

Statement of Reasons
Dismissing Complaints Concerning the Trusteeship
Imposed by the American Federation of Government Employees on Local 2778

This is in response to complaints filed on September 20, 2014 and October 15, 2014 with the U.S. Department of Labor alleging that the trusteeship over American Federation of Government Employees (AFGE) Local 2778 violated the Civil Service Reform Act of 1978 (CSRA).

Under the CSRA and the Department's regulations at 29 C.F.R. § 458.26, a labor organization may place subordinate bodies into trusteeship for the purpose of "(a) correcting corruption or financial malpractice, (b) assuring the performance of negotiated agreements or other duties of a representative of employees, (c) restoring democratic procedures, or (d) otherwise carrying out the legitimate objects of such labor organization." Under 29 C.F.R. § 458.28, for the first eighteen months of a trusteeship, the Department may only bring an action attacking the trusteeship if (1) the trusteeship was not established "in conformity with the procedural requirements of [the labor organization's] constitution and bylaws and authorized or ratified after a fair hearing," or (2) there is "clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under § 458.26."

The Department has investigated the complaints and concluded that the trusteeship of AFGE Local 2778 complied with the regulatory standards.

The Trusteeship Complied with Procedural Requirements

The complainants collectively and individually, raised a number of challenges to the procedures by which Local 2778 was placed into trusteeship. The Department's investigation concluded that the procedures set forth in the CSRA and its implementing regulations, the AFGE Constitution and the AFGE Trusteeship Hearing Manual were followed.

On June 5, 2014, National President Cox sent all Local 2778 members a memorandum informing them of the imposition of an expedited trusteeship. That memorandum set forth four bases for the establishment of a trusteeship discussed in further detail below, and indicated a hearing on the trusteeship would be convened on August 1, 2014.

The complainants alleged that it was improper for the National to proceed with an expedited trusteeship. Under the National Constitution, section 5(b)(4), an expedited trusteeship is authorized where, *inter alia*, there has been a violation of law, as established by the preponderance of evidence. As discussed in greater detail below, the Local's failure to comply with the Local and National Constitution with respect to the

2014 election was a violation of law. Thus, it was appropriate to invoke the expedited procedure.

A hearing pursuant to AFGE's expedited trusteeship procedure was held on August 1, 2014. Local 2778 was represented by two different individuals, who provided testimony, examined witnesses, and introduced exhibits. Members who opposed the trusteeship were given an opportunity to testify.

The complainants alleged that the Local was not provided with due process because the hearing officers did not allow the members the Local had chosen to represent them to do so, on the grounds that these members were potential witnesses. The AFGE Trusteeship Hearing Procedures expressly authorizes hearing officers to order witnesses be sequestered, and Local members indicated they knew of this provision prior to the hearing.

On August 21, 2014, the hearing panel issued a detailed written decision, ratifying the trusteeship. Members were informed of this decision by a memorandum dated August 29, 2014. Local members were given a right to appeal that decision. Multiple members filed appeals.

Accordingly, the Local was not denied a fair hearing.

The Trusteeship Was Established for Allowable Purposes

The AFGE National Union ("the National") has provided multiple reasons why the trusteeship was necessary to correct corruption or financial malpractice and/or to restore democratic purposes. It has maintained: (1) the Local improperly and in violation of the law allowed an ineligible officer to run for, and be elected as, President; (2) the Local was insubordinate in refusing to cease a rerun election after being overturned on appeal; (3) the Local committed financial malpractice in its expenditures of over \$50,000 in running its 2014 elections; and (4) the Local retaliated against a member and breached its duty of fair representation in requesting disciplinary investigation of one of its members.¹ Only one of these bases need be a proper purpose under the Act for the trusteeship to be maintained, even if all of the other bases were improper. See *Pape v. Local 390 of Int'l Bhd. of Teamsters*, 315 F. Supp.2d 1297, 1317 (S.D. Fla. 2004).

¹ Although the complainants address the issue of whether there was a "loss of leadership," the National does not contend that "loss of leadership" was one of the bases for the trusteeship.

