

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

CASSANDRA MCMILLAN,

**ARB CASE NOS. 2023-0012
2023-0013**

COMPLAINANT,

**ALJ CASE NO. 2021-SOC-00003
ALJ WILLIAM P. FARLEY**

v.

DATE: June 16, 2023

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL UNION 2145,**

RESPONDENT.

Appearances:

For the Complainant:

Cassandra McMillan; *pro se*; Yorktown, Virginia

For the Respondent:

**Mintina Minto; *Acting President, American Federation of Government
Employees, Local Union 2145; Richmond, Virginia***

**Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL,
Administrative Appeals Judge**

**DECISION AND ORDER AFFIRMING ALJ'S RECOMMENDED DECISION
AND ORDER IN PART, VACATING ALJ'S RECOMMENDED DECISION AND
ORDER IN PART, AND REMANDING**

HARTHILL, Chief Administrative Appeals Judge:

This case arises under Title VII of the Civil Service Reform Act of 1978 (CSRA),¹ and the Standards of Conduct (SOC) regulations issued pursuant to the CSRA.² Complainant Cassandra McMillan (McMillan), a member of Respondent American Federation of Government Employees, Local Union 2145 (Local 2145 or Union), alleges Local 2145 violated the SOC regulations by improperly raising member dues. On October 20, 2022, a United States Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order Granting Default Judgment Against Respondent (R. D. & O.). In the R. D. & O., the ALJ recommended that default judgment be entered against Local 2145, and recommended various remedies, including that Local 2145 be ordered to reduce Union dues and reimburse all Union members for the amount improperly collected.

On November 30, 2022, Local 2145 filed Exceptions to Default Judgment (Exceptions) with the Administrative Review Board (ARB or Board). Local 2145 requested the Board reject the ALJ's recommendations and decline to enter default judgment. For the reasons set forth below, we affirm the ALJ's recommendation to enter default judgment against Local 2145, but remand the case to the ALJ to reassess the relief ordered.

BACKGROUND

1. Initiation of Proceedings and Notice to Local 2145

McMillan filed a complaint against Local 2145 with the Department of Labor's Office of Labor-Management Standards (OLMS) on December 5, 2020. In the complaint, McMillan alleged that Local 2145 violated the SOC regulations by raising dues without notice to members.³ On September 16, 2021, after conducting inquiries into the allegations made by McMillan, OLMS determined that there was a reasonable basis for

¹ 5 U.S.C. §§ 7101-7135.

² 29 C.F.R. Part 458 (2022).

³ December 5, 2020 OLMS Complaint; September 16, 2021 OLMS Referral; *see also* 29 C.F.R. §§ 458.2(a)(3) (establishing the manner in which a union subject to the CSRA may increase member dues); 458.54 (stating that a member of a labor organization who alleges her rights under the Section 458.2 have been violated may file a complaint with OLMS).

McMillan's complaint and referred the matter to the United States Department of Labor's Office of Administrative Law Judges (OALJ) for adjudication.⁴

On September 22, 2021, the Chief ALJ issued a Notice of Docketing (First Notice) to the parties. The First Notice notified Local 2145 that McMillan had filed a complaint alleging Local 2145 violated the SOC regulations by raising dues without notice to the members and that the matter had been referred for a hearing pursuant to the SOC regulations.⁵

On November 3, 2021, the Chief ALJ issued an Amended Notice of Docketing (Second Notice) to the parties.⁶ In the Second Notice, the Chief ALJ again provided notice of McMillan's claim and that the matter had been referred for a hearing.⁷ The Second Notice also referred the parties to mediation in the OALJ's alternative dispute resolution (ADR) program, and ordered Local 2145 to "file an Answer with the Chief Administrative Law Judge within twenty (20) days after the close of mediation proceedings," if mediation was unsuccessful.⁸ McMillan's claim against Local 2145 was not resolved through mediation. Even so, Local 2145 failed to file an answer to McMillan's complaint.

On December 8, 2021, Jennifer Marshall entered her appearance on behalf of Local 2145. Marshall stated that she was the newly elected President of Local 2145 and would be serving as the "non-attorney representative" for the Union.⁹

On December 20, 2021, the Chief ALJ administratively reassigned this case to ALJ William P. Farley. On July 27, 2022, ALJ Farley issued a Notice of Docketing, Prehearing Conference, and Hearing (Third Notice) to the parties. The Third Notice again provided notice of McMillan's claim to Local 2145, and provided a detailed

⁴ OLMS Referral at 1; *see also* 29 C.F.R. § 458.60 ("If it appears to the District Director [of OLMS] that there is a reasonable basis for the complaint . . . he shall refer the matter to the Chief Administrative Law Judge . . .").

⁵ First Notice at 1 & n.2.

⁶ The First Notice reflected the wrong ALJ case number. The Chief ALJ issued the Second Notice to correct that error. Second Notice at 1 n.1.

⁷ *Id.* at 1 & n.2.

⁸ *Id.* at 1 & n.3.

⁹ December 8, 2021 Notice of Appearance at 1.

summary of the procedural history of McMillan's complaint with OLMS.¹⁰ In addition, the Third Notice set discovery and other deadlines, scheduled a telephonic pre-hearing conference for August 24, 2022, and scheduled a hearing for September 14, 2022.¹¹

2. Local 2145's Failure to Participate in Proceedings and the ALJ's Issuance of an Order to Show Cause

After ALJ Farley issued the Third Notice, McMillan attempted to engage Local 2145 in discovery. On August 3, 2022, McMillan sent interrogatories, requests for production of documents, and requests for admissions to Local 2145. Local 2145 did not respond to the discovery requests.

