

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEES OPINION 90-009

In the Matter of

Leroy Stafford,

Complainant,

v.

Amalgamated Transit Union, Local 268,

Respondent.

CASE NUMBER: 88-EORC-08-0003

DIRECTIVE  
(Opinion attached.)

Before Chairman Sheehan and Board Member Latané: May 3, 1990.

On August 24, 1988, Leroy Stafford (Complainant) filed a noncompliance complaint against the Amalgamated Transit Union, Local 268 (Respondent) pursuant to Ohio Revised Code §4117.19 charging the Respondent with denying the Complainant an opportunity to inspect the financial records of the union. On January 30, 1990, the Respondent filed a motion to dismiss the complaint for failure of the Complainant to state a cause of action for which relief may be granted. The Board directed the case to hearing.

The Board has reviewed the record and the Hearing Officer's Recommended Determination. No exceptions were filed. For the reasons stated in the attached opinion, incorporated by reference, the Board amends Conclusion of Law No. 3 to read: "The Respondent has not complied with the provisions of O.R.C. Section 4117.19(C)(1)."; deletes Conclusion of Law No. 4; amends Recommendation No. 2 to read: "The Board denies the Respondent's Motion to Dismiss for failure to state a cause of action and directs the Respondent to comply with O.R.C. §4117.19(C)(1)"; and adopts the Hearing Officer's Conclusions of Law and Recommendations as amended. The Respondent is directed to amend its bylaws to comply with O.R.C. §4117.19(C)(1), by the earliest date feasible under the bylaws, but no later than 120 days after issuance of this order, as specified in the attached opinion.

It is so directed.

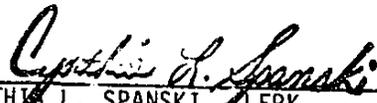
SHEEHAN, Chairman, and LATANE, Board Member, concur.

  
WILLIAM P. SHEEHAN, CHAIRMAN

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You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Common Pleas Court within fifteen days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party on this 20<sup>th</sup> day of June, 1990.

  
CYNTHIA L. SPANSKI, CLERK

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OPINION

Latané, Board Member:

I.

On August 24, 1988, Leroy Stafford (Employee), a member of a bargaining unit represented by Amalgamated Transit Union, Local 268 (Union or Local), filed an Ohio Revised Code (O.R.C.) §4117.19 noncompliance complaint with the State Employment Relations Board (Board). Stafford claimed that the Union was in violation of O.R.C. §4117.19(B) and (C)(1), (2), (3), and (4)<sup>1</sup>. In

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<sup>1</sup>O.R.C. §4117.19 provides in pertinent part:

(B) Every employee organization shall file with the board an annual report. The report shall be in a form prescribed by the board, and shall contain the following information:

(1) The names and addresses of the organization, any parent organization or organizations with which it is affiliated, and all organizationwide officers;

(2) The name and address of its local agent for service of process;

(3) A general description of the public employees the organization represents or seeks to represent;

(4) The amounts of the initiation fee and monthly dues members must pay;

Footnote continued on next page.

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essence, Stafford alleged that the Union denied him the opportunity to review its business records.<sup>2</sup>

In a separate request filed later by Stafford on March 30, 1989, he sought a Board order pursuant to O.R.C. §4117.19(F)<sup>3</sup> requiring a certified audit of the Local's financial records.

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(C) The constitution or bylaws of every employee organization shall:

(1) Require that the organization keep accurate accounts of all income and expenses, prepare an annual financial report, keep open for inspection by any member of the organization its accounts, and make loans to officers and agents only on terms and conditions available to all members;

(2) Prohibit business or financial interests of its officers and agents, their spouses, minor children, parents, or otherwise, in conflict, with the fiduciary obligation of such persons to the organization;

(3) When specifically requested by the board, require every official who is designated as a fiscal officer of an employee organization and who is responsible for funds or other property of the organization or trust in which an organization is interested, or a subsidiary organization be bonded with the amount, scope, and form of the bond determined by the board;

(4) Require periodic elections of officers by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in the elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.

<sup>2</sup>The Board deems that "accounts" in O.R.C. §4117.19(C)(1) means financial records.

<sup>3</sup>O.R.C. §4117.19(F) provides:

Upon the written request to the board of any member of a certified employee organization and where the board determines the necessity for an audit, the board may require the employee organization to provide a certified audit of its financial records.

