

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Amalgamated Transit Union, Local 268,

Respondent.

Case No. 2008-ULP-11-0495

2010 AUG 12 P 1:20
STATE EMPLOYMENT
RELATIONS BOARD

ORDER
(OPINION ATTACHED)

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada: August 12, 2010.

On November 17, 2008, Terry McGrady filed an unfair labor practice charge against the Amalgamated Transit Union, Local 268 ("Respondent"). On April 23, 2009, the State Employment Relations Board ("Board" or "Complainant") dismissed Mr. McGrady's unfair labor practice charge, which alleged that ATU Local 268 violated Ohio Revised Code ("O.R.C.") § 4117.11(B)(1) by denying him his right to run for union office. On June 15, 2009, Mr. McGrady filed a motion for reconsideration of the dismissal of his unfair labor practice charge. On December 17, 2009, the Board, upon review of the original investigation and the new information submitted, determined that probable cause existed for believing that Respondent had committed or was committing unfair labor practices in violation of O.R.C. § 4117.11(B)(1), authorized the issuance of a complaint, and referred the matter to hearing.

On February 24, 2010, a Complaint was issued. An Answer was filed by Respondent on April 22, 2010. On April 29, 2010, a hearing was conducted by an Administrative Law Judge. On June 22, 2010, the Administrative Law Judge's Proposed Order was issued, recommending that the Board find that Respondent violated O.R.C. § 4117.11(B)(1). On July 13, 2010, Respondent filed exceptions to the Proposed Order. On July 23, 2010, Counsel for Complainant filed a response to the exceptions.

After reviewing the unfair labor practice charge, Complaint, Answer, Proposed Order, exceptions, responses to exceptions, and all other filings in this case, the Board

adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Administrative Law Judge's Proposed Order, finding that Respondent violated Ohio Revised Code § 4117.11(B)(1) by denying Terry McGrady the right to run for union office.

The Amalgamated Transit Union, Local 268 is ordered to:

A. Cease and desist from:

Restraining or coercing Terry McGrady in the exercise of his rights guaranteed in Ohio Revised Code Chapter 4117 by disparately applying the International President's formal ruling on Mr. McGrady's eligibility for candidacy for Union office, by not giving deference to the Union membership's interpretation of the eligibility requirements for candidates for Union office, and by otherwise violating Ohio Revised Code § 4117.11(B)(1).

B. Take the following affirmative action:

- (1) Conduct a new election for the position of Executive Board Member of Triskett Operations to cover the remainder of the current term, listing only Terry McGrady and Joel Gulley as eligible candidates;
- (2) Cooperate with the SERB appointed Elections Monitor, Craig Young, in scheduling and conducting a re-run election within thirty (30) days of the date of this Order between the two individuals who were nominated for the position of Executive Board Member, Triskett Operations, to wit: Terry McGrady and Joel Gulley; immediately upon the tallying of the election results the successful candidate shall assume the position of Executive Board Member, Triskett Operations, and shall serve the remainder of the 2008 term that commenced January 1, 2009;
- (3) Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit members represented by the Amalgamated Transit Union, Local 268 members work, the Notice to Employees furnished by the State Employment Relations Board stating that the Amalgamated Transit Union, Local 268, shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and

- (4) Notify the State Employment Relations Board in writing within twenty calendar days from the date the order becomes final of the steps that have been taken to comply therewith.

It is so ordered.

BRUNDIGE, Chairperson; VERICH, Vice Chairperson; and SPADA, Board Member, concur.



N. EUGENE BRUNDIGE, CHAIRPERSON

TIME AND METHOD TO PERFECT AN APPEAL

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal setting forth the order appealed from and the grounds of appeal with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order. A copy of the notice of appeal must also be filed with the State Employment Relations Board, at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Administrative Code Rule 4117-7-07.

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary mail, this 12th day of August, 2010.