On August 24, 2022, ALJ Farley conducted the pre-hearing conference. McMillan appeared at the conference, but no representative of Local 2145 appeared.¹² McMillan explained to the ALJ that she had not been able to get Local 2145 to respond to her discovery requests or participate in these proceedings.¹³

Consequently, on August 25, 2022, the ALJ issued an Order to Show Cause Why a Default Judgment Should Not Be Entered Against Respondent and Rescheduling Hearing (Order to Show Cause). The ALJ ordered Local 2145 to show cause by September 26, 2022,¹⁴ why a default judgment should not be entered against Local 2145 for its failure to file a response to McMillan's complaint.¹⁵ The ALJ warned Local 2145 that failure to respond could result in the entry of default judgment against the Union.¹⁶ The ALJ also rescheduled the hearing for November 3, 2022, and set a new pre-hearing conference for October 7, 2022.¹⁷ The ALJ served the Order to Show Cause on Marshall, who had previously entered her appearance

¹⁰ Third Notice at 1-2.

¹¹ *Id.* at 2.

¹² August 24, 2022 Hearing Transcript (Aug. 24 Tr.) at 4.

¹³ *Id.* at 4-5.

¹⁴ The Order to Show Cause ordered Local 2145 to respond within thirty days of the issuance of the Order, which would have been Saturday, September 24, 2022. Because the deadline fell on a Saturday, Local 2145's response was due Monday, September 26, 2022, the next business day. *See* 29 C.F.R. § 18.32(a)(1)(iii).

¹⁵ Order to Show Cause at 2.

¹⁶ *Id.*

¹⁷ *Id.*

as representative of the Union, Mintina Minto, who by that time had become the Acting President of the Union,¹⁸ and two representatives of District 4 of the American Federation of Government Employees' national office (National Union).¹⁹

Minto also received the Order to Show Cause on at least two other occasions before the September 26, 2022 response deadline. First, on September 14, 2022—the original hearing date—Minto appeared at the OALJ's office in Washington, D.C.²⁰ There, she met the Chief ALJ, who provided her with a copy of the Order to Show Cause.²¹ Second, the next day, September 15, 2022, ALJ Farley's attorney advisor sent Minto another copy of the Order to Show Cause via email.²²

Additionally, evidence provided to the ALJ by McMillan shows that on September 22, 2022, a National Union representative emailed Minto regarding

¹⁸ According to Local 2145, Marshall was suspended from her position as President before the ALJ issued the Third Notice on July 27, 2022, at which time Minto succeeded her as Acting President. Exceptions at 4.

¹⁹ Order to Show Cause at 4-5; *see also* Email from J. Santos to R. Sanghvi, Cc: C. McMillan, M. Minto, E. Burnett, D. Doyle, Aug. 25, 2022, 10:57 a.m., RE: 2021SOC00003 Request for Contact Information. Although the National Union was and is not a party to these proceedings, the record reflects that National Union representatives were in communication with the ALJ and advised Minto about these proceedings. Email from R. Sanghvi to J. Santos, Aug. 25, 2022, 10:51 a.m., RE: FW: 2021SOC00003 Request for Contact Information (National Union representative emailing ALJ's attorney advisor asking for a copy of the Order to Show Cause); Email from D. Doyle to M. Minto, Sept. 22, 2022, 2:29 p.m., RE: US DOL Complaint Over Local Dues Increase, attached to Complainant's Motion to Deny the Respondent Late Document Submission (National Union representative emailing Minto regarding Local 2145's obligations with respect to the Order to Show Cause); October 7, 2022 Hearing Transcript (Oct. 7 Tr.) at 15 (Minto stating that she was in communication with National Union regarding these proceedings and that a National Union attorney was supposed to represent Local 2145 at the hearing).

²⁰ Oct. 7 Tr. at 5, 7, 19.

²¹ *Id.* at 19. Minto stated during the October 7, 2022 conference that she did not recall specifically what document she received from the Chief ALJ, and that she believed the document was called an "order to schedule." *Id.* at 11-12. However, she confirmed that the document provided the dates for the re-set pre-hearing conference and hearing. *Id.* at 11-12, 19. The only document providing those dates was the Order to Show Cause.

²² Email from J. Santos to C. McMillan, M. Minto, D. Doyle, E. Burnett, Sept. 15, 2022, 11:55 a.m., RE: Judge William P Farley; Cassandra McMillan v. American Federation of Government Employee, Local 2145; 2021-SOC-00003 Complainant's Motion to Deny the Respondent Request for a Stay of Processing and Reschedule Hearing.

Local 2145's obligations with respect to the Order to Show Cause.²³ The representative warned Minto that failure to respond to the Order to Show Cause could result in default judgment, and cautioned that "[t]he potential financial implications of a default judgment against Local 2145 is [sic] a very serious matter."²⁴ Nevertheless, Local 2145 did not respond by the September 26, 2022 deadline.

On October 7, 2022, ALJ Farley held the rescheduled pre-hearing conference. McMillan and Minto appeared.²⁵ The ALJ questioned Minto extensively regarding Local 2145's receipt of notice regarding these proceedings and the Order to Show Cause, and the Union's failure to participate. Minto asserted that although Marshall, the previous President, may have received notice of these proceedings, Minto was not personally served with notice prior to August 2022 and was not aware of the August 24, 2022 pre-hearing conference.²⁶ However, Minto conceded that although she had not personally been given notice, she was aware McMillan was engaged in adjudication against Local 2145 as of at least March 2022, when she assumed the Presidency from Marshall.²⁷ Likewise, Minto denied receiving a copy of

²³ Email from D. Doyle to M. Minto, Sept. 22, 2022, 2:29 p.m., RE: US DOL Complaint Over Local Dues Increases, attached to Complainant's Motion to Deny the Respondent Late Document Submission; *see also* Oct. 7 Tr. at 15 (Minto confirming that she received an email from the National Union asking Local 2145 to respond in these proceedings).

²⁴ Email from D. Doyle to M. Minto, Sept. 22, 2022, 2:29 p.m., RE: US DOL Complaint Over Local Dues Increases, attached to Complainant's Motion to Deny the Respondent Late Document Submission.

²⁵ Oct. 7 Tr. at 4.

²⁶ *Id.* at 5, 14-15.

