

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 August Term, 2006

4 (Argued February 5, 2007 Decided August 17, 2007)

5 Docket Nos. 06-0355-cv(L), 06-0504-cv(XAP)

6 -----
7 LOUIS DORO,

8 Plaintiff-Appellant-Cross-Appellee,

9 v.

10 SHEET METAL WORKERS' INTERNATIONAL
11 ASSOCIATION,

12 Defendant-Appellee-Cross-Appellant,

13 LOCAL UNION 38, SHEET METAL WORKERS'
14 INTERNATIONAL ASSOCIATION AND GINO COLUMBO,
15 PRESIDENT OF LOCAL UNION NO. 38, IN HIS
16 OFFICIAL AND INDIVIDUAL CAPACITIES,

17 Defendants.
18 -----

19 B e f o r e: MESKILL, NEWMAN and SACK, Circuit Judges.

20
21 Appeal from a judgment of the United States District
22 Court for the Southern District of New York, Brieant, J., entered
23 on December 27, 2005, granting summary judgment for Defendant-
24 Appellee-Cross-Appellant Sheet Metal Workers' International
25 Association and denying Plaintiff-Appellant-Cross-Appellee Louis
26 Doro's motion for partial summary judgment on his claim under the
27 Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411.

1 Affirmed; cross-appeal dismissed.

2 CHRISTOPHER WATKINS, Chester, NY (Stephen
3 Bergstein, Bergstein & Ullrich, Chester,
4 NY, of counsel),
5 for Appellant.

6 JEFFREY S. DUBIN, Huntington, NY,
7 for Appellee.

8 MESKILL, Circuit Judge:

9 This case asks us to decide whether the Sheet Metal
10 Workers' International Association (the International) may be
11 held liable under the Labor-Management Reporting and Disclosure
12 Act (LMRDA), 29 U.S.C. § 411, because in its quasi-appellate
13 role, the International ratified a decision of the local union
14 that allegedly violated member Louis Doro's (Doro) due process
15 rights. We hold that the United States District Court for the
16 Southern District of New York, Brieant, J., properly granted
17 summary judgment for the International and dismissed the claim.

18 Affirmed; cross-appeal dismissed.

19 BACKGROUND

20 Doro is a sheet metal worker who since 1989 has been a
21 member in good standing of the International and its affiliate,
22 Local Union 38 (Local 38). Doro occasionally worked overtime for
23 a Local 38 contractor, P & P Sheet Metal, performing pipe
24 sketching and estimating jobs related to piping and electrical
25 work. On October 22, 1998, fellow Local 38 member Nicholas
26 Colombo, Sr. (Nicholas Colombo), filed charges against Doro with

1 the local union. The charging document alleged the following
2 misconduct:

- 3 -Member working for P & P Sheet Metal (a [Local] 38
4 contractor) accepting substandard wages and benefits for
5 work performed after 40 hours with full knowledge that
6 benefits were not being paid into [Local] 38 and the
7 International Pension.
- 8 -Member failing to obtain an overtime permit.
- 9 -Member receiving two benefits (vacation and dues check-
10 off in their [sic] pay[]).

11 On the same day, Nicholas Colombo filed charges against another
12 Local 38 member, Anthony Pelella (Pelella). The documents
13 charging Pelella and Doro are identical, except for the name and
14 address of the charged party.

15 Doro, in his April 8, 2005 deposition, testified that
16 he was one of about 13 members whom Local 38 charged for work
17 performed for P & P Sheet Metal, allegedly in violation of the
18 union constitution, and that he understood the substance of the
19 charges against him. According to Doro, Roy Seacor, P & P Sheet
20 Metal's owner, called a meeting of all the charged members and
21 said not to worry about the charges, and that the issue of any
22 fines imposed would be dealt with after the union trial.

23 On November 4, 1998, less than two weeks after mailing
24 the charges, Local 38's Executive Board Trial Committee tried
25 both Doro and Pelella separately. The record before us contains
26 no transcript of the proceedings against Doro and Pelella.
27 Nicholas Colombo's brother Gino Colombo served as Chairman of the
28 Trial Committee. Doro did not object to the composition of the

1 Trial Committee. Nicholas Colombo read the charges, and Doro
2 responded that he was "sorry if [he] did anything wrong." Doro
3 was not represented by counsel at the hearing or, apparently, at
4 any other time during the union proceedings against him. The
5 record provides no details of Pelella's trial, or any indication
6 whether Pelella admitted the factual basis for the charges
7 against him.

8 The Trial Committee concluded that Doro and Pelella
9 each violated three sections of the union constitution and fined
10 Doro \$11,096 and Pelella \$4,418. On November 18, 1998, Gino
11 Colombo read the "trial minutes" of both trials to Local 38's
12 membership. The membership ratified the findings of guilt and
13 the fines.¹

14 Doro appealed to Arthur Moore, the General President of
15 the International, who affirmed Local 38's decision on January
16 22, 1999. Doro further appealed to the International's Executive
17 Council, which on July 7, 1999, upheld the decision below,
18 although it modified the penalty to remove any possibility of
19 expulsion. Doro appealed that decision to the International's
20 Grievances and Appeals Committee on September 2, 1999.

21 Doro's appeal was pending before the Grievances and

¹ Doro contends that the minutes "referred to documentary evidence never shown to [him] at trial and which he never had an opportunity to confront and rebut," but he does not identify that evidence or its relevance to his due process claim against the International.

1 Appeals Committee for almost five years, during which time Local
2 38 filed suit in federal court under the LMRDA against Pelella to
3 collect Pelella's unpaid fine. See Local Union No. 38 v.
4 Pelella, 350 F.3d 73, 78 (2d Cir. 2003). Pelella asserted a
5 counterclaim for violation of his due process rights and breach
6 of contract. Id. On November 27, 2001, after a two-day trial, a
7 jury found Local 38 liable for violating Pelella's due process
8 rights. Id. at 79. In affirming the order of the district court
9 granting Pelella fees and costs, we noted that Local 38 conceded
10 "that the charges and procedures to which Local 38 subjected
11 Pelella reflect, at the very least, negligent compliance with the
12 due process rights guaranteed by the LMRDA." Id. at 91.

13 Doro finally appeared before the Grievances and Appeals
14 Committee on August 20, 2004. In a statement that Doro claims he
15 read before the Convention's Grievance and Appeals Committee (the
16 Committee), he argued that the written charges prepared by
17 Nicholas Colombo "did not allege when or where the infractions
18 were committed, the number of hours in question, nor even the
19 work that was covered by the Union contract."² Doro cited the
20 Pelella decision as "case law" that compelled the Committee to
21 reverse Local 38's decision against him.

² We assume for purposes of the instant appeal that Doro's typed "script" for the hearing, which is reproduced in the record in lieu of a transcript with the annotation "Read on August 20, 2004 before Grievance & Appeals Committee," represents an accurate account of Doro's presentation to the Committee. Neither party appears to dispute this.

1 The Committee recommended that the General Executive's
2 decision be upheld. In recounting the prior proceedings, the
3 Committee stated that Local 38 had observed Doro's due process
4 rights, "including serving him with charges stating with
5 sufficient details the conduct of which he was accused and giving
6 him a full opportunity to defend against those charges." In
7 giving its reasons for recommending that the Convention uphold
8 the decision of the Executive Council, the Committee stated that
9 "Doro, both in his statements to the Committee and in his prior
10 statements during the appeal process, had acknowledged violating
11 the SMWIA Constitution" and had "also acknowledged in his
12 statements before the Committee that he understood the nature of
13 the charges against him." The Committee's recommendation made no
14 reference to the Pelella decision. In a letter dated August 27,
15 2004, the General Secretary-Treasurer of the International
16 informed Doro that the General Convention had approved the
17 Committee's recommendation and voted to reject his appeal.

18 On October 18, 2004, Doro filed suit in federal court
19 against Local 38, the International, and Gino Colombo for
20 "willfully" violating his due process rights under the LMRDA.
21 On July 6, 2005, Doro settled with Local 38 and Gino Colombo.
22 The remaining defendant, the International, moved for summary
23 judgment on the ground that Doro, because he sits on the Board of
24 Directors of and owns a 24 percent stake in CAQS, Inc., which

1 employs Local 38 members, is an "interested employer" who is
2 barred from bringing this suit pursuant to 29 U.S.C. § 411(a)(4).
3 Doro moved for partial summary judgment on the issue of
4 liability, asserting that as a matter of law the International
5 knowingly had ratified a facially illegal decision by Local 38.
6 The district court denied both motions, but entered summary
7 judgment sua sponte for the International on the ground that Doro
8 made no showing that the International acted in bad faith in
9 performing its appellate functions. This appeal followed.

10 DISCUSSION

11 Standard of Review

12 We review de novo a district court's grant of summary
13 judgment, construing the evidence in the light most favorable to
14 the nonmoving party and drawing all inferences and resolving all
15 ambiguities in favor of the nonmoving party. See Aon Fin. Prods.
16 v. Société Générale, 476 F.3d 90, 95 (2d Cir. 2007). Summary
17 judgment is appropriate "if the pleadings, depositions, answers
18 to interrogatories, and admissions on file, together with the
19 affidavits, if any, show that there is no genuine issue as to any
20 material fact and that the moving party is entitled to a judgment
21 as a matter of law." Fed. R. Civ. P. 56(c).

22 The Merits

23 Doro contends that the district court erred in denying
24 his motion for summary judgment on the issue of liability and in

1 granting summary judgment for the International sua sponte.
2 Doro's LMRDA claim relies on a number of facts that, even if not
3 formally disputed in the parties' Local Civil Rule 56.1
4 statements, are nonetheless unsettled, particularly the specific
5 factual background of Doro's and Pelella's union trials.
6 However, Doro has not identified for either the district court or
7 this Court any genuine issue of material fact that would raise a
8 jury question on the issue we deem dispositive. See Fed. R. Civ.
9 P. 56(c).