SANDRA A.M. IVERSEN, ADMINISTRATIVE ASSISTANT

NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD



POSTED PURSUANT TO AN ORDER OF THE STATE EMPLOYMENT RELATIONS BOARD, AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this notice. We intend to carry out the order of the State Employment Relations Board and to do the following:

A. CEASE AND DESIST FROM:

Restraining or coercing Terry McGrady in the exercise of his rights guaranteed in Ohio Revised Code Chapter 4117 by disparately applying the International President's formal ruling on Mr. McGrady's eligibility for candidacy for Union office, by not giving deference to the Union membership's interpretation of the eligibility requirements for candidates for Union office, and by otherwise violating Ohio Revised Code § 4117.11(B)(1).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Conduct a new election for the position of Executive Board Member of Triskett Operations to cover the remainder of the current term, listing only Terry McGrady and Joel Gulley as eligible candidates;
- (2) Cooperate with the SERB appointed Elections Monitor, Craig Young, in scheduling and conducting a re-run election within thirty (30) days of the date of this Order between the two individuals who were nominated for the position of Executive Board Member, Triskett Operations, to wit: Terry McGrady and Joel Gulley; immediately upon the tallying of the election results the successful candidate shall assume the position of Executive Board Member, Triskett Operations, and shall serve the remainder of the 2008 term that commenced January 1, 2009;
- (3) Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit members represented by the Amalgamated Transit Union, Local 268 members work, the Notice to Employees furnished by the State Employment Relations Board stating that the Amalgamated Transit Union, Local 268, shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (4) Notify the State Employment Relations Board in writing within twenty calendar days from the date the order becomes final of the steps that have been taken to comply therewith.

SERB v. Amalgamated Transit Union, Local 268, Case No. 2007-ULP-09-0516

BY

DATE

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD, :
 :
 Complainant, : CASE NO. 2008-ULP-11-0495
 :
 v. :
 :
 AMALGAMATED TRANSIT UNION, :
 LOCAL 268, : PROPOSED ORDER
 :
 Respondent. :

I. INTRODUCTION

On November 17, 2008, Terry McGrady filed an unfair labor practice charge against the Amalgamated Transit Union, Local 268 (the "Union"), alleging that the Union violated Ohio Revised Code § 4117.11(B)(1).¹ On April 23, 2009, the State Employment Relations Board ("SERB" or "Complainant") dismissed the charge. On June 15, 2009, Mr. McGrady filed a motion for reconsideration. On December 17, 2009, SERB granted the motion for reconsideration and found probable cause to believe that the Union violated § 4117.11(B)(1) by denying Terry McGrady's right to run for Union office and appealing the Union membership's decision to allow Mr. McGrady to run in a rerun election.

On February 24, 2010, a complaint was issued. A hearing was held on April 29, 2010, wherein testimonial and documentary evidence was presented. Subsequently, both parties filed post-hearing briefs.

II. ISSUES

1. Whether the Union violated § 4117.11(B)(1) by denying Mr. McGrady's right to run for Union office.
2. Whether the Union violated § 4117.11(B)(1) by appealing the Union membership's decision to allow Mr. McGrady to run in a rerun election.

¹ All references to statutes are to the Ohio Revised Code, Chapter 4117, unless otherwise indicated.

III. FINDINGS OF FACT²

1. The Greater Cleveland Regional Transit Authority (“GCRTA”) is a “public employer” as defined by § 4117.01(B). (S.)
2. The Amalgamated Transit Union (“ATU”), Local 268 (“Union”), is an “employee organization” as defined by § 4117.01(D) and is the deemed-certified bargaining representative of certain employees of GCRTA. (S.)
3. Terry McGrady is an employee of GCRTA, a member of the bargaining unit represented by the Union, and a “public employee” as defined by § 4117.01(C). (S.)
4. The Union and GCRTA were parties to a collective bargaining agreement effective from August 1, 2006 through July 31, 2009 (“CBA”), which contained a grievance process that culminated in binding arbitration. (S.)
5. Section 4 of the Union’s Constitution and Bylaws requires candidates for Union office to be in continuous good standing for two years and to have attended at least six regular meetings in each of the two years preceding the election. (S.)
6. The Union canceled two regular meetings during 2007. Section 13.3 of the ATU International Constitution and Bylaws provides that if the Local seeks permission from the International President (“IP”) to not hold a regular meeting and the IP grants the request, all Local members will be granted credit for attendance at that meeting for the purpose of eligibility for office. (S.)
7. Section 14.8 of the ATU International Constitution and Bylaws allows challenges to the conduct and results of an election. Any member who is entitled to vote may challenge the conduct or results of an election by filing a challenge within 10 days of the counting of the ballots with the incumbent Secretary Treasurer of the Union. The Secretary Treasurer shall submit the challenge for decision to the Union Executive Board, subject to final ruling by the Union membership. (S.)