The Department's investigation revealed that the Local directly disobeyed the orders of National Vice President Everett Kelley with respect to the 2014 Elections in two aspects. First, Kelly determined that [REDACTED] had not been an eligible candidate for office, and thus ordered the Local to rerun the race for President – which it refused to do. The investigation confirmed there was sufficient evidence for the National to conclude that [REDACTED] was not eligible to run for or serve as President.² In addition, Kelley entertained an appeal from the Local Election Committee decision to rerun the election for Secretary, and reversed that appeal. Nonetheless, the Local refused to halt the rerun for that position.

National Vice President Kelley's actions with respect to the 2014 elections conformed with Part III of the AFGE National Rules of Conduct for an Election. If Local members disagreed with Kelley's decisions, they were free to appeal to the National President. They did not do so. The Local's decision to simply disobey the constitutional process and orders of the National Vice President constituted insubordination, in violation of Art. XXIII, §2(g) of the National Constitution. This insubordination constitutes sufficient evidence to support the National's decision to place the Local into trusteeship to restore democratic procedures.

Moreover, section 401(e) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 481(e), as applied to federal sector unions pursuant to 29 C.F.R. § 458.29, requires labor organizations to conduct their elections in accordance with their constitutions and bylaws. By allowing an ineligible candidate to run for office, and disregarding the appeals process for elections, the Local violated both the Local and National Constitutions, thus violating the law. Under both the CSRA and its implementing regulations, and the AFGE National Constitution, Article IX, section 5(a), a local union's violation of law is a valid basis for the AFGE National to place the local into trusteeship.

Financial malpractice is also a proper purpose to place a union into trusteeship, under both the CSRA and the AFGE National Constitution. The Department's investigation revealed evidence to support the National's conclusion that Local 2778 engaged in

² Contrary to complainants' claims, the Department does not consider the elevation of Vice President to the Presidency to be an adequate remedy where an ineligible candidate was wrongfully allowed to run for, and be elected to serve as an officer. If the Secretary were to find probable cause to believe that an ineligible candidate was elected to office, he would seek for the election to be set aside and a new, supervised election be held. *See, e.g., OLMS v. Local 12, AFGE*, Case Nos. 13-094, 14-081, 2014 WL 4966164, at *4 (DOL Adm. Rev. Bd. Sept. 24, 2014) ("This remedy is consistent with relief afforded in union officer election disputes in the private sector, and seems to be an effective remedy by virtue of the statute and case law interpreting the statute.").

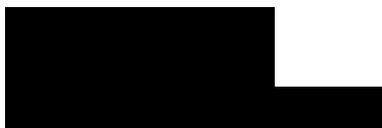
financial malpractice with relation to its expenditures for the 2014 Officers Election. Specifically, the investigation confirmed that over \$50,000 was spent to compensate 11 members of an election committee, at a rate of \$56 per diem, for attendance at sporadic meetings – none of which involved travel. Meeting minutes do not support the claim that a vote of the membership specifically authorized this expense, and there was no line item in the budget to cover this expense. Accordingly, there is no “clear and convincing proof” that this was an improper purpose for trusteeship.

In light of these two proper purposes for the trusteeship, we need not address the other reasons provided by the National.

For the reasons set forth above, it is concluded that no violation of the CSRA occurred. Accordingly, this office has closed the file on this matter.



May 15, 2015



Dear [REDACTED]:

This is to advise you of the disposition of your complaint filed with the Secretary of Labor alleging that violations of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120 and its implementing regulations at 29 C.F.R. § 458.26, occurred with respect to a trusteeship imposed by the American Federation of Government Employees (AFGE), over Local 2778, in Decatur, Georgia.

An investigation was conducted by OLMS. After carefully reviewing the investigative findings, we have determined that legal action is not warranted in this case. Therefore, we are closing our file as of this date.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

Enclosure

cc: Christopher Wilkinson, Associate Solicitor



May 15, 2015

[Redacted]

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Sincerely,

Patricia Fox
Chief, Division of Enforcement

Enclosure

cc: Christopher Wilkinson, Associate Solicitor



May 15, 2015

J. David Cox, National President
American Federation of Government Employees (AFGE)
80 F Street, N.W.
Washington, D.C. 20001

Dear Mr. Cox:

This is to advise you of the disposition of complaints filed with the Secretary of Labor alleging that violations of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120 and its implementing regulations at 29 C.F.R. § 458.26, occurred with respect to a trusteeship imposed by the American Federation of Government Employees (AFGE), over Local 2778, in Decatur, Georgia.

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