



Dated: January 18, 1995

Case No.: 94-SOC-2

In the Matter of:

FREDERICK TEDESCO and
ARMAND SIGISMONDI,
Complainants

v.

THE ASSOCIATION OF CIVILIAN TECHNICIANS,
Respondent

Frederick Tedesco and Armand Sigismondi, *pro se*
Samuel L. Spear, Esq.
Philadelphia, PA
For the Respondent

Before: JEFFREY TURECK
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §401 *et seq.* ("LMRDA" or "the Act"), and the regulations contained at 29 C.F.R. §458 *et seq.* On March 11, 1993 and April 6, 1993, Frederick Tedesco and Armand Sigismondi ("complainants"), respectively, filed complaints against the Association of Civilian Technicians ("ACT" or "respondent") alleging violations of the safeguards against improper disciplinary action contained in 29 C.F.R. §§458.2(a)(5)(a) and 458.37. A formal hearing was held in New York City on September 27, 1994. The record was closed with the receipt of respondent's brief and additional exhibits regarding the trustee status of the New York State Council. It was reopened to incorporate corrections to the transcript submitted by the respondent and the final disposition of an unfair labor practice charge that had been pending at the time of the hearing before the Federal Labor Relations Authority.

Complainants argue that they were expelled from ACT when their dues were rejected without their receiving specific charges in writing, being given a reasonable

amount of time in which to prepare their defense, and receiving a full and fair hearing. Alternatively, they claim that they were expelled or otherwise disciplined for exercising rights to which they were entitled employees who participated in the disaffiliation vote, and that ACT subverted the election process by stripping elected officers of their membership. Respondent contends that complainants are not entitled to the protections of the Act because, by actively participating in the disaffiliation movement, complainants resigned from ACT.

Findings of Fact and Conclusions of Law¹

Complainants Frederick Tedesco and Armand Sigismondi are retired federal civilian technicians with the New York Army National Guard (TR 28, 94). Tedesco joined ACT in 1961, shortly after its formation (TR 29). Sigismondi did not join ACT until 1973 or 1974, although he had been employed by the New York National Guard since 1957 (TR 94). ACT is a federal sector labor union comprised of civilian technicians assigned to National Guard units nationwide. Both current and retired federal technicians are eligible for Union membership (RX 45). Current employees pay dues through a check-off system at a rate .007% of their income (*id.*). Retired employees may continue their membership by paying annual dues of \$30 by January 1 to the National Treasurer (*id.*). ACT is run by a board of directors, and local chapters may be formed in any state by 10 full-time, non-supervisory technicians (*id.*). A state with more than one local chapter may form a state council to consolidate representation duties (*id.*). New York has 13 local chapters and a state council (*id.*). Tedesco held the position of ACT State Chairman for 12 years and was Chapter President of the New York City Chapter when he retired (TR 30). As the immediate past chairman of the State Council and a chapter president, Tedesco was also a member of the Executive Committee of the State Council (TR 57). Sigismondi was both Secretary-Treasurer of the New York City Chapter and Vice-Chairman of the New York State Council when the incidents complained of occurred (TR 95-96).

On February 29, 1992, the New York State Council held a meeting at which a resolution to change affiliation from ACT to the National Federation of Civilian Technicians ("NFCT") was agreed upon by 12 of the 13 chapter presidents (TR 33). In an open letter to the New York state membership, Mr. Frederick Young, State Chairman, explained that the State Council had decided to form NFCT because of dissatisfaction with the national ACT body including its lobbying methods, assessment of dues from certain chapters and the purchase of new office space (RX 1). Sigismondi was one of six individuals who signed and submitted the resolution to the State Council in his capacity as Vice Chairman (TR 98). The general membership of New York voted on the resolution March 22, 1992, passing it by a vote of 271 to 23 (RX 6).² Thereafter, the New

¹ The following abbreviations will be used when citing to the record in this case: RX--Respondent's Exhibit; CX--Complainants' Exhibit; TR--Hearing Transcript.

² The total voting strength of the New York general membership was 630 persons (RX 9).

