U.S. Department of Labor

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

IN THE MATTER OF:

CASSANDRA MCMILLAN,

COMPLAINANT,

v.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL UNION 2145,

RESPONDENT.

ARB CASE NOS. 2024-0044

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

DATE: January 31, 2025

Appearances:

For the Complainant:
Cassandra McMillan; *Pro Se*; Yorktown, Virginia

For the Respondent:
April L. Fuller; *Roberts Labor Law and Consulting, L.L.C.*; Columbia, Maryland

Before THOMSPON and ROLFE, Administrative Appeals Judges

DECISION AND ORDER REVERSING ALJ'S RECOMMENED DECISION AND ORDER

THOMPSON, 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]

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[1] 5 U.S.C. § 7101 et seq.

[2] 29 C.F.R. Part 458 (2024).

BACKGROUND AND PROCEDURAL HISTORY

On December 5, 2020, Cassandra McMillan (McMillan or Complainant) filed a complaint with the Department of Labor's Office of Labor-Management Standards (OLMS) alleging that the American Federation of Government Employees, Local Union 2145 (Respondent or Local 2145) raised her dues from $17.78 per pay period to $20.00 per pay period in violation of the CSRA and SOC regulations.[3] OLMS determined that there was a reasonable basis for her complaint and referred the matter to the Department of Labor's Office of Administrative Law Judges (OALJ). On October 20, 2022, ALJ William P. Farley issued a Recommended Decision and Order Granting Default Judgment Against Respondent (Default Judgment R. D. & O.). The Default Judgment R. D. & O. found that Local 2145 violated Section 458.2 of the SOC regulations, also known as the bill of rights of members of labor organizations (Bill of Rights), and ordered various remedies including reducing union dues to the amount at which they were previously set before being improperly raised, and reimbursing all union members in an amount equal to the increased dues they paid.

Local 2145 filed exceptions to the Default Judgment R. D. & O. with the Administrative Review Board (the Board), which issued a Decision and Order Affirming the ALJ's Recommended Decision and Order in Part, Vacating ALJ's Recommended Decision and Order in Part, and Remanding. In relevant part, we affirmed the ALJ's recommendation that default judgment be awarded against Local 2145, but vacated the ALJ's recommended remedial order, concluding that further development of the record was required in order to determine: (1) the appropriate rate to which dues should be reduced; (2) what relief Complainant requested; and (3) what monetary relief, if any, was appropriate.[4]

On remand, the ALJ issued an Order Determining Proper Parties (Proper Parties Order) in which he concluded "the proper parties in this matter are the AFGE Local 2145 members who paid the Increased Dues" and instructed that the case caption be amended to reflect this conclusion. In support, the ALJ cited the following evidence, which he believed tended to demonstrate that Complainant brought (or intended to bring) the complaint on behalf of all members of Local 2145:

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[3] *See* 29 C.F.R. § 458.2(a)(3)(i).

[4] *McMillan v. Am. Fed'n of Gov't Emps., Loc. Union 2145*, ARB Nos. 2023-0012, -0013, ALJ No. 2021-SOC-00003, slip op. at 18-19 (ARB June 16, 2023).

- On March 18, 2020, about seven months prior to the filing of the OLMS complaint, Jennifer Marshall[5] wrote an email to Mintina Minto, the then-president of Local 2145, stating that AFGE owed "a lot of money back to everyone that paid dues at $20.00;"

- On July 1, 2020, Complainant sent a memorandum to AFGE National President Dr. Everett Kelley stating that "AFGE should give the members their money back and give them the option to terminate their membership." The memorandum was signed by Complainant but addressed from "The Group;" and

- On December 5, 2020, Complainant filed a complaint with OLMS, writing "On 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." The email was signed "Cassandra McMillan/The Group Members in Good standing."[6]

Based on the foregoing, the ALJ reasoned that the "action was brought on behalf of all local members by Ms. McMillan. The filing put AFGE on notice she was bringing it on behalf of the full local membership."[7]

Subsequently, District Chief ALJ Theresa C. Timlin assigned the case to ALJ Jodeen M. Hobbs, who served as a settlement judge. The parties did not reach a settlement and ALJ Hobbs transferred the case back to ALJ Farley. After briefing by the parties, ALJ Farley issued a Recommended Decision and Order Awarding Remedy (Remedy R. D. & O.) in which he ordered Respondent to reimburse every

