

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-2664

ANTHONY P. MARCISZEWSKI, Plaintiff in Case A
and Plaintiff in Case B; VANESSA W. KELLY,
Plaintiff in Case A and Plaintiff in Case B,

Plaintiffs - Appellants,

versus

ROBERT B. REICH, SECRETARY OF LABOR, Defendant
in Case A and Defendant in Case B; THE BALTI-
MORE MUNICIPAL EMPLOYEES LOCAL 44, AFSCME,
AFL-CIO, Defendant in Case A; AMERICAN FEDERA-
TION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, Defendant in Case A,

Defendants - Appellees,

and

MARYLAND PUBLIC EMPLOYEES COUNCIL 67, American
Federation of State, County & Municipal AFL-
CIO, Defendant in Case A; LOCAL 3836, AFSCME,
AFL-CIO, Defendant in Case A,

Defendants.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. William M. Nickerson, District Judge.
(CA-93-1216-WMN)

Argued: April 3, 1996

Decided: May 7, 1996

Before ERVIN, Circuit Judge, LAY, Senior Circuit Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation, and TRAXLER, United States District Judge for the District of South Carolina, sitting by designation.

Affirmed by unpublished per curiam opinion.

ARGUED: David William Erb, WEINBERG & GREEN, L.L.C., Baltimore, Maryland; David Arnold Sherbow, Baltimore, Maryland, for Appellants. Lewis James Karesh, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C.; Andrew Dean Roth, BREDHOFF & KAISER, Washington, D.C., for Appellees. **ON BRIEF:** Theodore Sherbow, WEINBERG & GREEN, L.L.C., Baltimore, Maryland, for Appellants. Thomas S. Williamson, Jr., Solicitor of Labor, John F. Depenbrock, Associate Solicitor, Dennis Paquette, Counsel for Litigation, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for Appellee Reich.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Anthony P. Marciszewski and Vanessa W. Kelly (Appellants) filed an action seeking judicial review of a decision by the Secretary of Labor (the Secretary) not to bring a civil action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (the Act), 29 U.S.C.A. §§ 481-83 (West 1985), against Local 44, American Federation of State, County, and Municipal Employees (the Union). Appellants, members of the Union, alleged that violations of the Act occurred during an election of officers and that the Secretary was required to bring suit against the Union to set aside the election. The district court dismissed the action, holding that Appellants had failed to establish that the Secretary's decision not to bring an action against the Union was irrational. Marciszewski and Kelly now appeal, maintaining that the decision not to bring a civil action against the Union was based on an erroneous interpretation of the Act. In addition, they contend that the facts made this a "rare case" that required the district court to go beyond determining whether the Secretary's decision not to sue--as expressed in the Statement of Reasons--was arbitrary and capricious, and instead, to apply its own judgment to the facts. See Dunlop v. Bachowski, 421 U.S. 560, 572-73 (1975).

We have carefully considered the briefs and arguments of the parties and, finding no reversible error, affirm the judgment of the district court. Marciszewski v. Reich, No. 93-1216 (D. Md. July 7, 1995).

AFFIRMED