IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Equal Employment Opportunity Comm'n,

Plaintiff,

Case No. 3:02CV7374

ORDER

Goretti Newman,

Intervenor Plaintiff,

v.

Int'l Bro. of Elec. Workers, Local 998, et al.,

Defendant

This is an employment discrimination case brought initially by the Equal Employment Opportunity Commission (EEOC) against Local 998 of the International Brotherhood of Electrical Workers (Local 998). Thereafter, Goretti Newman, the union member whose complaint to the EEOC about discrimination by Local 998 led to this suit, was granted leave to intervene as a plaintiff. She filed an amended complaint, joining the International Brotherhood of Electrical Workers (International), with which Local 998 is affiliated.

At present, the real parties in interest are Ms. Newman and the International. Pending is the International's motion for summary judgment. For the reasons that follow, the motion shall be granted.

Background

Newman worked at Lithonia Downlighting of Vermilion, Ohio (Lithonia) and was a member of Local 998. She claims that beginning in February, 2000, a co-worker, Clifford Monske, subjected her to

harassment on the basis of her gender, and that the harassment continued for a little over a year until Monske was fired.

Newman complained frequently to officers of Local 998; they were unresponsive to her complaints and requests for assistance. Newman next complained to her employer. As a result of those complaints, Monske filed a charge with Local 998 that Newman's conduct was detrimental to the union.

Following an internal union hearing, Local 998 dismissed that charge. Nonetheless, according to Newman, officers and members of Local 998 continued to harass and discriminate against her. The union taking no action in response to her complaints, Newman filed her EEOC charge against Local 998 on February 12, 2001.

The EEOC, finding merit to Newman's complaints of discrimination on the basis of her gender, filed this suit against Local 998. Lithonia has since gone out of business, and Local 998, which represented only Lithonia's employees, is essentially defunct. Its counsel has been granted leave to withdraw.

Newman claims the International is vicariously liable for the discrimination incurred at the hands of Local 998 and its members. The International contends that its relationship with Local 998 is not such that it can be held liable for the actions of Local 998.

In support of her contention that the International is the alter ego of Local 998, Newman points to several attributes of the relationship between the International and Local 998:

> 1. As a member of Local 998 and employee of Lithonia, Newman was automatically a member of the International;
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> 2. Ten dollars of Newman's monthly dues to Local 998 of $19.95 went to the International;
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> 3. Local 998 and its members are subject to the International's Constitution and its provisions relating to local unions, including their charters, officers, and duties;

4. By-laws adopted by local unions, including Local 998, followed a pattern provided by the International, and became valid only when approved by the International; and

5. Collective bargaining agreements between local unions and employers likewise were not effective until approved by the International.

In addition to these general attributes of the structural relationship between the International and its local unions, Newman claims that several aspects of the dealings between the International and Local 998 as evidencing an alter-ego relationship. These include:

1. Attendance by representatives of the International at negotiating sessions between Local 998 and Lithonia;

2. Advice given by an International official, Mr. Curley, to Local 998 with regard to collective bargaining;

3 An interest-free unsecured loan of $15,000, granted by the International to Local 998 in response to a request for a cash infusion of $35,000 to cover debts incurred in collective bargaining;

4. Participation by an official from the International, Mr. Cook, in two arbitrations, and his presentation of cases for the grievant and authorship of briefs;

5. Negotiation of a settlement by Mr. Curley between Local 998 and an aggrieved union member; and

6. Curley's attendance at a case management conference in this case even before the International had been joined as a party.[1]

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[1] The International's opening brief contends that the incidents of the International/Local 998 relationship which I can consider are limited to those recited by Newman in her answers to interrogatories (Local 998 gave her a copy of the International Constitution and paid a portion of her dues to the International; representatives of the International attended negotiating sessions with Lithonia and the case management conference in this case and participated in arbitration hearings; and the International loaned $15,000 to Local 998). Because the same result is reached by considering all the incidents of that relationship to which Newman points in her opposition brief, I consider all those incidents, rather than the more limited aspects in her interrogatory answers.

Newman contends that these activities, viewed in light of the overall structure of the relationship between the International and its local unions under the International's Constitution show that the International is not a legally distinct entity apart from Local 998 and thus is liable for any acts of unlawful discrimination toward the plaintiff inflicted by Local 998.

The International, on the other hand, points out that Local 998:

> conducts its own day-to-day affairs. It admits its own members, elects its own officers, conducts its own meetings, negotiates its own collective bargaining agreements, processes its own grievances, collects its own dues, controls its own funds, and owns its own property. Decisions on collective bargaining, on contract enforcement and internal union discipline are made by Local 998 and not by the [International].