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[5] As noted in the Board's previous decision, Marshall served as president of Local 2145 during a part of this litigation. On December 8, 2021, Marshall entered an appearance on behalf of Local 2145, stating that she would be serving as the "non-attorney representative" for Local 2145. *See McMillan*, ARB Nos. 2023-0012, -0013, slip op. at 3. Marshall was suspended as president of Local 2145 on March 16, 2022, when this matter was initially before the ALJ. On February 22, 2024, while this matter was before the ALJ on remand, the AFGE expelled Marshall for life. Shortly after her expulsion from the AFGE, Marhsall submitted multiple copies of a non-attorney representative form, this time purporting to represent Complainant. Marshall appeared at and participated in status conferences before ALJ Farley, acting as Complainant's representative.

[6] Proper Parties Order at 3, *McMillan v. Am. Fed'n of Gov't Emps., Loc. Union 2145*, ALJ No. 2021-SOC-00003 (ALJ Aug. 29, 2023).

[7] *Id*.

Local 2145 member who was charged $20 per pay period from the pay dates beginning on February 7, 2020, until the period ending on December 31, 2022, in the amount of $1.72 per pay period. The ALJ calculated the $1.72 figure based on his determination that the correct rate of dues was $17.78 per pay period plus a $0.50 automatic increase assessed by the AFGE's National Veterans Affairs Council.[8] The ALJ determined that the period during which dues were unlawfully increased ended on December 31, 2022, when Respondent set dues at $18.78 per pay period in accordance with a February 15, 2022 vote by Local 2145's membership to set dues at that rate.[9] The ALJ further ordered Respondent to reimburse all retired members of Local 2145 $3 per year from 2020 to the end of 2022. Respondent timely filed exceptions with the Board.

JURISDICTION AND STANDARD OF REVIEW

The Board is authorized to review exceptions to an ALJ's recommended decision and order in cases arising under the CSRA and SOC regulations.[10] Pursuant to the SOC regulations, an ALJ makes a recommended decision and order and thereafter transfers the complaint to the Board.[11] After consideration of the ALJ's recommended decision and order, the record, and any exceptions filed, the Board may affirm or reverse the ALJ's decision in whole, or in part, or make such other disposition of the matter as it deems appropriate.[12]

DISCUSSION

1. The ALJ Erred in Determining the Proper Parties

In the Proper Parties Order, the ALJ reasoned that the "action was brought on behalf of all local members by Ms. McMillan."[13] This was legal error.

When OLMS first referred this matter to OALJ, the referral letter plainly stated that "OLMS received a complaint from AFGE Local 2145 member Cassandra

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8 Remedy R. D. & O. at 6.

9 *Id*. at 7.

10 29 C.F.R. §§ 458.88, 458.91.

11 *Id.* § 458.88.

12 *Id.* § 458.91(a).

13 *Id*.

McMillan."[14] In the Notice of Docketing, Prehearing Conference, and Hearing issued by ALJ Farley, the ALJ noted that "OLMS received a complaint from AFGE Local 2145 member Cassandra McMillan."[15] This notice was served on Cassandra McMillan and Jennifer Marshall, the then-president of Local 2145. It was not served on other members of Local 2145. When the ALJ issued the Default Judgment R. D. & O., he reiterated that "Cassandra McMillan ("Complainant") filed a complaint[.]"[16] Throughout the Default Judgment R. D. & O., "Complainant" solely refers to Cassandra McMillan.

Indeed, the first mention of other complainants did not come until the ALJ issued the Proper Parties Order. The lack of service on other members of Local 2145 is particularly concerning. Nothing in the record suggests that the other members of Local 2145 were afforded any opportunity to participate in this litigation or be excluded from it. Nor did the ALJ decide or analyze whether McMillan would—or even could—adequately represent the interests of these other members.

From when OLMS first referred this matter to OALJ through the Board's remand nothing in the record suggests that this litigation involved complainants other than Cassandra McMillan. And nothing contained in emails or other communications sent by McMillan or any non-party prior to OLMS referring this matter to OALJ overcomes that simple fact.[17] Accordingly, we disagree with the ALJ's conclusion that "all the members of Local 2145 were part of the litigation headed by Ms. McMillan."[18]

A. The OALJ Rules of Practice and Procedure do Not Permit Complainants to Bring Actions on Behalf of Others

Nothing in the OALJ Rules of Practice and Procedure (OALJ Rules) permits a complainant to bring a complaint on behalf of other individuals.[19] Section 18.20 of

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[14] September 16, 2021 OLMS Referral.

