Matanuska Electric Association, Inc. a*nd* International Brotherhood of Electrical Workers, Local Union 1547, International Brotherhood of Electrical Workers, AFL–CIO. Case 19–CA–25303

April 13, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND WALSH

This case presents the issue of whether Matanuska Electric Association, Inc. (MEA or the Respondent) violated Section 8(a)(1) of the Act by amending its bylaws to provide that a member of the local union that represents MEA's employees, as well as anyone who lives with and is financially interdependent with the union member, cannot become or remain a member of MEA's board of directors. The Board has decided, for the reasons stated below, that even assuming MEA's amended bylaw restricts the Section 7 rights of employees, it does not violate the Act because it serves MEA's legitimate interest in ensuring that it has the undivided loyalty of those who direct its operations.

On May 19, 1998, the Respondent, the Union, and the General Counsel (collectively the parties) jointly filed a motion to transfer proceeding to the Board and a stipulation of facts. The parties agreed that the stipulation of facts and attached exhibits, including the charge, the complaint, and the answer to the complaint, constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties further stipulated that they waived a hearing before an administrative law judge, and the making of findings of fact and conclusions of law and the issuance of a decision by a judge, and that they desired to submit this case directly to the Board for findings of fact, conclusions of law, and the issuance of an order by the Board.

On September 29, 1998, the Board issued an Order approving the stipulation, granting the motion, and transferring the proceeding to the Board. On October 9, 1998, the Board granted a motion filed by Chugach Electric Association (Chugach) for leave to file a brief as amicus curiae. Thereafter, the parties and the amicus curiae filed briefs.[1]

The Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the MEA has been an Alaska corporation, with an office and principal place of business in Palmer, Alaska, where it is engaged in the business of operating an electric utility. During the 12 months preceding the filing of the stipulation, a representative period, in the course and conduct of its business operations, MEA had gross revenue in excess of $250,000. During the same representative period, MEA, in the course and conduct of its business operations, sold and shipped goods or provided service to customers within the State of Alaska, which customers were themselves engaged in interstate commerce by other than indirect means, with a total value of in excess of $50,000. During the same representative period, MEA, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its facilities within the State of Alaska, goods and materials valued at in excess of $50,000 directly from sources outside the State, or from suppliers within the State which in turn obtained such goods and materials directly from sources outside the State.

At all material times, MEA has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Stipulated Facts

The parties stipulated that by virtue of Section 9(a) of the Act, the Union is the collective-bargaining representative of certain MEA employees in three separate bargaining units. The Union also has collective-bargaining agreements with numerous employers throughout Alaska, including approximately 10 major contracts covering employees who live within the MEA service area.

MEA is a nonprofit electrical cooperative organized pursuant to the Alaska Electric and Telephone Cooperative Act (Alaska Stat. sec. 10.25.010, et seq.). It provides electric service to individuals and businesses located within its service area as designated by the certificate of

[1] The General Counsel filed a motion to strike portions of Chugach's brief and all attached exhibits. The Union also filed a motion to strike Chugach's brief and all attached exhibits in their entirety. The General Counsel and the Union contend that the exhibits are not a part of the stipulated record, and that the attachment of the exhibits and the legal argument based on them circumvents the procedure by which the case is before the Board. In its opposition, Chugach argues that its brief with attached exhibits was within the proper scope of an amicus curiae filing. In the alternative, it offers a marked copy of its brief deleting references to the exhibits.

In filing the Joint Motion to Transfer Proceedings to the Board, the parties agreed that the stipulation of facts with exhibits constituted the entire record in this proceeding. Accordingly, we grant the motions to strike Chugach's attached exhibits that are not part of the stipulated record. Further, we accept Chugach's marked copy of its brief deleting all references to those exhibits.

public convenience and necessity issued by the Alaska Public Utilities Commission. MEA's service area generally encompasses the communities of Palmer, Wasilla, and Eagle River, Alaska.

Provisions for electrical cooperative membership, board of directors, bylaws, and other related topics are set forth under Alaska State law (Alaska Stat. sec. 10.25.010, et seq.). Under that law, MEA's board of directors is composed of seven members who are elected for terms of 3 years on a rotating basis by the membership. At all relevant times, MEA employees have been prohibited from serving on the board of directors under MEA's bylaws. No party contests the legality of this prohibition. Board members do not receive a salary, but are paid $20 for attendance at each meeting of the board, which meets on a monthly basis.

The board manages the business affairs of MEA. It establishes and carries out the general policies of MEA, including the relationship between the board and the general manager, adoption of workplace policies, annual budgetary operations, handling of election results, compensation plans, safety, investment of uncommitted funds, insurance and bonding, approval of depreciation rates, management plans, property leasing guidelines, ratification of collective-bargaining agreements, and expenditure of association funds.