²⁷ ALJ Farley and Minto engaged in the following exchange:

JUDGE FARLEY: And so are you saying, Ms. Minto, you didn't know about this case back in March of 2022?

MS. MINTO: To be honest, Your Honor, no. I knew that this whole thing was a situation. **I knew that Cassandra had filed this case with Jennifer as the president. Jennifer made a motion with our local to settle this case with Cassandra**, and I reached out to Jennifer as well as Cassandra asking them for whatever settlement was in agreement.

Oct. 7 Tr. at 15-16 (emphasis added). Substantiating Minto's knowledge of these proceedings as of March 2022, McMillan provided to the ALJ a copy of Local 2145's General Body Meeting Minutes from March 17, 2022, which indicate that the members voted "to accept/settle the DOL lawsuit." AFGC Local 2145's General Body Meeting Order of

the Order to Show Cause when it originally issued on August 25, 2022, or at least not “see[ing] it” in her email.²⁸ However, Minto confirmed that she subsequently received a copy of the Order to Show Cause from the Chief ALJ before Local 2145’s response was due.²⁹

3. R. D. & O. and Subsequent History

On October 20, 2022, the ALJ issued the R. D. & O. The ALJ observed that Local 2145 had failed to file an Answer or a response to the Order to Show Cause as ordered.³⁰ Accordingly, the ALJ recommended that the allegations of McMillan’s complaint should be accepted as true and that default judgment should be entered against Local 2145.³¹ The ALJ also recommended that Local 2145 should be ordered to: (1) “[r]educe union dues to the amount previously set before improperly raising dues;” (2) “[r]eimburse all union members the difference between the amount of dues prior to the improper increase and the increased amount of union dues;” (3) “cease and desist from violating 29 C.F.R. § 458.3;”³² and (4) “inform its members of the course and outcome of this litigation by all means possible.”³³

Minto, on behalf of Local 2145, filed a Request for Reconsideration of Default Judgment (Request for Reconsideration) with the ALJ on October 31, 2022. The ALJ denied the Request for Reconsideration on November 16, 2022. The ALJ stated that Local 2145 did not “raise any new issues or matters that were not considered” in the R. D. & O., and that “[t]here were no affidavits addressing the failure to

Business March 17, 2022 (marked as CX-15) at 2. The Minutes reflect that Minto, then the Executive Vice President and Treasurer, was present for the meeting. *Id.* at 1.

²⁸ Oct. 7 Tr. at 5-9, 14.

²⁹ Oct. 7 Tr. at 5, 7, 11-12, 19; *see also supra* note 21.

³⁰ R. D. & O. at 1, 2-3.

³¹ *Id.* at 4.

³² The ALJ’s citation to 29 C.F.R. § 458.3 appears to be in error. The ALJ should have cited 29 C.F.R. § 458.2(a)(3), which covers the increase of union dues.

³³ R. D. & O. at 4-5.

comply with the Order to Show Cause.”³⁴ On November 30, 2022, Local 2145, through Minto, filed Exceptions to Default Judgment (Exceptions) with the ARB.³⁵

JURISDICTION AND STANDARD OF REVIEW

The ARB is authorized to review exceptions to an ALJ’s recommended decision and order in cases arising under the CSRA and SOC regulations.³⁶ Pursuant to the SOC regulations, an ALJ makes a recommended decision and order, including recommended findings of fact and conclusions disposing of the case.³⁷ The ARB then considers the ALJ’s recommended decision and order, the record, and any exceptions filed, and may affirm or reverse the ALJ, in whole or in part, or make such other disposition of the matter as it deems appropriate.³⁸ Upon finding a violation of the CSRA or the SOC regulations, the ARB may “order respondent to cease and desist from such violative conduct and may require the

³⁴ Order Denying Respondent’s Motion for Reconsideration at 1.

³⁵ Local 2145’s Exceptions were assigned ARB case number 2023-0012. Separately, on December 7, 2022, McMillan e-filed as a new appeal a “Motion to AMEND AND ADD PUNITIVE DAMAGE AND COMPEL the Respondent to IMPLEMENT the ALJ Order dated 20 October 2022 within 15 days, and that full relief is within 30 days of the ARB decision” (Motion to Amend). McMillan’s appeal was given ARB case number 2023-0013. In the Motion to Amend, McMillan asserted that Local 2145 had not yet complied with the relief ordered in the R. D. & O. McMillan requested the Board order Local 2145 to comply with the R. D. & O., and award punitive damages for Local 2145’s failure to do so. McMillan subsequently filed several other similar motions and filings, the thrust of each being that Local 2145 failed to comply with the relief recommended by the ALJ in the R. D. & O. As we advised the parties in our Order on Consolidation and Certificate of Service issued February 10, 2023, McMillan’s assertions in her Motion to Amend and other filings that Local 2145 unlawfully or wrongfully failed to comply with the R. D. & O., including the remedial action therein, were premature. The R. D. & O. was a recommendation only. 29 C.F.R. § 458.88(a). Accordingly, McMillan’s Motion to Amend and other motions and requests for relief, including her request for punitive damages, are **DENIED**.

³⁶ 29 C.F.R. §§ 458.88(c), .91(a); *see also* Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020); *Chief, Div. of Enft, Off. of Lab.-Mgmt. Standards, U.S. Dep’t of Lab. v. Local 12, Am. Fed’n of Gov’t Emps.*, ARB Nos. 2013-0094, 2014-0081, ALJ No. 2013-SOC-00001, slip op. at 3 (ARB Sept. 24, 2014).

³⁷ 29 C.F.R. § 458.88(a).

³⁸ *Id.* § 458.91(a).

respondent to take such affirmative action as it deems appropriate to effectuate the policies of the CSRA.”³⁹

DISCUSSION

1. Local 2145’s Exceptions Were Not Timely and Were Not Properly Served

The SOC regulations state that any party may file exceptions to an ALJ’s recommended decision and order within 15 days after service thereof.⁴⁰ The ARB may, in its discretion, adopt without discussion a recommended decision and order if timely exceptions are not filed.⁴¹ In the present case, the ALJ issued and served the R. D. & O. on October 20, 2022. Local 2145 did not file its Exceptions until November 30, 2022, 41 days later. Thus, Local 2145’s Exceptions were untimely.⁴²

In addition, the SOC regulations require parties to serve exceptions on all other parties, and to provide a statement that service has been completed to the ARB.⁴³ Local 2145’s Exceptions did not include a certificate of service or any other indication that Local 2145 had served a copy of the Exceptions on McMillan. Accordingly, on February 10, 2023, the Board ordered Local 2145 to serve McMillan and provide a certificate of service with the Board.⁴⁴ The Board warned Local 2145 that if it failed to comply with these service requirements, the Board “may issue its

³⁹ *Id.* § 458.91(b).

⁴⁰ *Id.* § 458.88(c).

⁴¹ *Id.* § 458.91(a).

⁴² Between the issuance of the R. D. & O. and the filing of the Exceptions, Local 2145 filed, and the ALJ ruled on, the Request for Reconsideration. A timely request for reconsideration may ordinarily toll the appeal deadline. *Phox v. The Savoy at 21c*, ARB No. 2021-0057, ALJ No. 2019-FDA-00014, slip op. at 2-3 (ARB Jan. 6, 2022) (citations omitted), *aff’d sub nom. Phox v. Sec’y, Dep’t of Lab.*, No. 22-2364, 2023 WL 1872388 (8th Cir. Feb. 10, 2023). However, the SOC regulations state that, upon issuance of a recommended decision and order, the ALJ shall transfer the case to the ARB, and that “[a]ll motions made after the transfer of the case to the [ARB] . . . shall be made in writing to the [ARB].” 29 C.F.R. §§ 458.82, .88(b). Consistent with this regulation, the R. D. & O. stated “[o]n this date, pursuant to 29 C.F.R. § 458.88(b), I am transferring this [R. D. & O.], along with the case record, to the [ARB].” R. D. & O. at 6. Because the case transferred to the ARB upon the issuance of the R. D. & O., the Request for Reconsideration was not properly filed with the ALJ and, therefore, cannot serve to toll the appeal deadline.

⁴³ 29 C.F.R. § 458.88(c).

⁴⁴ Order on Consolidation and Certificate of Service at 1-2.

decision without considering the Exceptions.”⁴⁵ Despite this warning, Local 2145 did not serve McMillan or otherwise respond to the Board’s Order.⁴⁶

Local 2145’s disregard of these procedural rules and the Board’s Order is consistent with its inattention and laxity with respect to the proceedings below and is grounds for the Board to affirm the R. D. & O. without further discussion. Even so, the ARB has elected to exercise its discretion to consider the appropriateness of the ALJ’s recommendations for the sake of completeness.

2. The Entry of Default Is Appropriate

The record amply demonstrates that the Union was given proper and repeated notice of these proceedings and, despite being given several opportunities to do so, failed to participate and respond as ordered by the Chief ALJ and ALJ Farley. Local 2145 failed to file an answer, respond to McMillan’s discovery requests, appear at the original pre-hearing conference, or otherwise participate in these proceedings. ALJ Farley then gave Local 2145 one more opportunity to participate in these proceedings with the Order to Show Cause but, once again, Local 2145 failed to respond as ordered.

Despite Local 2145’s repeated failure to participate, Local 2145 asserts in its Exceptions that the ALJ erred in entering default against it. According to Local 2145, it did not receive proper notice of these proceedings, and Minto, as Local 2145’s Acting President, did not receive a copy of the Order to Show Cause when it was issued on August 25, 2022. We reject these arguments and agree with the ALJ that the entry of default was appropriate.

A. Notice of Proceedings

As detailed above, the Chief ALJ and ALJ Farley gave Local 2145 notice of these proceedings on at least three occasions: with the First Notice on September 22, 2021, with the Second Notice on November 3, 2021, and with the Third Notice

⁴⁵ *Id.* at 2.

⁴⁶ McMillan confirmed that Local 2145 did not serve her with the Exceptions. Complainant’s Motion to Deny the Respondent [sic] Exceptions to Default Judgement [sic] (Exceptions) at 1.

on July 27, 2022.⁴⁷ In each instance, Local 2145 was notified of McMillan's claims and Local 2145's obligations with respect to these proceedings.

The service sheets accompanying the Notices indicate that the First and Third Notices were served via email on Marshall, and the Second Notice was served via email on Gloria Dunham-Anderson.⁴⁸ Local 2145 argues that Marshall was not a proper recipient of service for Local 2145 with respect to the First and Third Notices because she was not President at the times those Notices were served.⁴⁹

Regarding the First Notice, Local 2145 asserts that Dunham-Anderson served as President of the Union from April 2019 to December 2021.⁵⁰ Accordingly, Local 2145 asserts that the First Notice, issued on September 22, 2021, should have been served on Dunham-Anderson instead of Marshall.⁵¹

Local 2145 did not offer any evidence to the ALJ or the ARB that Dunham-Anderson was in fact President at the time the First Notice was issued and served. Likewise, Local 2145 did not offer any evidence that Marshall, even if not President, was not otherwise an appropriate representative of Local 2145 for service purposes. Local 2145's conclusory assertions, which are unsupported and unsubstantiated by any evidence, are not sufficient to establish that Marshall was not a proper recipient of service for the First Notice.⁵²

⁴⁷ See 29 C.F.R. § 458.69 (requiring the Chief ALJ to issue a notice of hearing). It is the ALJ's obligation, not the complainant's, to serve notice of the adjudicatory proceedings when they begin. *Id.* Because the ALJ recommended default for Local 2145's failure to participate in these adjudicatory proceedings, we focus on the issue of whether Local 2145 properly received notice from the ALJ regarding the adjudicatory proceedings.