[15] Notice of Docketing, Prehearing Conference, and Hearing at 1, *McMillan v. Am. Fed'n of Gov't Emps., Loc. Union 2145*, ALJ No. 2021-SOC-00003 (ALJ July 27, 2022).

[16] Default Judgment R. D. & O. at 1.

[17] *See* 29 C.F.R. § 458.60 (requiring the District Director of OLMS to refer matters to the Chief ALJ if it appears to him that there is a reasonable basis for the complaint).

[18] *Id*.

[19] *See generally* 29 C.F.R. Part 18.

the OALJ Rules states that a "party seeking original relief or action is designated a complainant."[20] In its referral letter, OLMS identified Cassandra McMillan, not the entire membership of Local 2145, as the party seeking relief.[21] No other complainant either entered an appearance or filed notice waiving their right to participate in the proceedings. Nor did any other complainant designate a representative to appear and participate on their behalf. [22]

We note that the OALJ Rules do contain a mechanism for multiple complainants to participate in a single proceeding: consolidation. The OALJ Rules permit ALJs to consolidate proceedings and issue orders to avoid unnecessary cost or delay if separate proceedings before OALJ involve a common question of law or fact.[23] Similarly, the SOC regulations contain a mechanism to consolidate cases.[24] Section 458.61 permits the District Director of OLMS to "consolidate cases within his own area or [ ] transfer such cases to any other area, for the purpose of consolidation" whenever the District Director determines that consolidation "appears necessary in order to effectuate the purposes of the CSRA or FSA or to avoid unnecessary costs or delay[.]"[25] No such consolidation occurred here. Because OLMS only referred one complaint to OALJ, no proceedings were (or even could have been) consolidated.

Although the Proper Parties Order had the de facto effect of transforming the action into a class complaint, no provision of the OALJ Rules provide for the maintenance of a class complaint.[26] Further, the OALJ Rules provide that the Federal Rules of Civil Procedure apply in situations not controlled by these rules or a governing statute, regulation, or executive order.[27] Despite this, the Proper Parties Order makes no reference to Rule 23 of the Federal Rules of Civil Procedure and the ALJ made no attempt to comply with Rule 23's requirements for certifying

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20 29 C.F.R. § 18.20.

21 OLMS Referral at 1 ("On December 5, 2020, OLMS received a complaint from AFGE Local 2145 member Cassandra McMillan.").

22 *See* 29 C.F.R. § 18.21 (providing that a party may appear and participate in the proceeding in person or through a representative).

23 *Id.* § 18.43.

24 *Id.* § 458.61.

25 *Id*.

26 *See generally* 29 C.F.R. Part 18.

27 29 C.F.R. § 18.10(a).

a class or maintaining a class action.[28] Additionally, in the Remedy R. D. & O. the ALJ explicitly states that the complaint is not a class action, declaring: "This tribunal has taken into consideration Respondent's arguments and the facts in this matter. This matter is not a class action[.]"[29] We take the ALJ at his word. By permitting this action to be treated as a complaint brought on behalf of all members of Local 2145, the ALJ committed legal error.

B. The SOC Regulations Do Not Permit Actions to be Brought on Behalf of Others

Even if the OALJ Rules permitted complainants to bring actions on behalf of other persons, the SOC regulations do not. The SOC regulations provide that "[a]ny member of a labor organization whose rights under the provisions of § 458.2 or § 458.37 are alleged to have been infringed or violated, may file a complaint" with any district office or other office of OLMS.[30] This enforcement provision, which provides union members with a cause of action to vindicate *their* rights under the SOC's Bill of Rights, does not permit a union member whose rights have allegedly been infringed to bring a complaint on behalf of other union members whose rights are alleged to have been similarly infringed.

