

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4 August Term, 2013

5
6 (Submitted: December 3, 2013 Decided: February 3, 2014)

7
8 Docket No. 13-2038-cv

9
10 -----X

11
12 JOHN BRADY,

13
14 Plaintiff-Appellant,

15
16 v.

17
18 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, THEATRICAL
19 DRIVERS AND HELPERS LOCAL 817, THOMAS J. O'DONNELL, as
20 Secretary Treasurer and President of Local 817, IBT, and FRANCIS J.
21 CONNOLLY, JR., as Treasurer of Local 817, IBT,

22
23 Defendants-Appellees.

24
25 ----- X

26
27 Before: LIVINGSTON, LOHIER, and CARNEY, Circuit Judges.

28
29 John Brady appeals from a judgment of the United States District Court
30 for the Southern District of New York (Forrest, J.) dismissing his claim
31 brought pursuant to the Labor-Management Reporting and Disclosure Act
32 (the "LMRDA"). The District Court concluded that it lacked subject matter
33 jurisdiction under the LMRDA because Brady was not and has never been a
34 member, or member in substance, of the International Brotherhood of
35 Teamsters, Theatrical Drivers and Helpers Local 817. We AFFIRM.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Eugene G. Eisner, Eisner & Mirer, P.C.,
New York, New York, *for* Plaintiff-
Appellant.

Eugene S. Friedman, William Anspach,
Cristina E. Gallo, Friedman & Wolf,
New York, New York, *for* Defendants-
Appellees.

LOHIER, Circuit Judge:

John Brady appeals from a judgment of the United States District Court for the Southern District of New York (Forrest, J.) dismissing this case for lack of subject matter jurisdiction. Brady sued the International Brotherhood of Teamsters, Theatrical Drivers and Helpers Local 817 (“IBT Local 817”) and two of its officers (together with IBT Local 817, “Defendants”), alleging that Defendants violated Title I of the Labor-Management Reporting and Disclosure Act (the “LMRDA”), 29 U.S.C. § 411 et seq., by denying him membership in IBT Local 817 in retaliation for his complaints about a union member. The District Court held that it lacked subject matter jurisdiction because Brady pleaded facts affirmatively establishing that he was neither a member nor a member in substance of the union. We affirm.

1 **BACKGROUND**

2 “The amended complaint alleges the following facts, which we assume
3 to be true and construe in the light most favorable to the plaintiff.” See Cruz
4 v. FXDirectDealer, LLC, 720 F.3d 115, 118 (2d Cir. 2013). At various times
5 between 1981 and 2007, Brady sought and obtained work through IBT Local
6 817’s hiring hall. In 2007, while working on a film set, Brady criticized a
7 union member for not distributing promised cash per diem payments to
8 drivers for the set. In 2008 Brady was passed over for membership in IBT
9 Local 817 and told by defendant Thomas J. O’Donnell, the then Secretary
10 Treasurer of IBT Local 817, that the refusal was in retaliation for Brady’s
11 criticism relating to the per diem payments. Later, in 2012, Brady requested a
12 membership application from defendant Francis J. Connolly, Jr., the newly
13 elected Secretary Treasurer of IBT Local 817. Connolly refused to provide
14 one.

15 The Constitution and By-Laws of IBT Local 817 (the “Union
16 Constitution”) provide that a person is “eligible for membership” if he or she
17 has “good moral character” and “works in the craft or employment over
18 which [IBT Local 817] has jurisdiction.” Union Constitution § 4.01. Section

1 4.03 of the Union Constitution establishes three “Formal Requirements” for
2 union membership for an “eligible applicant”: (1) the applicant “shall have
3 executed a written application for membership,” (2) the applicant “shall have
4 tendered the initiation fees and one month’s dues,” and (3) “[t]he local shall
5 have accepted his application and dues.” Union Constitution § 4.03. The
6 amended complaint alleges that Brady satisfied the eligibility criteria of § 4.01
7 and therefore was entitled to receive a membership application. It also
8 alleges that IBT Local 817 “routinely granted membership” to individuals
9 without requiring them “to request or fill out an application for
10 membership.”

11 Brady claims that the union’s refusal to provide him an application or
12 grant him membership was retaliatory, in violation of the LMRDA. The
13 District Court determined that it lacked subject matter jurisdiction under the
14 LMRDA because Brady’s allegations established that he was neither a
15 member nor a member in substance of IBT Local 817.