Alaska Stat. section 10.25.070 contains, inter alia, provisions on the adoption, amendment, and repeal of bylaws. MEA received a petition in the spring of 1997, in advance of the annual meeting of the membership, from a group of MEA members requesting a vote on the following bylaw amendment:

> PROPOSED AMENDMENT
>
> Add a new Section 3(d) to Article IV, Section 3 of the Association's Bylaws to read as follows:
>
> Section 3 *Qualifications*: No person shall be eligible to become or remain a board member of the Association who:
>
> . . . .
>
> (d) is a member, officer, director, or employee of any union local currently acting as a bargaining agent for any group of Association employees or lives in the same household with and is financially interdependent with any person included with this Section 3(d).

The proposed amendment was submitted to MEA on March 3, 1997. On April 7, 1997, MEA gave notice of the annual membership meeting. The text of the proposed amendment was contained in the notice, including a summary of the reasons for the amendment. The summary stated in part: "Because one of the functions of the board is to ratify union contracts, as well as to consider matters as to which the Association's management and the union are in disagreement, a director who is also a member of a local union negotiating with the Association may be seen as having a conflict of interest, even if that person is not an employee of the Association."

At the annual membership meeting on April 30, 1997, members of MEA, by a vote of 4986 for and 2505 against, voted to add the proposed new section 3(d) to the bylaws as quoted above. The parties agree that the term "financially interdependent" used in the amended section 3(d) includes spouses. The Union takes the position that the term also includes children. MEA has not taken a position on whether the term includes children.

During April 1997, Douglas Mills was on the MEA board of directors and was a member of the Union. He was an employee within the meaning of the Act because he was employed by Matanuska Telephone Association, a statutory employer. In response to the new bylaw, Mills resigned from the Union so that he could continue in his capacity as a member of the MEA board of directors.

B. Contentions of the Parties

1. The General Counsel

The General Counsel argues that MEA's bylaw discourages membership in the Union on its face. He further argues that there is no legitimate business reason for this facial discrimination. In this regard, the General Counsel rejects the argument that the bylaw prevents a conflict of interest. He asserts that if MEA were really concerned about such conflicts it could address them in a much narrower fashion by requiring such members of the board of directors to abstain from votes on union matters.

The General Counsel contends that although MEA's bylaw has no direct connection to an employee's employment elsewhere, it does have an indirect impact upon an employee's employment situation. Thus, a statutory employee like Mills, who gives up his membership in the Union in order to serve on MEA's board of directors, must forfeit the right to serve on union committees and have a voice in the negotiation and terms and conditions of employment with his own Employer.

2. The Respondent

The Respondent argues that members of the board of directors are viewed as agents of the Employer under Board precedent. See, e.g., *Nemacolin Country Club*, 291 NLRB 456 (1988), and *Escambia River Electric Cooperative, Inc.*, 265 NLRB 973 (1982).

Additionally, the Respondent contends that MEA's members have the right to demand undivided loyalty from

the board members who have the power to make most of the important decisions about how to manage the corporation's business. The Respondent points to the Supreme Court's decision in *Beasley v. Food Fair of North Carolina*, 416 U.S. 653, 661–662 (1974), recognizing that employers may demand the undivided loyalty of their agents. The Respondent argues that the bylaw is reasonably tailored to ensure loyalty of board members on matters dealing with a union that has a collective-bargaining relationship with MEA.

3. The Union

The Union contends that the practical effect of the bylaw amendment is to coerce International Brotherhood of Electrical Workers (IBEW) members who are interested in serving on the MEA board into resigning their IBEW membership. The Union also claims that the bylaw coerces IBEW members, including those members employed by MEA, into resigning from the IBEW if the member has a spouse or child who wants to serve on the MEA board. According to the Union, MEA has coerced and interfered with Mills' and any other statutory employees' Section 7 rights by maintaining and enforcing the new bylaw.

The Union further contends that MEA has not provided a substantial business justification for the bylaw. The Union argues that prevention of conflict of interest is a specious rationale for the amended bylaw. First, under MEA board policy, the board does not have a direct role in labor relations. Full responsibility for labor relations and collective bargaining is delegated to the MEA general manager. Second, the bylaw has different effects on MEA's union and nonunion employees. The children and spouses of nonrepresented employees may serve on the board of directors as long as the relationship is disclosed to the MEA membership, while the children or spouse of a represented employee could serve on the MEA board only if the employee resigns membership in the Union. For these reasons, the Union argues that the bylaw does not prevent a conflict of interest. Instead, it coerces union members to give up their Section 7 rights.

4. The amicus curiae

Chugach contends that service on the board of directors of MEA is not an activity protected by Section 7 of the Act. Pointing to the Supreme Court's holding in *Eastex, Inc. v. NLRB*, 437 U.S. 556, 567 (1978), that Section 7 extends to activities that relate to "employees' interest as employees," Chugach argues that members of the board of directors do not act as employees, but rather as members of the management hierarchy.

Chugach also argues that MEA's bylaws reflect the common law prohibition against conflicts of interest. It contends that permitting a member of a union representing MEA employees to sit on the board of directors would give rise to inherent and irreconcilable conflicts of interest.