(Doc. 55 at 13).

Newman does not dispute the accuracy of this summary of Local 998's daily activities and operations.

Discussion

As a general rule, an international union and its affiliated locals are deemed to be separate legal entities. This rule has been applied to the International Brotherhood of Electrical Workers in cases involving efforts, similar to that being made by Newman in this case, to impose liability on the International for unlawful discrimination by local unions. *Childs v. IBEW Local 1*8, 719 F.2d 1379, 1382 (9th Cir. 1983) (International not liable on an agency theory where an affiliated local operated autonomously); *EEOC v. IBE*W, 476 F. Supp. 341, 346-47 (D. Mass. 1979) (holding that the local "operated independently of the International in disciplining [the intervener]".).

The International argues, and persuasively so, that the structure of its relationship with its local unions, including Local 998, does not make it the alter-ego of the locals. To be sure local unions must, to

become and remain affiliated with the International, meet certain requirements of the International's Constitution and submit their by-laws and collective bargaining agreements for approval to the International. Newman has not, however, shown that these requirements and practices were either intended to or did result in direct involvement in the locals' affairs and activities generally, or in those of Local 998 in particular.

Indeed, it would be difficult, if not impossible, for Newman to do so in light of the Sixth Circuit's decision in *Shimman v. Fran*k, 625 F.2d 80 (6th Cir. 1980). In that case, as in this case, the plaintiff claimed that the local was "an agent of the International because of the International's retention of substantial regulatory and supervisory powers." *Id*. at 97 (footnote omitted).

This contention, the Sixth Circuit stated in *Shinman*, ignored "the local's substantial autonomy in handling its own affairs." *Id.* at 98. Local 998 retained a similar degree of autonomy in what it did day in and day out on behalf its members, so that it, like the local in *Shinman*, is "simply not an arm of the International for all purposes." *Id*.

A contrary finding must, as the Supreme Court made clear in *Mine Workers v. Coronado Coal Co*., 259 U.S. 344, 395 (1922), be based on common-law principles of agency. *Accord*, *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 216 (1979) (International union liable for the acts of a local only "when the union may be found responsible according to the common-law rule of agency.").

Neither the general attributes, based in the International's Constitution, of the International's relationship with Local 998 nor its specific activities on behalf of Local 998 show that there was an agency relationship between the two entities. Requiring conformity to some general requirements, as prescribed

by the International's Constitution, did not subject either the general or daily operations of Local 998 to the International's control.

Likewise, the fact that the International or its representatives attended some negotiating sessions, gave advice about collective bargaining, assisted at arbitrations, resolved internal disputes within the Local 998, and provided modest financial assistance did not dissolve the legal distinction between the Local 998 and the International. There is nothing to indicate that the International's assistance made it dominant, or enabled it to dictate how the Local 998 went about its work for Lithonia's employees. That the International provided service did not make it Local 998's servant, or vice-versa.

Moreover, as the Sixth Circuit stated in *Alexander v. Local 496, Laborer*s, 177 F.3d 394, 409 (6th Cir. 1999), the common law agency theories of vicarious liability mean that "a plaintiff must adduce specific evidence that the international 'instigated, supported, ratified, or encouraged' [discriminatory] actions, or 'that what was done was done by their agents in accordance with their fundamental law of association.'" *Id*. (citing *Carbon Fuel*, 444 U.S. at 217-18).

Ratification requires affirmance of conduct undertaken on one's behalf by a subordinate. *Small v. IBE*W, 626 F. Supp. 96, 99 (S.D. Ohio 1985); Restatement (Second) Agency § 82. To show that the International ratified Local 998's activities, Newman must show that Local 998, without authorization, purported to act on behalf of the International, which thereafter, in turn, treated Local 998's actions as though they had been authorized from the outset.

Newman argues the International was aware of her problems with Local 998, but turned a blind eye and deaf ear to her situation and complaints. Assuming the International was aware of her complaints – which is not clear from or substantiated by the record – such response did not constitute ratification as

a matter of law. Newman offers, in any event, no proof that Local 998's treatment of her was undertaken in the name of the International.

Conclusion

I conclude, accordingly, that the International was not the alter-ego of Local 998, and no agency relationship existed between Local 998 and the International. The International cannot, therefore, be held liable vicariously for the actions of Local 998. It is entitled to summary judgment.

It is, therefore

ORDERED THAT the motion of the International Brotherhood of Electrical Workers for summary judgment be, and the same hereby is granted.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge