

LAW OFFICES
JUBELIRER, PASS & INTRIERI, P.C.

219 FORT PITT BOULEVARD
PITTSBURGH, PENNSYLVANIA 15222-1576

JOSEPH J. PASS
NEAL R. CRAMER
ERNEST B. ORSATTI
EDWARD H. WALTER
ROBERT A. EBERLE
JAMES A. WELKER
JOSEPH SANTINO PASS

412-281-3850
412-261-0147

BEN PAUL JUBELIRER (1904-1983)
FRANK P.G. INTRIERI (1942-1976)

Fax: 412-281-1985

TEAMSTERS JOINT COUNCIL 40
REPORT OF LEGAL COUNSEL
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There were three cases recently decided which are interesting:

1. *Service Employees v. Health Care Workers*, 195 LRRM 2341 (9th Cir. 2013)

In this California case involving SEIU, the Court decided that Section 501 of the Labor-Management Reporting & Disclosure Act (“Landrum-Griffin Act”) imposed a fiduciary duty on Union officers to the Union as an organization and not just to the rank and file members. SEIU International Union decided to consolidate all of its California unionized long-term health care workers from three different unions into one. Some officers of the Locals actively attempted to obstruct the consolidation and suit was filed in federal court against them and the renegade Local Union for breaching their fiduciary duty to the Union when they diverted Union funds for that purpose. The jury rendered verdicts against the individual officers ranging from \$31,400.00 to \$77,850.00 and against the renegade Local Union in the amount of \$724,000.00. The Ninth Circuit Court of Appeals affirmed the jury verdicts rejecting the argument that the fiduciary duty under Section 501 was only owed to the rank and file members.

2. *Little River Board of Ottawa Indians Tribal Gov’t.*, 359 NLRB No. 84, 195 LRRM 1061 (2013)

The NLRB asserted jurisdiction over a tribal resort and casino. The NLRB rejected the tribe’s claim to sovereign immunity over the resort and casino located on tribal land in Michigan finding that a “fair employment practice code” violated the National Labor Relations Act. The Board found that the resort is a “typical commercial enterprise operating in, and substantially affecting interstate commerce”.

3. *Roe v. Diamond*, 195 LRRM 227 (3rd Cir. 2013)

In a non-precedent setting case, a nurse’s union was found to have breached its duty of fair representation when it refused to arbitrate the grievance over the discharge of a

probationary employee. The Union argued that probationary employees did not have just cause protection under the contract. Plaintiff contended that there was nothing in the collective bargaining agreement specifically excluding probationary employees from the just cause provision. The District Court granted the Union's Motion for Summary Judgment and dismissed the case. On appeal, the Third Circuit reversed and remanded the case back to the Trial Court for trial by jury. The Court found that, because the collective bargaining agreement did not expressly state that probationary employees could be discharged without just cause and without resort to the grievance procedure, the Union's decision not to take the case to arbitration was arbitrary and therefore a violation of the duty of fair representation. It seems that the Union made the mistake of explaining its actions to the plaintiff by stating that it was based on "past practice" which, under the integration clause of the contract, expressly excludes past practices. This three Judge panel of Republican non-labor lawyers did not understand that probationary employees can be discharged during their probationary period. If the Union had a legal opinion from its attorney that the grievance had no reasonable likelihood of success in arbitration based upon the contract language, their decision not to arbitrate would not have been arbitrary as a matter of law. The Court would have had to grant summary judgment and dismiss the lawsuit if the decision was based on legal advice, even if the advice was wrong. This case demonstrates the wisdom of getting a legal opinion before deciding to not take a case to arbitration, especially a discharge case.

Respectfully submitted,

ERNEST B. ORSATTI, ESQUIRE