⁴⁸ First Notice at 2; Second Notice at 3; Third Notice at 4-5.

⁴⁹ Exceptions at 1, 4.

⁵⁰ *Id.* at 4.

⁵¹ See *id.* Local 2145 asserts that McMillan misled the OALJ into believing Marshall was the President at the time she filed her OLMS complaint and when the First Notice issued. Exceptions at 4. Local 2145 offers no evidence to support this assertion, and there is no indication in the record why the Chief ALJ appears to have mistakenly served Marshall, rather than Dunham-Anderson, with the First Notice.

⁵² *Bobreski v. J. Givoo Consultants, Inc.*, ARB No. 2013-0001, ALJ No. 2008-ERA-00003, slip op. at 23 n.77 (ARB Aug. 29, 2014) (“[U]nsubstantiated arguments made in briefs or at oral argument are not evidence to be considered by this Court.” (quoting *Versarge v. Twp. Of Clinton N.J.*, 984 F.2d 1359, 1370 (3d Cir. 1993))).

Furthermore, even if Local 2145 could establish that Marshall was not a proper recipient of service for the First Notice, any service error with respect to the First Notice was cured with the issuance and service of the Second Notice. The Second Notice provided the same information as the First Notice and ordered Local 2145 to file an answer to McMillan's complaint. The Second Notice was served on Dunham-Anderson.⁵³ Local 2145 concedes that Dunham-Anderson was its President at that time.⁵⁴ Thus, Local 2145, through its President, was properly served with notice of these proceedings and its obligation to file an answer.⁵⁵

Regarding the Third Notice, Local 2145 asserts that although Marshall succeeded Dunham-Anderson as President in December 2021, Marshall was suspended from that role and replaced by Minto before the Third Notice issued on July 27, 2022.⁵⁶ As a result, Local 2145 asserts that Minto, rather than Marshall, should have been served with the Third Notice.⁵⁷ Local 2145 also asserts that service of the Third Notice on Marshall was particularly problematic because Marshall, having been suspended, failed to alert Minto or Local 2145 about the Third Notice.⁵⁸

As set forth above, Marshall notified the ALJ that she would be serving as Local 2145's representative on December 8, 2021. Consistent with this notice, the ALJ served the Third Notice on Marshall as Local 2145's representative. Although Local 2145 asserts that Marshall had been suspended in the period between when she entered her appearance and when she was served with the Third Notice, neither Marshall, nor her successor Minto, nor anyone else from Local 2145 ever notified the ALJ that Marshall no longer represented the Union, or that a new representative should be substituted for her.⁵⁹ We find no error in the ALJ serving the Third Notice on Marshall in these circumstances.

⁵³ Second Notice at 3.

⁵⁴ Exceptions at 4.

⁵⁵ Local 2145 nakedly asserts that "Ms. Dunham-Anderson did not receive any notification in regards, to this allegation." *Id.* Once again, Local 2145 has not offered any evidence supporting this assertion, and we reject it as conclusory and unsubstantiated.

⁵⁶ *Id.*

⁵⁷ *See id.*

⁵⁸ *Id.*

⁵⁹ On August 3, 2022, McMillan served her discovery requests via email on Marshall, Minto, and others. Marshall responded to McMillan, with copies to Minto, ALJ Farley's

Furthermore, although Local 2145 asserts that Marshall did not alert Minto or anyone else about these proceedings after she was suspended, Minto admitted to ALJ Farley that she was aware of these proceedings dating back at least to March 2022, when she first assumed the Presidency from Marshall.⁶⁰ Documents produced in the ALJ proceedings by McMillan and Local 2145 also reflect that Minto was personally copied on subsequent communications related to these proceedings in July and August 2022, before the ALJ issued the Order to Show Cause.⁶¹ Even so, Minto and Local 2145 failed to act diligently to ensure that the Union obtained the information it needed to participate and fulfill its obligations in these proceedings.

Finally, Local 2145 argues that the Chief ALJ and ALJ Farley erred by serving the First, Second, and Third Notices, and other documents in this case, on Local 2145's representatives via email.⁶² Specifically, Local 2145 cites the service

attorney-advisor, and others, that she did not want McMillan to include her on "these communications." Email from J. Marshall to C. McMillan, Cc: M. Minto, D. Doyle, E. Burnett, J. Santos, et al., Aug. 3, 2022, 3:36 p.m., RE: Judge William P Farley; Cassandra McMillan v. American Federation of Government Employee, Local 2145; 2021-SOC-00003 Motion for Discovery. Marshall did not indicate why she did not want to be included on these communications or otherwise indicate that she no longer represented Local 2145. Despite being copied on these communications, Minto did not enter her own appearance as representative of Local 2145, otherwise indicate that she, or anyone else, should be substituted for Marshall, or inform the ALJ that Marshall no longer represented Local 2145. Additionally, despite receiving these communications, Minto failed to ensure that Local 2145 responded to the discovery requests, inform herself of the status of the proceedings, or otherwise take steps to participate in the proceedings.

⁶⁰ Oct. 7 Tr. at 15-16; *see also supra* note 27.

⁶¹ Email from J. Marshall to C. McMillan, Cc: M. Minto, D. Doyle, E. Burnett, J. Santos, et al., Aug. 3, 2022, 3:36 p.m., RE: Judge William P Farley; Cassandra McMillan v. American Federation of Government Employee, Local 2145; 2021-SOC-00003 Motion for Discovery (Minto copied on communications regarding McMillan's discovery requests); Emails between C. McMillan, J. Marshall, M. Minto, et al., July 20, 2022, 9:12 p.m. to July 21, 2022, 11:05 a.m., RE: Back Payment [sic] for Dues and lower the dues by-weekly payment, attached to Request for Reconsideration (email chain including McMillan, Marshall, and Minto, among others, discussing Marshall being "served upon by DOL the lawsuit by Cassandra McMillan regarding overpayment of dues," and actively discussing resolution or settlement thereof); Oct. 7 Tr. at 17-18 (Minto confirming she received the August 3, 2022 email from Marshall to McMillan responding to service of discovery requests and asking to be removed from communications).

⁶² Exceptions at 1. Local 2145 did not object to the use of email service before the ALJ. As a result, the argument is waived. *See* 29 C.F.R. § 458.83 ("Any objection not duly urged

rules under the OALJ Rules of Practice and Procedure, which permit service “by electronic means if the [recipient] consented in writing.”⁶³ Local 2145 asserts that it never consented to receiving email service and, therefore, notice of these proceedings was never properly served.⁶⁴

Although the OALJ Rules of Practice and Procedure generally require written consent for email service, the Rules expressly permit the waiver, modification, or suspension of any Rule “when doing so will not prejudice a party and will serve the ends of justice.”⁶⁵ On April 16, 2020, before these proceedings began and in response to the COVID-19 pandemic, the Chief ALJ issued an Administrative Notice announcing that ALJs would effectuate service via email, in lieu of certified mail and other forms of service. The Chief ALJ explained that “OALJ’s national and district offices are all currently self-quarantining, operating remotely, and unable to utilize certified mail,” and that email service would allow OALJ “to continue administrative-adjudication operations without jeopardizing the safety of those involved.”⁶⁶ Undoubtedly, switching to email service in these circumstances “serve[d] the ends of justice,” and Local 2145 has not established any unfair prejudice it suffered as a result of being served via email, rather than by

before an Administrative Law Judges shall be deemed waived.”); *Phillips v. Norfolk S. Ry. Co.*, ARB No. 2015-0059, ALJ No. 2014-FRS-00133, slip op. at 3 n.5 (ARB Aug. 11, 2015) (citation omitted) (“The Board does not generally consider arguments raised for the first time on appeal.”). Although waived, we have elected to analyze the argument for the sake of completeness and clarity.

⁶³ 29 C.F.R. § 18.30(a)(2)(E).

⁶⁴ Exceptions at 1. Local 2145 also asserted that its “address is an incorrect address on the service sheet.” *Id.* It is not clear to which service sheet Local 2145 is referring, but given that the Chief ALJ and ALJ Farley emailed all orders instead of physically mailing them, and given that we approve of such practice in this case, any error in the physical mailing address indicated on the service sheets is immaterial and harmless.

⁶⁵ 29 C.F.R. § 18.10(c).

⁶⁶ April 16, 2020 Administrative Notice at 2, available at [https://www.oalj.dol.gov/DECISIONS/ALJ/MIS/2020/In_re_IMPLEMENTATION_OF_EL_2_020MIS00007_\(APR_16_2020\)_151609_CADEC_PD.PDF?_ga=2.142554935.407634182.1685708123-207613970.1685708123](https://www.oalj.dol.gov/DECISIONS/ALJ/MIS/2020/In_re_IMPLEMENTATION_OF_EL_2_020MIS00007_(APR_16_2020)_151609_CADEC_PD.PDF?_ga=2.142554935.407634182.1685708123-207613970.1685708123). On April 29, 2022, the Chief ALJ rescinded the April 16, 2020 Administrative Notice, but continued the practice of effectuating service via email. April 29, 2022 Administrative Notice at 2, available at [https://www.dol.gov/sites/dolgov/files/OALJ/PUBLIC/RULES_OF_PRACTICE/REFERENCES/REFERENCE_WORKS/US_v_Procedural_Notices_R_2022MIS00003_\(APR_29_2022\)_1_21824_CADEC_SD_20224291433.pdf](https://www.dol.gov/sites/dolgov/files/OALJ/PUBLIC/RULES_OF_PRACTICE/REFERENCES/REFERENCE_WORKS/US_v_Procedural_Notices_R_2022MIS00003_(APR_29_2022)_1_21824_CADEC_SD_20224291433.pdf).

some other means.⁶⁷ Accordingly, we conclude it was appropriate for the Chief ALJ and ALJ Farley to utilize email service in this case.⁶⁸

B. Order to Show Cause

Given Local 2145's failure to participate in the proceedings, the ALJ prudently issued the Order to Show Cause on August 25, 2022. The ALJ ordered Local 2145 to show cause by September 26, 2022, why default should not be entered against it, and warned Local 2145 that its failure to respond could result in default judgment. The ALJ served the Order to Show Cause on Minto (who was at the time the Acting President), Marshall (who had entered, and never withdrawn, her appearance for Local 2145), and two National Union representatives.⁶⁹

Local 2145 asserts that Minto and Local 2145 did not receive a copy of the Order to Show Cause on August 25, 2022.⁷⁰ Email records maintained by the OALJ prove that the Order to Show Cause was sent via email to Minto and other

⁶⁷ For example, Local 2145 has not alleged or proved that the Chief ALJ or ALJ Farley used the incorrect email addresses or that the email addresses were not monitored.

⁶⁸ Although not cited by Local 2145, we observe that the SOC regulations also contain their own specific service rules. Section 459.4 provides that “[n]otices of hearing, decisions, orders and other papers may be served personally or by registered or certified mail or by telegraph.” 29 C.F.R. § 459.4(a). Local 2145 did not raise any argument concerning e-service, generally, or Section 459.4, specifically, before the ALJ or the ARB, so we deem any objection to the method of service used under that regulation as waived. *See* 29 C.F.R. § 458.83 (“Any objection not duly urged before the Administrative Law Judge shall be deemed waived.”); *see also Luckie v. United Parcel Serv., Inc.*, ARB Nos. 2005-0026, -0054, ALJ No. 2003-STA-00039, slip op. at 16 n.7 (ARB June 29, 2007), *aff’d* 321 F. App’x 889 (11th Cir. 2009) (citation omitted) (“UPS did not raise this argument before the ALJ or the ARB and has, therefore, waived it.”). In any event, 29 C.F.R. § 459.4(a) lists methods of service as permissive and 29 C.F.R. § 459.5(a) permits the ARB to construe the regulations liberally to effectuate the purposes and provisions of the CSRA. In this case, we construe the service rules liberally to allow email service in these circumstances, given the global pandemic and the lack of unfair prejudice to Local 2145.

⁶⁹ Order to Show Cause at 4-5; *see also* Email from J. Santos to R. Sanghvi, Cc: C. McMillan, M. Minto, E. Burnett, D. Doyle, Aug. 25, 2022, 10:57 a.m., RE: 2021SOC00003 Request for Contact Information.

⁷⁰ Exceptions at 1, 4.

recipients on August 25, 2022, at 10:57 a.m.⁷¹ Minto confirmed that the email address to which the Order to Show Cause was sent was accurate.⁷²

Moreover, the record reflects that Minto received copies of the Order to Show Cause on at least two other occasions before the September 26, 2022 deadline for Local 2145's response. As set forth above, the Chief ALJ personally handed Minto a copy of the Order to Show Cause on September 14, 2022, and the ALJ's attorney advisor emailed another copy of the Order to Show Cause to Minto on September 15, 2022. Minto has not disputed that she received a copy of the Order to Show Cause on either of these occasions. As of September 15, 2022, Local 2145 still had 11 days to respond to the Order to Show Cause.

Additionally, as set forth above, on September 22, 2022, the National Union urged Minto to respond to the Order to Show Cause and warned her of the serious consequences that could result if Local 2145 failed to do so. Local 2145 still had four days to respond to the Order to Show Cause when Minto received these warnings. Accordingly, even assuming Minto and Local 2145 did not receive a copy of the Order to Show Cause on August 25, 2022, they still received the Order to Show Cause with ample time to respond, but failed to do so.

⁷¹ Email from J. Santos to R. Sanghvi, Cc: C. McMillan, M. Minto, E. Burnett, D. Doyle, Aug. 25, 2022, 10:57 a.m., RE: 2021SOC00003 Request for Contact Information. The 10:57 a.m. email attaching the copy of the Order to Show Cause is the last in a chain of emails between the ALJ's attorney advisor, McMillan, Minto, and others between the morning of August 24, 2022, and the morning of August 25, 2022. Local 2145 included a portion of this email chain as an attachment to its Request for Reconsideration in support of the argument that the ALJ's attorney-advisor only sent Minto the service sheet for the Order to Show Cause, and not the Order to Show Cause itself. Request for Reconsideration at 2. Local 2145 made the same assertion in its Exceptions. Exceptions at 1, 4. Conspicuously, Local 2145 did not attach a complete copy of the email chain to its Request for Reconsideration—Local 2145 omitted the 10:57 a.m. email to which the complete Order to Show Cause was attached.

⁷² Oct. 7 Tr. at 5, 9. Additionally, although Minto, on behalf of Local 2145, now asserts in a conclusory fashion that she did not receive the Order to Show Cause on August 25, 2022, Minto conceded to the ALJ that she simply may not have “see[n]” the Order to Show Cause when it was sent to her. Oct. 7 Tr. at 5, 14.

Given Local 2145's failure to participate in these proceedings, failure to file an answer, and failure to respond to the Order to Show Cause, we agree with the ALJ's recommendation to enter default against Local 2145.⁷³

3. Judgment Is Appropriate

Having determined that default should be entered against Local 2145, we next determine whether the allegations of fact proffered by McMillan, which we accept as true because of Local 2145's default, warrant judgment in her favor.⁷⁴ As stated above, McMillan alleged that Local 2145 violated the SOC regulations by raising dues without notice to the members. Specifically, in her December 5, 2020 OLMS complaint, McMillan asserted that "[o]n Feb 1, 2020, money was taken out of AFGE Local 2145 members' paychecks at the Department of Veterans Affairs in Richmond[,] Virginia without any notices to the employees. . . . Local 2145 membership was never notified of these increases."⁷⁵

Section 458.2 of the SOC regulations, called the "Bill of rights of members of labor organizations" (Bill of Rights), prescribes, among other things, how federal-sector labor organizations subject to the CSRA may raise member dues. Specifically, that section provides that a local labor organization like Local 2145⁷⁶ may only increase member dues:

⁷³ *OFCCP v. D&S Constr. of Pineville, Inc.*, ARB No. 2014-0088, ALJ No. 2010-OFC-00006, slip op. at 3-4 (ARB Aug. 28, 2014) (affirming entry of default judgment where respondent failed to participate in proceedings or respond to motion for default judgment); *Sisfontes v. Int'l Bus. Software Sols., Inc.*, ARB Nos. 2007-0107, -0114, ALJ No. 2007-LCA-00014, slip op. at 7-9 (ARB Aug. 31, 2009) (affirming entry of default judgment where respondent failed to timely file a pre-hearing report and respond to order to show cause).

⁷⁴ *See, e.g., Isigi v. Dorvilier*, 795 F. App'x 31, 33-34 (2d Cir. 2019) (citations omitted); *Tripodi v. Welch*, 810 F.3d 761, 764 (10th Cir. 2016) (citations omitted); *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007); *cf.* 29 C.F.R. § 458.71. The ALJ cited 29 C.F.R. § 458.68(b) for the proposition that failure to file an answer to the complaint constitutes an admission of the allegations contained in the complaint. R. D. & O. at 4. That regulation does not apply to proceedings related to Bill of Rights violations; it is included in a subpart covering "Other Enforcement Procedures," which is separate from the subpart concerning "Procedures Involving Bill of Rights or Prohibited Discipline." Although the ALJ offered the wrong legal citation, the ALJ was correct that Local 2145's failure to respond resulted in the allegations of fact from McMillan's complaint being accepted as true.

⁷⁵ December 5, 2020 OLMS Complaint.

⁷⁶ OLMS and the ALJ regarded Local 2145 as a "local organization" under the SOC regulations. *See* OLMS Referral at 1 (citing the SOC regulations concerning an increase of

(A) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (B) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot.^[77]

We agree with the ALJ that McMillan’s allegations of fact, accepted as true, establish a violation of the Bill of Rights. Without notice to members, Local 2145 could not have properly raised dues. Accordingly, we agree with the ALJ’s recommendation and enter judgment against Local 2145.

4. The Board Cannot Determine the Remedies on the Current Record

The ALJ recommended various remedies for Local 2145’s violation of the SOC regulations, including that Local 2145 “[r]educe union dues to the amount previously set before improperly raising the dues” and “[r]eimburse all union members the difference between the amount of dues prior to the improper increase and the increased amount of union dues.”⁷⁸ The ALJ did not identify a specific monetary reimbursement amount, specify the appropriate rate to which the dues should be reduced, or otherwise provide a fixed formula or method for calculating, setting, or defining such amounts.

The remedies recommended by the ALJ are too imprecise and open-ended to reasonably apprise the parties, and any reviewing or enforcing entity, of Local 2145’s obligations, and would likely lead to additional disputes and adjudication between the parties. Indeed, the parties have already signaled that they disagree as

dues for local labor organizations); R. D. & O. at 3 (same). Local 2145 did not challenge that designation before the ALJ or in its Exceptions to the Board.

⁷⁷ 29 C.F.R. § 458.2(a)(3)(i). In the R. D. & O., the ALJ also referred to and quoted the regulation for increasing dues for a labor organization “other than a local labor organization or a federation of national or international labor organizations.” R. D. & O. at 3-4 (quoting 29 C.F.R. § 458.2(a)(3)(ii)). There appears to be no dispute in this case that Local 2145 is a “local organization,” *see supra* note 76, so the ALJ’s citation to those rules for other labor organizations was in error. Nevertheless, the ALJ also correctly cited to, and relied upon, the rules for local labor organizations like Local 2145. R. D. & O. at 3 (citing 20 C.F.R. § 458.2(a)(3)(i)).

⁷⁸ R. D. & O. at 4-5.

to the appropriate rate to which dues should be reduced. According to McMillan, Local 2145 reduced member dues on January 4, 2023, to \$18.78, but she asserts that dues should be reduced further to \$17.78.⁷⁹ Local 2145 appears to counter that \$18.78 is the appropriate reduced rate because it accounts for a separate, valid per capita tax increase.⁸⁰ Absent more precision in the remedies ordered, this debate over the appropriate dues rate (and potentially other issues as well) will likely lead to further adjudication between the parties.

Additionally, the current record does not allow the Board to fashion a more precise remedy. Given the manner in which this case proceeded and resolved, it is not clear what precise remedies McMillan requested or sought from Local 2145.⁸¹ Additionally, given the posture of the proceedings, the ALJ did not develop the record with respect to the dues rates before, during, and after the increase alleged by McMillan; what other factors may have affected the rates during the relevant period, including in the interim between when McMillan first complained of the dues increase and the present; when, how much, and how often dues were collected during the relevant period; what, if any, amounts have already been repaid to McMillan or other Union members; and other pieces of information that would be necessary to more precisely define the monetary remedy, if any, in this case.

Accordingly, we remand this case to the ALJ to conduct such additional proceedings as he deems necessary and prudent to develop the record and more precisely define the remedies that the ALJ believes are appropriate. The ALJ may reopen the record and conduct hearings, among other steps. In fashioning an appropriate remedy, the ALJ should also carefully consider the nature and scope of the remedy he recommends, including the authority the ALJ and the ARB have to order such a remedy, consistent with 29 C.F.R. § 458.91(b).

⁷⁹ COMPLAINANT'S MOTION TO COMPEL THE RESPONDENT to refrain from showing "Bad faith" ACTS and to comply with the lower court order dated 20 October 2022 at 1.

⁸⁰ Request for Reconsideration at 3 ("The order imposed by the [ALJ] will cause an undue hardship on the local because it also includes the increases that were imposed by per capita tax increases. These increases were not considered in his ruling.").

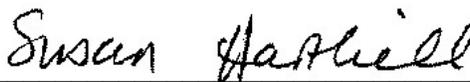
⁸¹ For example, McMillan's original OLMS complaint did not include a request for relief or identify the precise remedies McMillan sought in the action. Additionally, although the ALJ ordered that the Union reimburse all members, it is not clear whether McMillan, the sole named complainant, requested relief solely on behalf of herself, or on behalf of all members.

Additionally, we strongly urge the parties to consider mediation on remand. Although the parties were not able to reach a resolution when first referred to the OALJ's ADR program in 2021, certain filings and materials in the record suggest that the parties may have subsequently advanced in their settlement discussions.⁸² Given that judgment is being entered against Local 2145, and that the only matter left to be resolved is the remedy to be ordered, resolution of this case through mediation without further adjudication and without expending additional time and resources in these proceedings may be in the parties' best interests.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the ALJ's recommendation that default judgment be entered against Local 2145 for violating 29 C.F.R. § 458.2(a)(3)(i) by raising dues without notice to the members. However, we **VACATE** the ALJ's recommended remedial order, and **REMAND** to the ALJ to conduct further proceedings consistent with this Decision.

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge

⁸² AFGE Local 2145's General Body Meeting Order of Business March 17, 2022 (marked as CX-15) at 1 (indicating that the members voted to reduce dues from \$20.00 to \$17.87), 2 (indicating that the members voted to "settle the DOL lawsuit"); Emails between C. McMillan, J. Marshall, M. Minto, et al., July 20, 2022, 9:12 p.m. to July 21, 2022, 11:05 a.m., RE: Back Payment [sic] for Dues and lower the dues by-weekly payment, attached to Request for Reconsideration (McMillan, Minto, and Marshall discussing resolving this action and Minto asking for a settlement agreement, to the extent one existed); Oct. 7 Tr. at 16 (Minto stating that, to her knowledge, "there was a settlement" and that if McMillan "really wanted to have this settled I've been willing to work it out").