² References in the record to the Joint Stipulations of Fact filed by the parties are indicated parenthetically by “S.” References to the Joint Exhibits in the record are indicated parenthetically by “Jt. Exh.,” followed by the exhibit number(s). References to the Respondent’s Exhibits in the record are indicated parenthetically by “R. Exh.,” followed by the exhibit number(s). References to the digital recording of the evidentiary hearing are indicated parenthetically by the witness’ name and approximate timing point. References to the record in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for the related Finding of Fact.

8. Under Section 23 of the ATU International Constitution and Bylaws, any member who believes he or she has received unfair treatment from the Union has the right of appeal from the Union's final decision to the IP, from the IP to the General Executive Board ("GEB"), and from the GEB to the regular Convention of the ATU International. Under Section 23, all appeals must be forwarded through the IP. (S.)

9. In early November 2008, Mr. McGrady announced that he was running for the office of Executive Board Member, Triskett Operations. On November 13, 2008, the three-member Union Scanning Committee determined Mr. McGrady was ineligible to run for office because he was credited with attendance at only three meetings in 2007, the first of the two years preceding the election. (S.)

10. The Scanning Committee determined that members Wayne Bender, Michael Carlisle, Tina Johnson, Charles Spivey and Tim DeFranco were ineligible to run for their respective offices because of their failure to attend the requisite six meetings. (Jt.Exh. 3)

11. The Scanning Committee also determined that another member, Willie Lawson, was ineligible to run for the office of Executive Board Member, Rail Operations, due to his failure to attend the requisite six meetings; however, the committee allowed Mr. Lawson to run for office for the stated reason that he "was the only nominated candidate for the position." Subsequently, Mr. Lawson was installed as an Executive Board Member. (S.)

12. The Scanning Committee had credited Mr. McGrady with attendance at three meetings in 2007: the February and September 2007 canceled meetings for which all members were given credit, and the November 2007 meeting. On November 14, 2008, Mr. McGrady was permitted to meet with Union Secretary Treasurer Roger Kwiatkowski to review the attendance rosters for 2007. Mr. Kwiatkowski acknowledged at least one additional meeting, in October 2007, that Mr. McGrady had attended but had not been given credit for by the Scanning Committee. This increased Mr. McGrady's credited meeting attendance for 2007 from three to four meetings. Mr. McGrady informed Mr. Kwiatkowski that he physically attended both the July and August 2007 meetings. However, because he did not fill out an attendance card at either of these meetings, they were not counted. (S.; McGrady, 17:47-34:29)

13. A primary election was held on December 2, 2008, and a general election was held on December 16, 2008. Mr. McGrady's name was not on either ballot. (S.)

14. On December 23, 2008, Mr. McGrady filed a challenge to the conduct and results of the election pursuant to his right under Section 14.8 of the ATU International Constitution. Mr. McGrady copied the IP on the correspondence. (S.)

15. Mr. McGrady challenged the election on two grounds: (1) that he had attended the requisite six meetings in 2007, and (2) that he was treated less favorably than Mr. Lawson, who did not meet the attendance requirement but ran unopposed for a different Executive Board position. In accepting his challenge, the Union membership agreed that Mr. McGrady had actually attended the July and August 2007 meetings. Consequently, the Union membership concluded that Mr. McGrady had met the six-meeting attendance requirement and was an eligible candidate. (McGrady, 46:00-48:00)

16. On January 13, 2009, the Union Executive Board met and voted not to accept Mr. McGrady's challenge to the election. However, on the same night, the Union membership voted to accept Mr. McGrady's challenge to the election. A re-run election was to be held with Mr. McGrady's name on the ballot for Executive Board Member, Triskett Operations. (S.)

17. On January 15, 2009, before a rerun election was held, Secretary Treasurer Kwiatkowski appealed the membership's decision upholding Mr. McGrady's challenge. Mr. Kwiatkowski sent two separate appeals to the IP: one in his capacity as Union Secretary/Treasurer and the other purportedly on behalf of the Union membership. Also, on January 27, 2009, Union member Joel Gulley, who had been elected without opposition to the position of Executive Board Member, Triskett Operations, appealed the membership's decision pertaining to Mr. McGrady to the IP. (S.)

18. The IP dismissed Mr. Kwiatkowski's appeal on behalf of the membership for lack of standing. On February 25, 2009, the IP sustained both Mr. Kwiatkowski's and Mr. Gulley's individual appeals and determined that Mr. McGrady was ineligible to run for office. The IP found that Mr. McGrady had never claimed he missed meetings due to his work schedule and that even if Mr. McGrady was given credit for the two (2) canceled meetings in 2007, he would still fall short of the attendance requirement. (S.)

19. The IP applied his interpretation of Sections 13.3 and 14.2 of the ATU International Constitution and Bylaws in rendering his decision. Section 13.3 provides that if a local union seeks permission from the IP to not hold a regular meeting and the request is granted, all Union members will be granted credit for attendance at that meeting for the purpose of eligibility for office. Section 14.2 allows a local union to give a Union member credit for a missed meeting if the Union member's regular work schedule prevented his or her attendance, provided that the member requests the credit within ten days following the meeting. But Section 14.2 further states that a member who has attended five or fewer meetings in one of the preceding two years is ineligible to run for office unless he or she was excused from or granted credit for "each and all of the remaining regular" meetings. The IP reasoned that in order to meet the six-meeting requirement, Section 14.2 requires actual physical attendance instead of credit granted for attendance. Therefore, even if Mr. McGrady had actually attended the July and

August 2007 meetings as the Union membership had concluded, this still placed his actual 2007 attendance at only four meetings. Mr. McGrady did not produce evidence that he had been excused from or granted credit for attendance at each of the other regular meetings in 2007. Thus, according to the IP, the Union membership could not bring Mr. McGrady's 2007 meeting-attendance total to six meetings by using his credits for the two canceled meetings. (Jt. Exh 16)

20. On or about March 30, 2009, Mr. McGrady sent a "request for reconsideration of: IP's formal ruling on appeals of Kwiatkowski and Gulley (Election Challenges of DeFranco and McGrady); Alternatively Appeal to the General Executive Board." (S.)

21. On or about April 8, 2009, the IP issued a letter in response to Mr. McGrady's request for reconsideration. In his letter, the IP wrote, in relevant part, that "it [was] not appropriate for [McGrady] to invoke and participate in the appellate procedures set forth under Section 23 of the ATU Constitution and General Laws because McGrady had filed a legal action with the State Employment Relations Board." Consequently, Mr. McGrady exhausted all of his internal union remedies. (S.)

22. On April 23, 2009, SERB dismissed Mr. McGrady's unfair labor practice charge for lack of probable cause. (S.)

23. On June 15, 2009, Mr. McGrady filed a motion for reconsideration of SERB's dismissal of his ULP charge on the grounds that he had requested reconsideration of the IP's ruling and had received the April 8, 2009 response informing him that because he had filed a charge with SERB he could not invoke appellate procedures under Section 23 of the ATU International Constitution and Bylaws. (S.)

24. On December 17, 2009, upon review of the original investigation and the new information submitted, SERB determined that probable cause existed for believing that ATU Local 268 had committed or was committing unfair labor practices, authorized the issuance of a complaint, and referred the matter to hearing. (S.)

IV. ANALYSIS AND DISCUSSION

A. Relevant Statutes and Decisions

Section 4117.11 provides in relevant part as follows:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code.