York ACT officers appointed themselves officers of NFCT (RX 43) and held the newly formed NFCT out as the representative of New York State civilian technicians (RX 2). Tedesco was a member of the NFCT Executive Board and NFCT New York City Chapter President while Sigismondi became the NFCT State Council Vice-Chairman and the New York City Chapter Secretary-Treasurer. NFCT's structure mirrored that of ACT; both organizations had virtually the same by-laws, positions, and constitution (*see* RX 4, 18). Business was conducted on stationary bearing the letterhead "National Federation of Civilian Technicians" (*e.g.*, RX 14). The chapter presidents petitioned the Federal Labor Relations Authority to change the designation of the exclusive bargaining representative for New York employees from ACT to NFCT (RX 9). The initial petition and an appeal were dismissed, but a third petition is still pending (TR 104-05). Subsequently, NFCT issued a press release announcing the disaffiliation vote and the organization's efforts to be recognized as the sole representative of civilian technicians in New York (RX 12). Statements were made by the complainants indicating their dedication to the success of NFCT. Tedesco wrote the Adjutant General of New York, Major General Lawrence Flynn, informing him that the decision to form NFCT was "firm and secure and there is no turning back" (RX 10). Sigismondi was responsible for publishing a notice to all New York union workers that heralded, as NFCT accomplishments, grievance claims filed by ACT (RX 50). Moreover, Tedesco and Sigismondi, as officers of NFCT, both signed SF-1187s, forms which designate the union to which dues are to be sent when they are deducted automatically from an active employee's paycheck, before NFCT was even formed by the March 20 vote (TR 77, 122).

As a result of these activities, the Board of Directors of ACT imposed a trusteeship on the New York State Council (RX 56). Under the terms of the trusteeship, Peter Strohl, the National Treasurer, was appointed trustee and assumed all duties previously carried out by the State Council officers (*id.*).

Despite their action, in January 1993, both Tedesco and Sigismondi mailed in their annual ACT dues (RX 30, 32). Both these checks were returned by Mr. Hunter, National President of ACT, who explained that the Executive Council reviewed their role in New York's disaffiliation from ACT and concluded that each had resigned from ACT (RX 31, 34). Prior to these letters, complainants had never been informed that they were no longer considered members of ACT despite numerous opportunities to do so (*see, e.g.*, RX 44-45). For example, Tedesco continued to receive mail in his capacity as Chapter President (TR 34); a letter dated April 9, 1992 and addressed "Dear Chapter President" was sent to his home from Norman E. Smith, the ACT National Secretary, advising him that the New York State Council had been placed in trusteeship and as Chapter President he had certain obligations to fulfill (*id.*; CX 10). Both complainants contend that they continued to hold their ACT offices; no one was ever asked to step in and assume their duties or positions (TR 49, 97). While ACT brought expulsion proceedings against other State Council members which were ultimately settled without expulsion, no such action was ever brought against complainants (CX 9, 14, 15). Moreover, ACT continues to accept dues via the check-off system from all current New York technicians, regardless of their vote on March 20 (TR 175, 186).

Discussion

The Bill of Rights of members of labor organizations set out at 29 C.F.R. §458.2(a)(5)(a) provides:

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (i) served with written specific charges; (ii) given a reasonable time to prepare his defense; and (iii) afforded a full and fair hearing.

Id. Nor may a labor organization discipline members for exercising any right to which they are entitled under the provisions of the applicable regulations. 29 C.F.R. §458.37. In actions alleging violations of §458.2 or §458.37, the burden of proving such violations, by a preponderance of the evidence, is on the complainant. 20 C.F.R. §458.79.

In order to avail oneself of the protections of these provisions, a complainant must be a member of a labor organization.³ A person is considered a member of a labor organization when he or she fulfills the requirements for membership in that organization. 29 U.S.C. §402(o). Such membership status, though, is maintained only if one of two events do not occur: (1) the member voluntarily resigns from the union or (2) the member is expelled from the union through a lawful process. *Id.*; see also *Brennan v. Local 357, Int'l Bhd. of Teamsters*, 709 F.2d 611, 615 (9th Cir.). At issue in this case is whether the actions taken by complainants constituted voluntary resignations of their union membership. See *Basilicato v. Int'l Alliance of Theatrical Stage Employees*, 479 F. Supp. 1232, 1243 (D. Conn. 1979).

ACT's constitution does not specify a method of resignation, and complainants did not submit written resignations, nor did they ever publicly state that they had resigned from ACT. Yet, the failure of complainants to formally resign is not dispositive of the issue because resignation can be inferred from the totality of the circumstances present. Complainant's actions must be evaluated in regard to whether they intended to remain members of ACT. *Basilicato*, 479 F. Supp. at 1244.

Complainants' participation in the disaffiliation movement and the subsequent formation of a rival union, rather than displaying complainants' intention to remain members of ACT, is evidence of their voluntary resignation from the Union. This conclusion mirrors the result reached in a similar case, *Basilicato v. International Alliance of Theatrical Stage Employees*, 479 F. Supp. 1232 (D. Conn. 1979). In *Basilicato*, the court had to decide whether members of IATSE Local 273 who voted to disaffiliate from the union and established an independent local union were still "members" of a labor organization, entitled to the protections against deprivation

³ "Congress did not intend Title I of the LMRDA to create a panoply of rights to which all persons injured in some way relating to a union may turn when seeking redress." *Phelan v. Local*, 973 F.2d 1050, 1055 (2d Cir. 1992).

