

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

Amalgamated Transit Union and Amalgamated Transit Union Local 627,

Respondents.

CASE NUMBER: 93-ULP-10-0584

OPINION

POHLER, Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("SERB") upon the filing of exceptions and cross-exceptions to the Hearing Officer's Proposed Order issued on May 16, 1995. For the reasons below, we find that SERB is precluded from acting on the allegations in the complaint at issue because the U.S. Department of Labor has exclusive jurisdiction over post-election challenges of internal union elections, pursuant to the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. § 401 et seq. Thus, the Supremacy Clause of the United States Constitution requires deferral to the U.S. Department of Labor's jurisdiction.

I. BACKGROUND

On October 20, 1993, Edward Fischer filed an unfair labor practice ("ULP") charge with SERB. By a directive issued September 30, 1994, SERB found probable cause existed for alleged violations of Ohio Revised Code ("O.R.C.") §§ 4117.11(B)(1) and 4117.19(C)(4) and dismissed an alleged O.R.C. § 4117.11(B)(6) violation for lack of probable cause. By a directive issued November 17, 1994, SERB amended its previous finding of probable cause by deleting the O.R.C. § 4117.19(C)(4) allegation and directed this matter to hearing. On December 1, 1994, SERB issued a Complaint against Amalgamated Transit Union ("International") and Amalgamated Transit Union, Local 627 ("Local 627"). The complaint

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alleges that the International and Local 627 violated O.R.C. § 4117.11(B)(1) by denying the charging party the right to seek union office through another run-off election after it was discovered that there had been election discrepancies in the first run-off and after a majority of the union membership had voted for a second run-off.

On December 9, 1994, the Respondents filed an answer to the complaint denying that election improprieties occurred. They also filed a motion to dismiss the complaint in its entirety or, alternatively, to dismiss the International as a party. Also on December 9, 1994, Complainant filed a memorandum contra to the Respondent's motion to dismiss. The motion was transmitted from the hearing officer to the Board.

By a directive dated December 15, 1994, these submissions were remanded to the Hearings Section to "hold a hearing, if necessary; to make a recommendation to the Board on the motion to dismiss; and, if the recommendation is not dispositive of the matter, to hold a hearing, as soon as administratively feasible, and make a recommendation on the merits of the complaint." On January 20, 1995, the parties filed a joint motion to submit the case for decision on stipulations and exhibits. This motion was granted, and the parties submitted stipulations, exhibits and briefs on January 27, 1995.¹ On February 6, 1995, the parties jointly filed a motion for leave to file responsive briefs. This motion was also granted, and responsive briefs were filed on February 13, 1995.

On May 16, 1995, the Hearing Officer's Proposed Order was issued concerning four issues, including the threshold issue of whether SERB has subject matter jurisdiction over this case.² Since the resolution of the first issue is determinative of this matter, the remaining issues do not need to be addressed.

¹On December 13, 1994, the charging party filed a motion to intervene. The motion was subsequently granted, but he did not file a brief.

²The four issues raised in the motions and addressed in the Hearing Officer's Proposed Order were: (1) whether SERB has subject matter jurisdiction over this case; (2) whether the complaint states a claim upon which relief can be granted under Chapter 4117; (3) whether SERB has jurisdiction over the International; and (4) whether the Employee Organizations are estopped from denying SERB's jurisdiction.

IV. ANALYSIS AND DISCUSSION

The Respondents contend the factual basis of the complaint lies within the sole and exclusive jurisdiction of the United States Department of Labor under the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. § 401 *et seq.* ("LMRDA"). The Complainant counters that SERB has exclusive subject matter jurisdiction over unfair labor practice cases. The Respondents correctly assert this case essentially involves post-election challenges; federal jurisdiction over post-election challenges is exclusive; and, therefore, the Supremacy Clause of the United States Constitution requires deferral to the U.S. Department of Labor's jurisdiction.

A. Whether The International And Local 627 Are "Labor Organizations" Under The LMRDA

The first issue to resolve is whether the International and Local 627 are "labor organizations" under the LMRDA. The LMRDA [29 U.S.C. § 402(i) and (j)] defines and discusses "labor organization" as follows:

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment. . . .

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it--

- (1) is the certified representative of employees under the provisions of the National Labor Relations Act . . .
- (3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2);

On April 13, 1993, prior to Local 627's union election, the National Labor Relations Board ("NLRB") certified Local 627 to represent certain employees of Mayflower Contract Services, Inc.³ Even though Local 627 also represents public employees, e.g., Southwest Ohio Regional Transit Authority's employees, the NLRB certification places Local 627 squarely within the definition of "labor organization" under the LMRDA. Local 627 is required to file, and has indeed filed, the appropriate labor organization reports under Title II of the LMRDA as a "labor organization" under the Act.⁴ Moreover, Local 627 Union Financial Secretary Sharon Anderson was advised by the U.S. Department of Labor in 1994 that: (1) because Local 627 had represented private employees in 1993, Local 627 owed a Labor Organization Report for 1993, and (2) Local 627's union election fell under the jurisdiction of the U.S. Department of Labor.⁵