On June 8, 1989, the Board directed the complaint to an investigative hearing. A pre-hearing conference was held on September 15, 1989, and the parties reached tentative agreement that Stafford could inspect the Union's income and expense records.

Based on this agreement, the Local's financial secretary notified Stafford in a letter dated October 26, 1989, that the Union records were available for inspection by Stafford and all other Union members at the Union's office during normal business hours Monday through Friday from 8:30 am to 5:30 pm.<sup>4</sup>

Stafford responded in a letter dated January 31, 1990. He stated that his work hours were Monday through Friday from 7:30 am to 4:00 pm and that he could not inspect all the financial records and minutes of the membership and Executive Board meetings after work. Stafford requested that the Union arrange to open its office outside the normal business hours so he could make his desired inspections.

A day earlier on January 30, 1990, the Union moved that Stafford's complaint be dismissed for failure to state a claim for which relief could be granted. The Union argued that it had complied with O.R.C. §4117.19(C) because Section 17 of its bylaws require that accounts be kept open for inspection. Furthermore, the Union claimed that SERB has no authority to render the relief requested by Stafford. Stafford did not file a response to this motion.

The hearing officer found that the ATU provided Mr. Stafford a reasonable

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<sup>4</sup>Hearing Officer's Recommended Determination (H.O.R.D.), p. 7.

opportunity to inspect the financial records of the Union Local, but that Mr. Stafford chose not to avail himself of that opportunity. He found also that the Local bylaws and the national union's constitution did comply with the provisions of O.R.C. §4117.19 and concluded that the Complainant did fail to establish a cause of action for which relief could be granted by the Board.

However, the Board, following the reasoning delineated below, hereby deletes Conclusion of Law No. 4 and amends Recommendation No. 2 to read:

The Board denies the Respondent's Motion to Dismiss for failure to state a cause of action and directs the Respondent to comply with O.R.C. §4117.19(C)(1).

Conclusion of Law No. 3 is amended to read: "The Respondent has not complied with the provisions of O.R.C. §4117.19(C)(1).

II.

The issue before this Board is whether the Union complied with O.R.C. §4117.19(C)(1). The Board agrees with the Hearing Officer that the Union made a reasonable effort to provide Mr. Stafford with access to the financial records of the organization in response to his request. However, examination of the Constitution of the national ATU and the bylaws of Local 268 reveals that neither document expressly provides the right of members to inspect financial documents required by O.R.C. §4117.19(C)(1).

This section provides, in pertinent part, that

(t)he constitution or bylaws of every employee organization shall: (r)equire that the organization keep accurate accounts of all income and expenses, prepare an annual financial report, keep open for inspection by any member of the organization its accounts .... (Emphasis Added.)

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Although the Union's international constitution and its bylaws were not included in the record, this Board is authorized to take administrative notice of both documents which are on file with SERB's Division of Research and Training. After reviewing both documents we note that neither provides for membership inspection of the Union's accounts.

Four provisions in the international union's constitution do discuss the Union's financial records and members' access to them. Specifically, Section 13.12 of the international constitution<sup>4</sup> states that

the financial secretary shall keep the books of the local union. The financial secretary shall report to the local at each meeting the amount collected from the local's members and shall make a quarterly statement of receipts, deposits, expenditures and balances, and deliver the books to the auditing committee when so desired for authentication.

Section 13.13 of the Union's international constitution<sup>5</sup> provides, in relevant part, that

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<sup>4</sup>Section 13.12 states in part that

(i)t is the duty of the financial secretary to keep the books of the L.U. [local union] .... The F.S. [financial secretary] shall keep a true and proper account between the L.U. and its members ... shall report to the L.U. at each meeting the amount collected, and shall make a quarterly statement of receipts, deposits, expenditures and balances, and deliver his or her books to the auditing committee when so desired for authentication.... (Emphasis in Original.)

<sup>5</sup>Section 13.13 provides in pertinent part that

(i)t shall be the duty of the treasurer to receive from the F.S. all monies collected by him or her. The treasurer ... shall report quarterly all monies received and paid out by him or her and submit his or her books to the auditing committee when so desired .... (Emphasis in Original.)

the treasurer shall receive from the financial secretary all monies collected. The treasurer shall report quarterly all the monies received and paid out and submit the books to the auditing committee when so desired.

Section 35.2 of the international union's constitution<sup>6</sup> requires that all local unions, at the end of a six-month period, must have an audit made of the books and accounts of the financial officer. Such audit may be made by a board of auditors, a certified public accountant or other independent accountant of unquestionable professional integrity. This report (emphasis added) shall be available to the membership.

