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RE: JUDICIAL PANEL CASE NO. 19-66
Libby & Powers v. Francis et al

DEFENDANTS MOTION TO DISMISS

The following Motion to Dismiss is hereby submitted by all of the named defendants in the charges filed by Libby and Powers.

I.

Roberts Rules of Order Controls Conduct of Meetings

Our attempt to understand the rambling and often incoherent charge narrative leads us to conclude the complaint against us pertains to the alleged lack of quorum at union meetings where votes of Libby and Powers were in the minority.

In accordance with the applicable provisions of the Local 114 Constitution and AFSCME constitution we conduct our meetings in accordance with the current edition of *Roberts Rules of Order*.

Roberts Rules of Order Procedure on determining a quorum says (in part):

Determination of a quorum

The chairman of the group has the responsibility to determine if a quorum is present.^[7] In addition, any member can raise a point of order about an apparent absence of a quorum.^[8] Because it is difficult to determine exactly when a quorum was lost, points of order relating to the absence of a quorum are “generally not permitted to affect prior action; but upon clear and convincing proof, such a point of order can be given effect retrospectively by a ruling of the presiding officer, subject to appeal.”^[9]

A review of the minutes will show that there was no challenge to a quorum being present at any of the meetings in question relevant to this charge. Absent any motion, ruling, or point of order raised on the question of a Quorum, the local conducted its business appropriately as supported

by *Roberts Rules of Order*. The presiding officer made no ruling on the question of a quorum. Union meeting minutes shows that no quorum objection was raised by any member at any subsequent meeting. Thus, all action taken at any meeting is irretrievable and cannot be reversed. Consequently, the unchallenged decision of the membership made at these meetings are binding on the Local and these decisions are irretrievable and cannot be reversed.

It should be noted the charging parties were frequently in attendance at meetings where they are now challenging the decisions due to lack of quorum. The record shows that neither one of that have ever challenged the quorum at the meeting or the subsequent meeting in accordance with *Roberts Rules of Order*.

The Judicial Panel does not have the authority to change or alter the *Roberts Rules of Order* procedure. Yet, the challengers are asking the Judicial Panel to supersede *Roberts Rules of Order*, ignore the Local Constitution, ignore the AFSCME Constitution and impose a yet unwritten rule.

II.

Procedural Errors

1. Charges Improperly Filed

Libby and Sister Powers improperly filed their charges directly with AFSCME International. This action violates Article X Section 3 of the AFSCME International code, which reads, in part:

"Charges against an individual for actions taken in such individual's capacity as a member, a local union officer, or a local union staff employee shall be filed with and heard by the local union trial body in the local of which the accused was a member at the time of the alleged actions".

By filing charges directly with AFSCME International, Sister Libby and Sister Powers violated Article X Section 3.

2. Improper Notification of Charges

Libby and Sister failed to notify the defendants of the charges they made properly and in a timely manner and have not provided proof of certified mailing per Article X of the International Constitution. The charges were filed with AFSCME International, NOT the local, with a letter dated July 15, 2019. According to Article X Section 10,

"Within fifteen days following the receipt of the charges, the person with whom the charges have been filed shall send by certified mail, return receipt requested, an exact and full copy of the charge to the accused party, together with a copy of Article X of this Constitution and an explanation of the trial procedure to be followed".

Notification was made via standard first-class mail NOT certified mail as required, which was received on August 3, 2019 by only two of the charged parties and more than 15 days after the

charges were filed. The required copy of Article X of the AFSCME International code was not included as required under Article X, section 10.

3. Failure to Provide Specific Charges and Dates

Libby and Powers failed to file specific charges, including the nature of the charges and specific dates that the charged activities transpired. In the charging papers, Libby and Sister most specific detail was “since 2018”. This is not specific enough. Libby and Powers failed to identify which actions or motions were improper, when they were supposedly made or improperly made and what the dollar amounts were. The charges reference “attachments” but nothing is attached.

Finally, Libby and Powers offer as evidence of their charge a memo written by Council President Chris Dugovich to the Local Secretary. This memo is not evidence of any wrongdoing, it is not an audit finding from a CPA, it is tiresome litany of inaccurate, unsubstantiated allegations which our Local Treasurer has soundly refuted.