Numerous courts have considered the issue of whether "mixed locals," that is, unions representing both private and public employees, are labor organizations under the LMRDA. These courts have universally held that "mixed locals" are covered by the LMRDA. In *Hester v. International Union of Operating Engineers*, 818 F.2d 1537, 125 L.R.R.M. 2994 (11th Cir. 1987), modified, 830 F.2d 172, 126 L.R.R.M. 2786 (11th Cir. 1987), rev'd on other grounds, 488 U.S. 1025, 130 L.R.R.M. 2272 (1989), a union member was working for the Tennessee Valley Authority, a public entity, at the time of his dispute with the unions. The union admitted that they also represented employees working in private industry. The court wrote:

[W]e find it unlikely that Congress would create a statutory scheme making a labor union subject to the LMRDA only if the particular transaction in question involved a member who was working for a private employer. Congress acted in the public interest to protect workers whose unions are susceptible to corrupt leadership -- unions that deal with private employers, to whatever extent, and which are thus afforded power by federal labor law. We know of no case that says a particular union is a "labor organization" under the LMRDA as to one member, working for the private sector, but not a "labor organization" under the LMRDA as to another member, working for the government.

³ Respondents' Exhibit 1.

⁴ Stipulation No. 9.

⁵ Stipulation No. 9; Appendix A, ¶¶ 3 and 5.

* * *

The union . . . is "mixed." Its internal affairs are thus regulated by the LMRDA, even as to its relationship with a member like Hester, who at the time of his dispute with IUOE and the locals was working for a public entity.

Id. at 1541, 1543, 125 L.R.R.M. at 2997, 2998 (footnotes omitted).

In *National Education Assn. v. Marshall*, 100 L.R.R.M. 2565, 2566 (D.D.C. 1979), the U.S. District Court rejected the employee organizations' efforts to escape coverage of the LMRDA on the ground that their private sector activities constituted "only a very small fraction of their activities, considerably less than one percent." There, the court wrote: "It is not material that plaintiffs' private sector activities are thus limited. The purpose of the LMRDA is to protect vital public interests and to protect the interest of private sector union members in relations with their unions. In view of this purpose the principle of *de minimis* cannot apply." *Id.* at 2565-2566.⁹

These decisions all rest in part on, and are in complete accord with, the U.S. Department of Labor regulations, which state in pertinent part:

A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act. . . . However, in the case of a national, international or intermediate labor organization composed both of government locals and non-government locals or *mixed locals*, the parent organization *as well as the mixed and non-government locals would be "labor organizations" and subject to the Act.*" 29 C.F.R. § 451.3(a)(4)(1985) (emphasis added).

The International, having chartered Local 627 and numerous other local unions which represent private employees, is, like the "mixed local" in this case, also a "labor organization" as defined by the LMRDA.

⁹*Accord, Wright v. Baltimore Teacher's Union*, 369 F. Supp. 848 (D. Md. 1974), 85 L.R.R.M. 2245; *Laity v. Beatty*, 766 F. Supp. 92, 141 L.R.R.M. 2711 (W.D.N.Y. 1991), *aff'd*, 956 F.2d 1160, 143 L.R.R.M. 2936 (2nd Cir. 1992); *Kennedy v. Metropolitan Suburban Bus Authority*, 102 L.R.R.M. 2088 (E.D.N.Y. 1979).

B. Exclusivity Of The U.S. Department Of Labor's Jurisdiction

The preemption doctrine establishes the supremacy of federal law when a conflict exists between federal and state regulation. This doctrine is rooted in the Supremacy Clause in Article VI of the United States Constitution, which states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land" This doctrine has two levels of analysis. The first level looks at whether Congress has acted on a subject so that there is an actual or potential conflict between federal and state law. Thus, when an activity is arguably protected or prohibited by federal law, the states must defer to the exclusive jurisdiction of the federal entity having oversight responsibilities. The second level of analysis focuses on whether Congress has intended the activity to be left unregulated so that the area would be left "to be controlled by the free play of economic forces."⁷ The courts, in addition, have recognized that the states have areas of concurrent jurisdiction with the federal government and may regulate traditionally local matters,⁸ matters of intense local concern⁹ and matters that are of peripheral concern to federal interests.¹⁰ The U.S. Supreme Court has stated, "We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several States in that regard." *Allen-Bradley Local v. Wisconsin Board*, *supra* at 749, 10 L.R.R.M. at 524.

The LMRDA was Congress' first major attempt to regulate the internal affairs of labor unions. Congress, concerned that the substantial power vested in labor organizations might lead to abuse, attempted to safeguard union democracy by including a comprehensive scheme

⁷*Machinists Lodge 76 v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 92 L.R.R.M. 2881(1976).

⁸*Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740, 10 L.R.R.M. 520 (1942).