Because § 4117.11(B)(1) is analogous to § 4117.11(A)(1) in that it prohibits restraining or coercing employees in the exercise of rights guaranteed in Chapter 4117, SERB has found it appropriate to assess § 4117.11(B)(1) allegations in the same manner as § 4117.11(A)(1) allegations. SERB utilizes an objective case-by-case analysis to assess whether particular conduct violates § 4117.11(A)(1). In re Pickaway County Human Services Dept., SERB 93-001 (3-24-93). Similarly, when a § 4117.11(B)(1) violation is alleged, SERB will determine whether, under all the facts and circumstances, one could reasonably conclude that employees were restrained or coerced, or that their rights under § 4117.03 were interfered with. In re Amalgamated Transit Union, Local 268, SERB 93-013 (6-25-93)(“In re ATU”). It has not been SERB’s practice to unnecessarily interfere in internal union affairs. However, this practice does not absolve employee organizations from their statutory obligations to their membership. In In re ATU, supra at 3-82, SERB explained its approach as follows:

Internal union policies or practices that violate rights protected under Chapter 4117 are not immune from scrutiny as violations of O.R.C. § 4117.11(B)(1) simply because they arise in the course of internal union affairs. Rather, union practices which coerce employees in the exercise of their statutory rights will be as closely scrutinized as employer practices alleged to violate O.R.C. § 4117.11(A)(1).

Before SERB considers the merits of an alleged § 4117.11(B)(1) violation, internal union remedies must be exhausted. In re ATU, supra. At the same time, SERB has recognized the 90-day statute of limitations for filing unfair labor practice charges. A matter may not be resolved through internal union means within this period. Accordingly, SERB advised charging parties to file such charges in a timely manner, with the understanding that they may be held in abeyance pending exhaustion of internal union remedies. Id. Mr. McGrady’s unfair labor practice charge is now ripe for review, as it was timely filed and the parties have stipulated that his internal union remedies have been exhausted.³

Section 4117.03(A)(1) guarantees public employees the right to participate in an employee organization of their choosing. Participation in an employee organization includes the right to seek office within the organization. In re ATU, supra. Section 4117.19 requires that every employee organization file with SERB a registration report accompanied by copies of the organization’s constitution and bylaws. Section 4117.19(C)(4) confirms the right to seek office, providing the following:

³ F.F. 22.

The constitution or bylaws of every employee organization shall 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.

As is fully set forth below, under the totality of the facts and circumstances, the Union's actions interfered with and restrained Mr. McGrady in his exercise of the right to seek local union office, in violation of § 4117.11(B)(1). By interpreting Section 14.2 as requiring "actual" attendance at six meetings, the IP overturned the Union membership's decision that Mr. McGrady did in fact comply with the meeting-attendance requirements. The IP's interpretation of Section 14.2 would also eliminate the candidacy of Mr. McGrady's opponent, Mr. Gulley. The Union utilized the IP's interpretation of Section 14.2 to overturn Mr. McGrady's challenge to the election and prevent him from being a candidate for the Union office of Executive Board Member, Triskett Operations. However, the Union utilized its local practice of using meeting-cancellation credit toward the requisite six meetings to allow Mr. Gulley to run unopposed for that office. This unequal application of the meeting-attendance requirement interfered with and restrained Mr. McGrady in his effort to run for Union office.

SERB may examine analogous federal precedent for guidance in first-impression cases. The United States Supreme Court has ruled that union elections are to be modeled after general elections, and that the local union membership is the best judge of whether a candidate is qualified. Wirtz v. Hotel, Motel and Club Emp. Union Local 6, 391 U.S. 492, 499-502 (1968). "Congress plainly did not intend that the authorization... of 'reasonable qualifications...' should be given a broad reach." Id. at 499. Eligibility qualifications should be construed narrowly with deference given to the local membership. Because Section 14.2 is ambiguous and eligibility requirements are matter of local discretion, it was a violation of § 4117.11(B)(1) to overturn the Union membership's decision that Mr. McGrady was eligible for candidacy.

B. Unequal Application of the IP's Ruling

The IP wrote a letter on February 25, 2009, that served as a formal ruling overturning the Union membership's determination in favor of Mr. McGrady's challenge to the Union's 2008 officer elections. The IP did not find that Mr. McGrady's challenge was untimely. Nor did the IP dispute Mr. McGrady's attendance at the July and August 2007 meetings, acknowledging that this "factual question was resolved in Mr. McGrady's favor."⁴ The IP instead based his determination on the fact that the Union membership counted

⁴ (Jt. Exh. 16, p. 3)

attendance credit granted for the canceled February and September 2007 meetings toward the six required meetings. The IP ruled that treating credited attendance the same as “actual” attendance for eligibility purposes was inconsistent with the language of Section 14.2.

After determining that Mr. McGrady had physically attended four meetings and had received credit for attending two, the IP pointed out that Mr. McGrady had supplied no evidence that he had been excused from or granted credit for attendance at the “other six regular meetings in 2007.” Thus, because Mr. McGrady “actually” only attended four meetings, he needed to be excused from or granted credit for all the remaining eight meetings in order to meet the meeting-attendance requirement of six meetings. Mr. McGrady’s evidence showed that he was granted credit only for the canceled meetings in February and September. Therefore, he was ineligible for candidacy under the IP’s interpretation of Section 14.2.

The Union now argues that for purposes of granting credit for canceled meetings, the phrase, “each and all of the remaining meets [sic],” within Section 14.2 means all the meetings *after* the first meeting attended.⁵ The interpretation the Union now suggests is not the interpretation it followed when it denied Mr. McGrady the opportunity to run for election but permitted Mr. Gulley to run as the only eligible candidate from Triskett Operations. In November and December 2008, the Union was following its local practice of crediting all members for attendance at canceled regular meetings, without regard to the number of meetings a member actually attended or the number of meetings from which a member was excused. All Union members, including Mr. McGrady, had two attendance credits for the canceled 2007 meetings. Thus, once Mr. McGrady demonstrated that he had actually attended the July and August 2007 meetings as well as the October and November 2007 meetings, it was the Union membership’s opinion that he met the six-meeting eligibility requirement for candidacy.

Neither the actual practice of the Union, nor the interpretation it proffered at hearing and in its post-hearing brief, was followed by the IP. The IP based his ruling on the fact that although Mr. McGrady’s evidence demonstrated he attended four meetings and was credited for two meetings in 2007, he failed to supply evidence that he had been excused from or granted credit for the “other *six* meetings in 2007.”⁶ If the July meeting is counted as Mr. McGrady’s first meeting, then he either physically attended or was excused from every remaining meeting. If the February credit for attendance is counted as Mr. McGrady’s first meeting, then only four months are unaccounted for until July, which has been credited to Mr. McGrady by the Membership’s decision. Therefore, the only interpretation of the “other *six* meetings” must include December 2006, which is counted

⁵ (Roger Kwiatkowski, 2:49:00-2:53:30)

⁶ (Jt. Exh. 16)

towards the 2007 eligibility year, as well as January, March, April, May, and June 2007. By counting December and January, the IP is clearly interpreting “each and all of the remaining” meetings to mean each of the other meetings of the year in question, not “each and all of the remaining” meetings after the first meeting a member attended.

The IP’s interpretation resulted in a final ruling denying Mr. McGrady his opportunity to run for office. But applying the IP’s interpretation of Section 14.2 results in the finding that Mr. McGrady’s opponent, Mr. Gulley, was not eligible for candidacy either. Mr. Gulley attended the June, July, August, October, and November 2007 meetings and received credit for the cancellation of the February and September meetings.⁷ Under the Union’s actual practice, Mr. Gulley was eligible because cancellation credit for a meeting is equivalent to actual attendance, bringing his attendance total to seven meetings. Under the IP’s interpretation of Section 14.2, Mr. Gulley is ineligible because he “actually” attended only five meetings and was not excused from or granted credit for each and all of the remaining five meetings of the year: December, January, March, April, and May. The IP’s interpretation of Section 14.2 was used to deny Mr. McGrady his challenge while the Union’s alternative interpretation of Section 14.2 was used to affirm Mr. Gulley’s eligibility. The use of differing interpretations of § 14.2 interferes with and restrains Mr. McGrady’s equal right to seek Union office and therefore violates § 4117.11(B)(1).

