

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210



July 20, 2009

[REDACTED]

Dear [REDACTED]:

This is to advise you of the disposition of your complaint filed with the Secretary of Labor alleging that violations of Title III of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred with respect to the trusteeship imposed by the American Federation of Government Employees, over Local 1380, Panama City, Florida.

Pursuant to Sections 304 and 601 of the LMRDA, an investigation was conducted by the Office of Labor-Management Standards. After carefully reviewing the investigative findings, and after consulting with the Solicitor of Labor, we have determined that legal action is not warranted in this case. We are, therefore, closing our file as of this date.

The basis for this decision is set forth in the enclosed Statement of Reasons.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

Enclosure

cc: Katherine E. Bissell, Associate Solicitor for Civil Rights and Labor-Management

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210



July 20, 2009

Mr. John Gage
National President
American Federation of Government Employees
80 F St., NW
Washington, DC 20001

Dear Mr. Gage:

This is to advise you of the disposition of a complaint filed with the Secretary of Labor alleging that violations of Title III of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred with respect to the trusteeship imposed by the American Federation of Government Employees, over Local 1380, Panama City, Florida.

Pursuant to Sections 304 and 601 of the LMRDA, an investigation was conducted by the Office of Labor-Management Standards. After carefully reviewing the investigative findings, and after consulting with the Solicitor of Labor, we have determined that legal action is not warranted in this case. We are, therefore, closing our file as of this date.

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Cynthia M. Downing
Chief, Division of Enforcement

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**Statement of Reasons
For Dismissing the Complaint**

**Concerning the Imposition of a Trusteeship
By American Federation of Government
Employees National Union on Local 1380**

A member in good standing of AFGE Local 1380 (the "Local") filed a complaint with the United States Department of Labor (the "Department") on April 23, 2009, alleging that the American Federation of Government Employees ("AFGE") violated Title III of the Labor-Management Reporting and Disclosure Act of 1959 (the "Act"), 29 U.S.C. § 401, et seq., as made applicable to federal sector unions by 29 C.F.R. § 458.26-.28 and the Civil Service Reform Act of 1978 ("CSRA"), 5 U.S.C. § 7120, by imposing a trusteeship on the Local in violation of the AFGE Constitution. For the following reasons, the complaint is dismissed.

Title III of the LMRDA permits a parent labor organization to impose a trusteeship on a subordinate body for the purposes of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization. *See* 29 U.S.C. § 462; 29 C.F.R. § 458.26. A trusteeship established by a parent body in conformity with the procedural requirements of its constitution and bylaws is presumed valid for eighteen months from the date of its establishment and is not subject to attack during such period except by clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under Section 302 of the LMRDA. *See* 29 U.S.C. § 464(c); 29 C.F.R. § 458.28.

The complainant alleged that AFGE violated its own constitution by failing to hold a hearing prior to imposition of the trusteeship and by failing to notify the Local's members within 30 days of the hearing panel's decision. The complainant further alleged that AFGE failed to act in a timely manner by not imposing a trusteeship earlier, when it became aware the Local had fallen more than 90 days behind in paying its per capita tax. The Department conducted an investigation and has concluded that the trusteeship was imposed for a purpose allowable under the LMRDA and in accordance with the AFGE Constitution.

The Department's investigation determined that before the trusteeship was imposed, the Local owed AFGE \$25,156.00 and had been in arrears for more than 90 days. Although the Local had made several per capita tax payments in recent months, no payment plan or other arrangement to reduce the outstanding balance had yet been agreed upon.

AFGE placed the Local under an expedited trusteeship pursuant to Article IX, Section 5(b)(4) of the AFGE Constitution, which permits an expedited trusteeship where there has been a violation of law. AFGE found that the failure to pay per capita tax constituted a failure to discharge monies in accordance with the constitution and bylaws, as required by Section 501(a) of the LMRDA, 29 U.S.C. § 501(a). The evidence establishes that the trusteeship was imposed to correct financial malpractice, i.e. the recurring nonpayment of per capita dues, a legitimate purpose under the Act. *See Donatello v. McKenzie*, 826 F. Supp. 780, 781 (S.D.N.Y. 1993)(failure of local unions to make per capita payments to international union on timely basis was "financial malpractice" warranting imposition of trusteeship under authority of international union's constitution and federal statute).

When an expedited trusteeship is imposed, the national president is not required to hold a hearing prior to the imposition of the trusteeship. *See* AFGE Constitution Article IX, Section 5(b)(5). Therefore, AFGE did not violate its constitution or statute when it failed to hold a hearing prior to imposing a trusteeship on the Local.

Complainant also alleged that AFGE failed to notify the Local's members of the hearing panel's decision within 30 days in violation of the AFGE Constitution. Article IX, Section 5(b)(6) of the AFGE Constitution requires the hearing panel to issue its decision within 30 days of holding a hearing. The written decision of the hearing panel was dated March 12, 2009, fewer than 30 days following the hearing held on February 13, 2009. The AFGE Constitution also requires the AFGE President to notify the members of the local of the hearing panel's decision but imposes no time limit in which he must do so. *See* AFGE Constitution Article IX, Section 5(b)(6). Therefore, the letter received by the Local's members on or around April 21, 2009 and informing them of the hearing panel's decision was in accordance with the AFGE Constitution and statute.

Complainant further alleged that AFGE failed to act in a timely manner in imposing the trusteeship, because it did not do so when it became aware that the Local had fallen more than 90 days behind in paying its per capita tax. According to the Complainant, the failure to pay per capita tax to AFGE resulted from embezzlement by a former officer, which would have been detected sooner if the Local had been placed in trusteeship when it fell 90 days behind in paying AFGE. The Complainant seeks reimbursement for the Local for the embezzled funds from AFGE. Nothing in the AFGE Constitution or Trusteeship Hearing Manual requires that AFGE impose a trusteeship within a certain amount of time. Further, Title III of the LMRDA provides standards for the imposition of trusteeships by parent organizations. It does not mandate the imposition of a trusteeship in any particular circumstance or provide a remedy for a union's failure to impose a trusteeship.

Because AFGE followed its constitutional procedure for imposing a trusteeship and imposed the trusteeship for a permissible purpose, there was no violation of the Act. Accordingly, the Department is closing its file on this matter.