16 This appeal followed.
17

1 The LMRDA defines a member, in relevant part, as “any person who
2 has fulfilled the requirements for membership in [a labor] organization.” 29
3 U.S.C. § 402(o). To determine whether an individual is a union member, we
4 have suggested that the focus should be “on whether [a] plaintiff[] ha[s]
5 fulfilled the requirements of membership.” Phelan, 973 F.2d at 1057. “[T]hat
6 union officials have not performed the ministerial acts necessary to give
7 formal recognition to a person’s status as a member is not determinative.” Id.
8 (quotation marks omitted). In Hughes v. Local Number 11 of International
9 Association of Bridge, Structural and Ornamental Ironworkers, 287 F.2d 810
10 (3d Cir. 1961), the Third Circuit relied on similar reasoning to hold that the
11 LMRDA’s protection extends to “those who are everything that members are,
12 to those who are in substance members, despite the fact that the officials of
13 the particular labor organization have not performed the ministerial acts
14 precedent to formal admission and recognition.” Id. at 815.

15 We agree with the Third Circuit and adopt the “member in substance”
16 formulation articulated in Hughes and subsequently recognized by other
17 sister Circuits as relevant to cases in which the union does not retain
18 discretion “to refuse membership . . . to those who have fulfilled its standard

1 membership requirements.” Id. at 816; see Gavin v. Structural Iron Workers
2 Local No. 1, 553 F.2d 28, 31 (7th Cir. 1977); Moynahan v. Pari-Mutuel Emps.
3 Guild of Cal., Local 280, 317 F.2d 209, 210 (9th Cir. 1963).

4 Applying that formulation here, Brady argues that he qualified as a
5 member in substance of IBT Local 817 because he was eligible to be a member
6 and the § 4.03 requirements were purely ministerial acts. We disagree. In
7 doing so, we again turn to Hughes, in which the Third Circuit explained that
8 Hughes’s formal admission to the defendant union was merely “ministerial”
9 because that union’s constitution required it to admit Hughes as a transfer
10 from an affiliated local. Hughes, 287 F.2d at 815-16. Unlike the union
11 requirements in Hughes, the Union Constitution here does not require that
12 IBT Local 817 accept every eligible applicant for membership. Cf. Gavin, 553
13 F.2d at 31 (application approval not ministerial where union constitution
14 specifically reserved discretion to reject a transfer applicant); Moynahan, 317
15 F.2d at 210 (application approval not ministerial where union constitution
16 required favorable vote of current membership before admission).

17 To the contrary, the Union Constitution gives the union discretion over
18 membership decisions. For example, even an eligible applicant for

1 membership in IBT Local 817 is not considered a member until the union
2 “accept[s]” his application, which it is not required to do. Union Constitution
3 § 4.03. Had Brady actually applied, therefore, IBT Local 817 would have
4 retained discretion to accept or reject his application.

5 Brady also characterizes IBT Local 817’s requirements as “ministerial”
6 because the union “routinely granted” membership to individuals who did
7 not meet the requirements. We reject the characterization insofar as it
8 conflicts with the plainly discretionary contractual language of the Union
9 Constitution. There is no provision in the Union Constitution that requires
10 IBT Local 817 to accept all eligible applications. See LaSalle Bank Nat’l Ass’n
11 v. Nomura Asset Capital Corp., 424 F.3d 195, 206 (2d Cir. 2005). In any event,
12 that IBT Local 817 perhaps only rarely exercised its discretion to reject an
13 eligible applicant did not disable it from rejecting Brady’s application.

14 Finally, Brady argues that IBT Local 817 should not be permitted to
15 “profit” from its alleged bad faith refusal to provide him with an application.
16 Because Brady was not a member or member in substance of the union,
17 however, the District Court was without jurisdiction to entertain this
18 argument. IBT Local 817’s denial of union membership to Brady, if it can

1 even be described as such, is not a wrong that is redressable under the
2 LMRDA. See Phelan, 973 F.2d at 1056 (“[C]ourts have refused to entertain
3 suits by plaintiffs against unions that have rejected them for membership.”);
4 Abrams v. Carrier Corp., 434 F.2d 1234, 1254 (2d Cir. 1970) (“Wrongful denial
5 of union membership does not come within the ambit of . . . the LMRDA.”).

6 CONCLUSION

7 The District Court correctly concluded that it lacked subject matter
8 jurisdiction to adjudicate Brady’s claim under the LMRDA. For the foregoing
9 reasons, the judgment of the District Court is AFFIRMED.