AFSCME International Article X section 6 states

“The charges shall be specific, citing in detail the nature, the date, and the circumstances of the alleged offense and, where a violation of a constitutional provision is alleged, the specific section shall be cited, along with the specific act or failure to act which constitutes the alleged violation.”

4. Failure to File with the Secretary of the Trial Body

Libby and Powers further violated Article X section 6 by filing with the AFSCME International judicial panel, not the secretary of the trial body as required by Article X Section 6.

“The charges shall be filed with the secretary of the trial body or, if the secretary of such trial body.”

5. Failure to be Personally Served

Sister Libby and Sister Powers violated the defendant’s rights as the accused under Article X Section 12 under the following subsections:

“The right to be served personally with, or to have forwarded by certified mail to the accused person’s current address of record with the local union, return receipt requested, a full copy of the charges within fifteen days after they are filed and to receive a copy at least thirty days before the trial date. “

As listed under charge 2, none of the charged parties were notified properly of the charges.

6. Defendants Deprived of Right to Respond

Article X provides defendants the right to file a written answer to the charges.

Because of improper notification the defendants had no opportunity to file a written answer to the charges that were filed on July 15, 2019.

7. Defendants Deprived of Right to Prepare a Defense.

Article X gives defendants the right to compel the production of union records pertinent to the case.

The defendants have not been allowed or been able to compel records pertinent to this case because there have been no specific charges filed against the individuals named by Libby and Powers.

II.

Selective and Biased Accusations

1. Powers as Local President Ignored Quorum Determination

Powers was a former president of Local 114 for at least a decade. A search through meeting minutes extending back through her tenure show that Powers, as presiding officer, never raised the question of a quorum at any meeting she chaired. Significant expenditures were made at these meetings and the record shows the threshold for quorum were not met.

President Dugovich attended local meetings and requested the local take specific action. A quorum was not present at this meeting.

2. Libby as Local Treasurer Ignored Quorum Determination

When Sister Libby was Treasurer during the period of Jan 1 - Dec 31, 2014. The record will show that no mention of a quorum was made in the minutes. Yet expenditures were made.

3. Libby and Powers Absent at Meetings

We understand the concern of the charging parties regarding their assumption that one of Local 114 attorneys had done subcontracted work for a firm who was working for the Freedom Foundation. Had they attended the meeting where this lawyer was present, they would have learned that the limited, indirect extent of that relationship is not as spurious as portrayed by President Dugovich. Had they attended the presentation, Powers and Libby would also have learned that this attorney is a registered democratic, a democratic candidate for local office and one who supports politically progressive candidates. He also is general co-counsel for a labor organization.

III.

Charges are Moot

In an effort to correct any perceived problem or question as to whether a majority of the membership support financial decisions by the Local, on May 28, 2019 Local Officers specifically discussed concerns over the allegations of a lack of quorum with the membership. With a quorum present, the membership overwhelmingly reapproved all past expenditures challenged by Libby and Powers. While we firmly maintain action was not necessary, we believed that it was prudent, to demonstrate to our members, who are in the minority, that the votes and democratic actions taken in previous meetings comport with the wishes and interests of the majority. ¹

Because the membership is in full support and full knowledge of the financial decisions made and current and past local officers (including Libby and Powers) are now mindful of determining a quorum, there is no remedy that can be fashioned by the judicial panel that would serve any productive purpose or result.

Shayla Francis
Sept 23, 2019

Jael Komac
Sept 23, 2019

Andrew Wojciechowski
Sept 23, 2019

Tom Veitch
Sept 23, 2019

¹ **Maycock Case**

Of note is the case of Maycock – Case 18-80-A, where Maycock correctly objected to the hiring of a Council 2 lawyer without the consent of the executive board and in direct violation of the Council 2 constitution. However, despite clear and convincing evidence of wrongdoing, the Judicial Panel trial officer McKenna affirmed the Council’s actions by recognizing that Council 2 retroactively corrected the violation. This action was upheld by the full judicial panel on appeal. So, apparently, a “do over” is allowed.