⁹*United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 34 L.R.R.M. 2229 (1954); *Building Trades Council (San Diego) v. Garmon*, 359 U.S. 236, 43 L.R.R.M. 2838, 2841 (1959).

¹⁰*International Association of Machinists v. Gonzales*, 356 U.S. 617, 42 L.R.R.M. 2135 (1958); *Garmon*, *supra* at 2841.

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for regulating union elections in the LMRDA. Title I of the LMRDA establishes a statutory "Bill of Rights" for union members, including various protections for members involved in union elections, with enforcement and appropriate remedies available in district court. Title IV, in contrast, establishes an elaborate post-election procedure aimed at protecting free and democratic union elections, with primary responsibility for enforcement lodged with the Secretary of Labor.

Title IV, § 401 of the LMRDA establishes substantive rules governing union elections, while Title IV, § 402 provides a comprehensive procedure for enforcing those rules. A union member alleging a violation of Title IV may, after exhausting any internal remedies available under the union's constitution and bylaws, initiate the enforcement procedure by filing a complaint with the Secretary of Labor who "shall investigate" the complaint. If the Secretary finds probable cause to believe that a violation has occurred, the Secretary shall "bring a civil action against the labor organization" in federal district court to set aside the election if it has already been held and to direct and supervise a new election. For elections not yet conducted, the LMRDA provides that existing rights and remedies apart from the statute are not affected. However, for an election already conducted, the statute is clear and unambiguous: "The remedy provided by this subchapter for challenging an election already conducted shall be exclusive." 29 U.S.C. § 483 [Title IV, § 403, LMRDA] (emphasis added). The U.S. Supreme Court has explained that Congress made suit by the Secretary the "exclusive" post-election remedy for two principal reasons: "[T]o protect unions from frivolous litigation and unnecessary judicial interference with their elections, and (2) to centralize in a single proceeding such litigation as might be warranted with respect to a single election." *Trbovich v. Mine Workers*, 404 U.S. 528, 532, 79 L.R.R.M. 2193, 2194 (1972). In reviewing the legislative history of this provision, the U.S. Supreme Court stated, "Thus, when the Senate Committee reported out the Kennedy-Ervin bill . . . , it is reasonable to infer that the Committee, and later the Senate, regarded the provision for exclusive enforcement by the Secretary as a device for eliminating frivolous complaints and consolidating meritorious ones." *Id.* at 535, 79 L.R.R.M. at 2195.

The U.S. Supreme Court has twice specifically addressed the exclusivity of Title IV's remedial scheme. In *Furniture Moving Drivers v. Crowley*, 467 U.S. 526, 543, 116 L.R.R.M.

2633, 2640 (1984), the Court stated: "Congress clearly intended to lodge exclusive responsibility for post-election suits challenging the validity of a union election with the Secretary of Labor. The legislative history of Title IV consistently echoes this theme." See also, *Calhoon v. Harvey*, 379 U.S. 134 (1964).

Other courts, consistent with the reasoning in the cases cited above, have found their jurisdiction to be preempted, even though the actions filed allegedly raised something other than a post-election challenge. The U.S. Court of Appeals, Second Circuit, held that state tort claims were preempted by Title IV of the LMRDA in *McBride v. Rockefeller Family Fund*, 612 F.2d 34 (2nd Cir. 1979), 502 L.R.R.M. 2830, cert. denied, 445 U.S. 951 (1980). In *Brown v. American Arbitration Association*, 717 F. Supp. 195, 199 (S.D.N.Y. 1989), the U.S. District Court held the LMRDA completely preempted a breach of contract action. Thus, it is clear that the intent of Congress in enacting the LMRDA was to create exclusive jurisdiction in the federal government and not to create any concurrent jurisdiction over these matters in the states.

C. SERB's Jurisdiction Over Unfair Labor Practice Charges

SERB has exclusive jurisdiction over unfair labor practice charges. *Franklin County Sheriff's Dept v. F.O.P., Capital City Lodge No. 9*, (1991) 59 Ohio St.3d 173, 1991 SERB 4-85. However, the issue here is not whether SERB has jurisdiction over unfair labor practices, but whether SERB's jurisdiction, even if established, is preempted. The allegations in the complaint go to the conduct of Local 627's internal election of officers and are based upon the charge regarding the run-off election. The charging party seeks to challenge Local 627's internal election *after* the election had been conducted. Any post-election challenge by SERB, even if couched as an unfair labor practice, is preempted under Title IV of the LMRDA. Since the election in this case has already occurred, the U.S. Department of Labor has exclusive jurisdiction over this matter.

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III. CONCLUSION

For the reasons given above, SERB is precluded from acting on the allegations in the complaint at issue. This case involves post-election challenges of internal union elections over which the federal jurisdiction is exclusive and rests with the U.S. Department of Labor, pursuant to the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. § 401 *et seq.* Thus, the Supremacy Clause of the United States Constitution requires deferral to the U.S. Department of Labor's jurisdiction.

Pottenger, Vice Chairman, and Mason, Board Member, concur.

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