C. Deference to Membership when Eligibility Requirement is Ambiguous

Section 14.2 is ambiguous and subject to more than one reasonable interpretation. Secretary Treasurer Kwiatkowski interpreted Section 14.2 as allowing the use of meeting-cancellation credit toward achieving the requisite six meetings.⁸ William Nix, the Union President, also interpreted Section 14.2 as allowing the use of cancellation credit toward achieving the requisite six meetings.⁹ The IP interpreted Section 14.2 as requiring actual attendance in order to achieve the requisite number of meetings unless the member was credited for or excused from all other meetings in the eligibility year.¹⁰

The existence and substance of the attendance requirement is a matter of local Union discretion. Section 14.2 states in part as follows: “such [local union] may, through its bylaws and with approval of the I.P., affirmatively declare that no such meeting attendance requirement shall be applied as a condition of eligibility for any office of the [local union].”¹¹ Not only is the totality of the attendance requirement local-specific, certain practices regarding the application of the attendance requirement are local-specific. In addition to the Union’s meeting-cancellation credit practice, Union President Nix explained to the IP that

⁷ (R. Exh. 3)

⁸ (Roger Kwiatkowski, 2:36:10)

⁹ (Jt.Exh. 15, p. 4)

¹⁰ (Jt.Exh. 16, p. 4)

¹¹ (Jt.Exh. 1, pp. 64-65)

“Local 268 has had a practice of waiving the membership meeting requirement when a member who is ineligible for office is unopposed.”¹² In this case, the Union has chosen to apply a meeting-attendance requirement. Union leadership should defer to the Union membership’s application of the meeting-attendance requirement, particularly where, as here, the language setting forth the requirement is ambiguous and subject to multiple interpretations.

D. Eligibility Requirements should be Narrowly Construed

The overall congressional purpose of the federal Labor- Management Reporting and Disclosure Act, 29 U.S.C. §§ 401-531 (“LMRDA”), upon which Chapter 4117 is partially based, is to prevent anti-democratic tendencies and procedures within unions. Wirtz, supra p. 7, 391 U.S. at 499. Union members are to be treated with proper deference in regard to their reason and ability to assess the qualities of union candidates. In Wirtz, the United States Supreme Court stated as follows:

[The argument that a rule is necessary to keep inexperienced members out of office] assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices.... But Congress’ model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. [The union] made no showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

Id. at 504.

Furthermore, the Court has recognized that the best means for “assuring the election of knowledgeable and dedicated leaders... is to leave the choice of leaders to the membership in open democratic elections, unfettered by arbitrary exclusions.” United Steelworkers of America, Local 3489, AFL-CIO v. W.J. Uesery, 429 U.S. 305, 312 (1977). Although not binding on SERB, the Court’s interpretation of the LMRDA is informative.

At the federal level, meeting-attendance requirements have been struck down on numerous occasions as violative of § 401(e) of the LMRDA. See, e.g., Local 3489 v. Uesery, 429 U.S. at 310 (attendance requirement that results in the exclusion of 96.5 percent of members hardly seems to be a “reasonable qualification”); Donovan v. Local 25, Sheet Metal Workers, AFL – CIO, 613 F.Supp. 607, 609-611 (D.C.Tenn. 1985) (rule is invalid because it significantly curtails the number of eligible candidates and there is no substantial

¹² (Jt.Exh. 15, p. 4)

connection between the requirement and the ability to hold office); Doyle v. Brock, 821 F.2d 778, 784-85 (D.C.Cir. 1987) (unreasonableness is judged by the undemocratic effect of the meeting-attendance requirement); Herman v. Local Union, 1011, United Steelworkers of America, AFL-CIO, 59 F.Supp.2d 770, 775-80 (N.D.Ind.1999) (large undemocratic effect in addition to the time necessary to meet qualification makes attendance rule invalid). Complainant has not challenged the overall validity of the meeting-attendance requirement or provided information regarding the percentage of employees disqualified by the current rule, so this is an issue for another occasion. However, meeting-attendance requirements should be construed narrowly and in a manner that reflect the wishes of the union members.

V. REMEDIES

The appropriate remedies in this case are for SERB to issue an order requiring the Union to cease and desist from violating § 4117.11(B)(1), and to conduct a new election for the remainder of the current term for the position of Executive Board Member, Triskett Operations, including Terry McGrady on the ballot.

VI. CONCLUSIONS OF LAW

Based upon the entire record herein, this Administrative Law Judge recommends the following Conclusions of Law:

1. The Greater Cleveland Regional Transit Authority is a “public employer” as defined by § 4117.01(B).
2. The Amalgamated Transit Union, Local 268, is an “employee organization” as defined by § 4117.01(D).
3. The Amalgamated Transit Union, Local 268, violated § 4117.11(B)(1).