allegations Concerning the Referendum Do Not Otherwise State A Violation of the CMPA

The pertinent provisions of the CMPA, D.C. Code, Section 1-618.3(a)(1), provide as follows:

- a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:
 - 1) The maintenance of democratic ... provisions defining and securing the right of individual members to participate in the affairs of the organization, [and] to fair and equal treatment under the governing rules of the organization[.]

We cannot find that, as the Complainant contends, the Union violated Section 1-618.3(a) because the circumstances of the referendum "inhibited the right of individual members to participate in the affairs of the organization" and "to fair and equal treatment." We find that the amount of notice given to the members of Local 246 was sufficient to permit members of the Union to participate in the referendum vote. Notice was first posted at DOC's facilities on March 17, 1987 five (5) days before the referendum vote was scheduled to be conducted. Although the notice was not on the Union's official letterhead, the material information as to date, time and topic was clearly stated in the notice. The fact that the March 19th notice included an additional meeting location and time did not diminish the DOC Local 246 members' opportunity to attend, to debate the relevant issues

6/ Forbes' allegation that the notices of the referendum vote violated the collective bargaining agreement is not properly before the Board. A violation of the parties' collective bargaining agreement, at least under these circumstances, does not constitute a violation of the Standards of Conduct provisions of the CMPA.

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and cast their votes. To the contrary, if this additional notice had any effect on the membership, it increased the opportunities for members to participate in the election. The record discloses that the Complainant himself attended all three meetings, fully participated in the deliberative process and voted. Under these circumstances, the Board cannot find that the notice of the referendum vote denied members of the Union the right to participate in the affairs of the Union or to fair and equal treatment. 7/

The Board, having reviewed the Complaints and annexed documents, concludes that the Complaints do not state a violation of the Union's governing documents upon which they rely and do not otherwise allege actions by the Union violative of the Standard of Conduct provisions of the CMPA.

O R D E R

The Complaints are dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

November 1, 1988

7/ In so finding, we reject Complainant's urging that we adopt the notice requirement applied in the private sector under the Labor-Management Reporting Disclosure Act.