According to Section 35.4, the six month report will specify the amount of money on hand at the end of the last audit, dues money, assessments, initiations, and income from all other sources. The report must also include expenditures for enrollment fees, per capita tax, supplies from the international office, and the amount spent for other purposes. The report must include a bank statement stating the amount on deposit and the number of members initiated and suspended.

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<sup>6</sup>Section 35.2 states that

(l)ocal (u)nions . . . at the end of each six months shall have an audit made of the books and accounts of the financial officer. This audit may be made as provided under Section 35.3 of the Constitution and General Laws [Section 35.3 establishes that the board of auditors who audit the books, bills and accounts of the financial officers of the L.U.s shall consist of the president and three (3) members who shall either be elected or appointed by the president of the L.U.] by a certified public accountant or other independent accountant of unquestioned professional integrity, which report shall be available to the membership ....

These four provisions in the international constitution are most pertinent to the question of whether the constitution requires that the Union keeps its accounts open for membership inspection. None of these four sections nor any other part of the constitution require membership access to the financial accounts of the Union. The constitution only provides that members can review audit reports conducted every six months.

The Union cited Section 17 of its bylaws as the provision that requires that the Union's accounts be open for inspection. A close reading of Section 17 shows that, in pertinent part,

(t)he Financial Secretary shall ... receive and receipt all monies due the Organization. He shall ... keep his books, records and accounts in perfect order and open to inspection by a firm of Certified Public Accountants no less than once every six months, also by the Executive Board at any time they desire. He shall perform such other duties as the Association may instruct or are required of him by the General Laws .... (emphasis Added.)

Section 17 only requires that a C.P.A. firm and the Union's Executive Board be able to review the financial records. That portion of Section 17 which requires that the Local's financial secretary must perform such "duties as ... required of him by the General Laws" only requires that the financial secretary perform duties designated by the international constitution and its general laws. As previously discussed, there is no provision in the constitution that mandates membership inspection of the Union's financial records.

O.R.C. §4117.19(C)(1) requires that the constitution or bylaws include specific wording which states that the Union must allow its members to inspect its accounts. While the language of Section 35.2 of the international

constitution provides that the audit report shall be available to the membership, it does not comply with strict interpretation of O.R.C. §4117.19(C)(1), requiring that the accounts must be open to membership inspection.

Section 17 of the bylaws requires only that the books, records and accounts be open only to a C.P.A. firm and to the Executive Board of the Local. Thus, neither the international constitution nor the bylaws make it a requirement that the local union open its accounts to its membership.

The Union's offer to open its books for Stafford's inspection is not adequate to comply with O.R.C. §4117.19(C)(1). A verbal offer by Union officials to allow members to review the records can not be considered compliance with O.R.C. §4117.19(C)(1) which states unequivocally that either the constitution or the bylaws must require that the organization keep its accounts open for inspection by any member.

For these reasons, the Board finds that the Union has not complied with O.R.C. §4117.19(C)(1).

The Union argues that even assuming that the Union violated O.R.C. §4117.19(C)(1), O.R.C. §4117.19 does not provide a remedy for such a violation. However, O.R.C. §4117.19(E) provides in part that,

(t)he board may withhold certification of an employee organization ... that willfully refuses to comply with other provisions of this section. The board may revoke a certification of an employee organization for willfully failing to comply with this section.... (Emphasis Added.)

Thus, there is a remedy for willful violation of O.R.C. §4117.19.

The local Union's bylaws must codify the right to inspection of the Union's accounts by its members. This Board directs Local 268 of the

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Amalgamated Transit Union to amend its bylaws to comply with O.R.C. §4117.19(C)(1), by the earliest date feasible under the bylaws, but no later than 120 days after issuance of this order.<sup>7</sup>

For these reasons, the Union's Motion to Dismiss is denied.

Sheehan, Chairman, concurs.

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<sup>7</sup>Section 13.3 provides in relevant part that amending the bylaws require that the amendment be read at two regular meetings of the local union. A two-thirds vote of the membership in attendance is necessary at the second meeting in order to adopt the amended bylaw. This bylaw must be approved by the international president of the Amalgamated Transit Union before it can go into effect. If this 120-day deadline creates time problems, then the Employee Organization should notify this board which will appropriately extend the deadline.