C. Analysis and Conclusions

As the parties recognize in their briefs, in deciding whether the Respondent violated Section 8(a)(1) of the Act by adopting the bylaw in issue, there are two questions that must be considered: First, does the bylaw tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights? Second, has the Respondent established a legitimate business justification for the bylaw? See generally *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263, 268–269 (1965) ("Naturally, certain business decisions will, to some degree, interfere with concerted activities by employees. But it is only when the interference with Section 7 rights outweighs the business justification for the employer's action that Section 8(a)(1) is violated.").

With respect to the first issue, we assume, without deciding, that MEA's bylaw restricts employees' exercise of Section 7 rights. Accordingly, we turn to the question of whether the Respondent had a legitimate business justification for the bylaw. The Respondent asserts that it enacted the bylaw in order to ensure the loyalty of the members of its board of directors. Such members, the Respondent argues, are its agents from whom it can demand undivided loyalty. We find merit in the Respondent's argument.

According to the stipulated facts, MEA has a seven-member board of directors that approves budgets and management plans, manages the general business affairs of MEA, and sets the overall direction for MEA. The board has the authority to handle labor relations, but has delegated that authority to the general manager who is selected by the board. However, the board, not the general manager, ratifies collective-bargaining agreements tentatively agreed to by a negotiation team.

In other contexts, the Board has found members of a corporate board of directors to be agents of the corporation within the meaning of Section 2(13) of the Act.[2] In *Escambia River Electric Cooperative, Inc.*, supra, 265 NLRB at 981, for example, the Board adopted the judge's finding that members of the cooperative's board of trustees were agents of the cooperative. There, the judge found that the power conferred on the board of trustees was that normally associated with a board of directors and

[2] Sec. 2(13) provides:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

officers of a typical corporation. The board of trustees had complete control over management of the cooperative. The judge also relied on the limited number of trustees and the fact that their control extended to labor relations. Having found that the trustees were agents of the cooperative, the judge, with Board approval, concluded that the cooperative was responsible for the conduct of its trustees. See also *Fort Vancouver Plywood Co.*, 235 NLRB 635, 637 fn. 1 (1978), enfd. as modified 604 F.2d 596 (9th Cir. 1979) (member of board of directors is agent of respondent because of control exercised by board over respondent's affair and limited number of directors).

Here, as in *Escambia River* and *Ford Vancouver Plywood,* the board of directors is limited in number (seven) and exercises control over the business affairs of MEA. It also maintains considerable control over the labor relations of MEA by ratifying any collective-bargaining agreement tentatively reached by a negotiating team. For these reasons, we agree with the Respondent that the members of its board of directors are its agents within the meaning of Section 2(13).

We also agree with the Respondent that its bylaw is a lawful means of ensuring the undivided loyalty of its agents. The Supreme Court has found that both management and employees are entitled to loyal representatives. In *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 704–705 fn. 9 (1983), the Court, in discussing the Taft-Hartley amendment excluding supervisors from the coverage of the Act, stated:

> Congress was concerned that if supervisors were included in a bargaining unit, "management will be deprived of the undivided loyalty of its foremen." *Florida Power & Light Co. v. Electrical Workers,* 417 U.S. 790, 809–810 . . . (1974) (quoting S.Rep. No. 104, 80th Cong., 1st Sess. 5 (1947)). This concern was not limited to ensuring the loyalty of management's representatives. The House Report recognized that "no one, whether employer or employee need have as his agent one who is obligated to those on the other side, or one whom, for *any* reason, he does not trust." H.R. Rep. No. 245, 80th Cong., 1st Sess. 17 (1947) (emphasis in original); see also id. at 14 (stating that management, "as well as workers, are entitled to loyal representatives in the plants").

The Respondent argues that its bylaw prohibiting members of its board of directors from membership in any union representing MEA employees is narrowly tailored to serve MEA's legitimate interest in ensuring that its board members do not have any loyalties to the unions with which it has bargaining relationships. We agree. The bylaw does not prohibit all union members from serving on the board of directors. The bylaw only prohibits board members from holding membership in a union that is on the other side of the bargaining table from MEA. Similarly, MEA's barring from the board of directors those who live with and are financially interdependent with members of a union representing MEA's employees is a narrow provision implementing its legitimate interest in having as its agents only those persons whom it trusts to act with undivided loyalty.

The Union contends that the bylaw is not rationally related to the goal of preventing a conflict of interest. In this regard, the Union notes that nonmembers can be on the Respondent's board of directors, even if they are represented by the Union. The contention has no merit. Nonmembers, unlike members, are not subject to the Union's disciplinary control. Thus, they do not pose a risk that a person on the board of directors could be disciplined by the Union for acting contrary to the Union's wishes.

For these reasons, we find that to the extent MEA's bylaw may be a restraint on Section 7 rights, MEA's legitimate interest in having trusted agents with undivided loyalty justifies such restraint. Cf. *Shenango Inc.*, 237 NLRB 1355 (1978) (union did not violate Sec. 8(b)(1)(A) by removing dissident from his position as safety committee chairman; union's "legitimate interest in placing in offices such as chairman of the safety committee those people it considers can best serve the Union and its membership" outweighs individual's interest in retaining his office).

Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.