10 Doro contends that the International knowingly ratified
11 Local 38's alleged violation of the due process rights afforded
12 him by the LMRDA.³ He argues that the insufficiency of the
13 charges Local 38 brought against him are evident from the face of
14 the document, and that he informed the International's Grievance
15 and Appeals Committee of the Pelella decision. The International
16 contends that it did not act in bad faith in affirming the
17 decision of Local 38, and that Doro may not bring suit under the

³ The LMRDA's "[s]afeguards against improper disciplinary action" provide that

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 (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

29 U.S.C. § 411(a) (5).

1 LMRDA because he is an interested employer.⁴ We need not decide
2 whether Doro is an interested employer pursuant to 29 U.S.C.
3 § 411(a)(4), because we hold that as a matter of law Doro has
4 failed to adduce any evidence that the International ratified any
5 unlawful action of Local 38.

6 Congress enacted the LMRDA to correct widespread abuses
7 of power and corruption by union officials, including the abuse
8 of union disciplinary powers. Pelella, 350 F.3d at 83. The
9 LMRDA contains a "Bill of Rights" for union members, including
10 the right of a member to bring an action against his union and
11 its leaders in court or before an administrative agency for
12 violations of the LMRDA's substantive provisions. Id. This
13 right-to-sue provision was designed to give union members the
14 tools to insure the fairness of their union as a representative
15 institution. Pelella, 350 F.3d at 83.

16 We have recognized that this "right to sue" may permit
17 a union member to recover damages from an international union if
18 the international ratifies the illegal acts of a local union.
19 Phelan v. Local 305, 973 F.2d 1050, 1062 (2d Cir. 1992). Common

⁴ Although the International has filed a cross-appeal, it does not seek to modify the district court's judgment. Thus, "no cross-appeal was necessary to bring these contentions before us if they can be considered otherwise. They would simply be alternative grounds on which the judgment below could be supported." United States v. Raines, 362 U.S. 17, 27 n.7 (1960). We therefore dismiss the International's cross-appeal and consider the arguments made in support thereof as arguments for affirming the district court's judgment.

1 law agency principles govern an international union's liability
2 for the actions of its local chapters or their officers. Id.
3 However, an international union's liability for violations of a
4 member's rights may not be coextensive with that of the local
5 union. While a union member may prevail against a local union
6 under the LMRDA if the local union violated one of his enumerated
7 rights, he may prevail against the international only if the
8 international ratified the local union's violation. Rodonich v.
9 House Wreckers Union Local 95, 817 F.2d 967, 973 (2d Cir. 1987).

10 In the pending case, the Committee's recommendation to
11 uphold the Executive Council's affirmance of discipline for
12 Doro's violation was based on his admission of his violation and
13 his further admission that he understood the charges against him.
14 It remains an open question whether a local union can violate a
15 member's due process rights under the LMRDA when the member does
16 not contemporaneously challenge the deficiencies of the charging
17 document and admits, during the intraunion appeal process, the
18 factual basis for the charges and his understanding of the nature
19 of the charges. Compare Strom v. Nat'l Ass'n of Basketball
20 Referees, 564 F.Supp. 250, 256 (E.D. Pa. 1983) ("[I]ndependent
21 knowledge of the general nature of the accusations is irrelevant
22 to the requirement that written specific charges be provided."),
23 and Gleason v. Chain Serv. Rest., 300 F.Supp. 1241, 1253
24 (S.D.N.Y. 1969) ("An ex post facto showing that the accused had

1 knowledge of the events surrounding the alleged offenses cannot
2 cure the lack of adequate written notice made mandatory by the
3 statute.”), aff’d, 422 F.2d 342 (2d Cir. 1970), with Stodghill v.
4 Serv. Employees’ Int’l Union, 13 F.Supp.2d 960, 965-66 (E.D. Mo.
5 1998) (holding that the charges were sufficiently specific when
6 the union member, by his own admission, “was prepared to defend
7 himself against the charges”), aff’d in part and rev’d in part on
8 other grounds, 192 F.3d 1159 (8th Cir. 1999), and Vars v. Int’l
9 Bhd. of Boilermakers, 215 F.Supp. 943, 948 (D.Conn. 1963)
10 (finding no due process violation where member was “very
11 familiar” with factual basis for the charges). We need not
12 decide this question today. It suffices for our decision to hold
13 that, with the law unsettled as to whether a member’s admissions
14 of both his violations and his understanding of charges insulates
15 a local from liability for imposing discipline on arguably
16 inadequately specific charges, an intraunion appellate body does
17 not ratify the arguable due process violation of the local by
18 affirming the member’s discipline on the basis of his admissions.

19 CONCLUSION

20 We conclude that the district court properly granted
21 summary judgment for the International because Doro has failed as
22 a matter of law to demonstrate that the International violated
23 the LMRDA in relying on his admissions in affirming Local 38’s
24 decision to discipline him. Therefore the judgment of the

1 district court is affirmed, and the International's cross-appeal
2 is dismissed.