of membership without written notice or a hearing. Following a vote by 23 of its members, Local 273 disaffiliated from IATSE, according to a letter written by Basilicato, president of the newly independent union, to the international president of IATSE. Yet 10 members of Local 273 asked IATSE to retain its charter. Thereafter, Basilicato sent in his dues for a membership at large with IATSE which was available under IATSE's constitution to any member whose local chapter became defunct. Basilicato's check was returned, and he was informed that not only was Local 273 a functioning chapter of IATSE, but when he voted to disaffiliate from IATSE he in effect resigned from the union. The court upheld this determination finding that Basilicato evidenced an intent to withdraw from IATSE through the language he used in his correspondence with local union members, the international members and local exhibitors, the stationary on which correspondence was sent, and the differing constitution and bylaws of Local 273 and the independent local.

These factors are present in this case. Evidence of complainants' intent to disaffiliate from ACT is clear from their letters in evidence. For example, in a letter dated March 30, 1992 from Tedesco to Hunter, Tedesco wrote that he was a member of ACT before "we voted to break away" (RX 7). Likewise, Tedesco wrote Major General Flynn to convince him of the "seriousness of our intent to form a rival union . . . we did it legally, properly and by a wide margin that left no doubt about our intentions" (RX 10). *See also* RX 17. Equally telling, these letters were sent on stationary bearing the title "National Federation of Civilian Technicians." In some instances, ACT stationary was used, but the ACT heading was whited out and replaced with a NFCT letterhead. In other cases NFCT stationary was used featuring the NFCT logo. Finally, as in *Basilicato*, while the ACT constitution and the NFCT constitution in large part are the same, they are readily discernable when compared. All references to ACT or the Association have been replaced with NFCT or the Federation. Moreover, the NFCT constitution has deleted sections found in the ACT constitution such as those on life membership, and has added rules like the requirement that policies created by the Board of Directors be approved by the delegate body at the next scheduled business meeting.

In addition to these factors identified by the *Basilicato* court as probative of an individual's voluntary resignation, other actions by complainants in this case provide clear evidence of their withdrawal from ACT. Sigismondi was receiving payment as an NFCT officer; he received \$574 in 1992 and \$97 in 1993 (TR 125). More importantly, the March 1, 1992 resolution required that the money from the ACT New York State Council bank account be transferred to an NFCT account (TR 143). This was accomplished sometime after March 1, without the permission of ACT, and labelled a "donation" on NFCT's financial disclosure forms (TR 145). This action, in part, prompted the imposition of a trusteeship on the New York State Council by ACT (TR 58). Furthermore, both Tedesco and Sigismondi signed SF-1187s prior to the formation of NFCT which had the effect, after the establishment of the rival union, of sending dues to NFCT through the check-off system (TR 77, 122). It is unclear whether the employees who authorized dues payments by this method were aware of which union was receiving their money (TR 136-140). Lastly, Tedesco and Sigismondi both signed petitions

requesting that NFCT replace ACT as the exclusive bargaining representative for New York civilian technicians.

Based on this evidence, I find that Tedesco and Sigismondi had resigned from ACT, and the union acted appropriately in refusing to accept their dues payments. Accordingly, no violation of law has occurred.

This same result is reached both under the applicable statute and ACT's constitution. The statute requires a labor organization to accept an employee's dues allotment unless

the agreement between the agency and the exclusive representative ceases to be applicable to the employee or the employee is suspended or expelled from membership in the exclusive representative.

5 U.S.C. §7115(b)(1)-(2). ACT is therefore not required to accept Tedesco and Sigismondi's dues checks because they were not employees subject to the allotment system. Only full-time, current employees can pay their dues through the check-off system under ACT's constitution. Since Tedesco and Sigismondi are both retired, their dues must be paid annually, by check, to the ACT treasurer, and ACT is not obligated to accept them like it must with allotment payments. ACT treated all retired members who held positions on the NY State Council Executive Board--Tedesco, Sigismondi, and former New York State Chairman Young--equally; ACT refused their dues payments and considered them to have resigned. Only members in good standing are entitled to the rights, privileges and prerogatives of ACT membership (RX 45, Art. 2, §7). The phrase "good standing" is not defined, but clearly a member does not meet this requirement if he or she acts in direct opposition to the goals or legal obligations of the union by trying to supplant it with a rival union. Moreover, once a member has resigned, he or she may only be reinstated pursuant to ACT's rules and regulations (*id.* at art. 2, §6). Reinstatement is thus an exercise of discretion. Act's refusal to reinstate the respondents does not violate the Labor-Management Reporting and Disclosure Act.

Therefore, the complaints of Tedesco and Sigismondi should be dismissed.

ORDER

It is Recommended that the complaints be dismissed.

JEFFREY TURECK
Administrative Law Judge