Given the lack of Board precedent interpreting the enforcement provision of the SOC regulations, our decision today is guided by applicable court decisions interpreting and applying analogous provisions in Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).[31] Title I of the LMRDA, like the SOC regulations, contains a bill of rights of members of labor organizations. As noted in the Final Rule revising the SOC regulations, "the standards of conduct regulations incorporate Title I of the LMRDA (Bill of Rights of Members of Labor Organizations) virtually verbatim."[32] Further, the SOC regulations themselves provide that the Director of OLMS "[i]n applying the standards contained in this

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[28] In the Proper Parties Order, the ALJ implicitly considered numerosity, commonality, and typicality but did not make any reference to adequacy, Rule 23's fourth prerequisite for maintaining a class action.

[29] Remedy R. D. & O. at 9.

[30] 29 C.F.R. § 458.54.

[31] 29 U.S.C. § 411.

[32] Standards of Conduct for Federal Sector Labor Organizations, 71 Fed. Reg. 31,929, 31,930 (June 2, 2006).

subpart . . . will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of the LMRDA and by applicable court decisions."[33]

Notably, the SOC regulations governing how local labor organizations may raise dues are identical to the LMRDA provisions governing how local labor organizations may raise dues.[34] Additionally, the enforcement provisions in the SOC regulations and Title I of the LMRDA are comparable, albeit not identical. The SOC regulations state that "[a]ny member of a labor organization whose rights under the provisions of § 458.2 or § 458.37 are alleged to have been infringed or violated, may file a complaint[.]"[35] Similarly, title I of the LMRDA states that "[a]ny person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."[36]

Courts that have considered cases brought under Title I of the LMRDA have consistently held that union members lack standing to enforce the rights of other union members, unless the action is brought as a class action.[37] In one dues increase case, a district court held that "[t]o the extent that plaintiff has asserted claims against defendant on behalf of his fellow union members, he has failed to state claims on which the Court can grant relief."[38] Another district court observed that "it is well established that union members lack standing to enforce the rights of other union members."[39] In a recent case that directly addressed this issue, the District Court for the Northern District of California held that since the case was

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33 29 C.F.R. § 458.1.

34 *Compare* 29 U.S.C. § 411, *with* 29 C.F.R. § 458.2(a)(3)(i).

35 29 C.F.R. § 458.54.

36 29 U.S.C. § 412.

37 *See, e.g.*, *Ellis v. Civ. Serv. Emps. Ass'n, Inc., Loc. 1000, AFSCME, AFL-CIO*, 913 F. Supp. 684, 688 (N.D.N.Y. 1996); *Corns v. Laborers Int'l Union of N. Am.*, 62 F. Supp. 3d 1105, 1111 (N.D. Cal. 2014); *Weiss v. Torpey*, 987 F. Supp. 212, 218 (E.D.N.Y. 1997) ("[I]t is well established that union members lack standing to enforce the rights of other union members.").

38 *Ellis*, 913 F. Supp. at 688.

39 *Weiss*, 987 F. Supp. at 218.

not initially brought as a class action, "Plaintiff cannot now seek to recover on behalf of the other union members."[40]

We find no reason to depart from the well-established precedent relating to the LMRDA's enforcement provision. The SOC regulations provide Complainant with an avenue for vindicating the rights afforded to her under the CSRA's Bill of Rights. They do not, however, provide her with the freewheeling authority to bring complaints on behalf of or to enforce the rights of other union members. Because the SOC regulations do not confer standing on union members to enforce the rights of other union members, the ALJ erred when he transfigured this action from one between McMillan and Local 2145 into one purportedly brought by McMillan "individually and on behalf of all others similarly situated."

2. The ALJ's Recommended Remedy is Not Appropriate

We turn now to the question of remedies. The SOC regulations allow the Board, upon finding a violation of the CSRA, to "order respondent to cease and desist from such violative conduct" and "take such affirmative action as it deems appropriate to effectuate the policies of the CSRA[.]"[41] When interpreting similar language in Title I of the LMRDA,[42] the Supreme Court has emphasized the need to grant relief according to the facts and necessities of the case, stating that "Title I litigation necessarily demands that remedies be tailored to fit facts and circumstances admitting of almost infinite variety, and [Title I's enforcement provision] was therefore cast as a broad mandate to the courts to fashion 'appropriate' relief."[43] Circuit courts have similarly observed that Title I "merely sets forth the procedure a union local must follow to increase dues. It does not limit the district court's authority to design an appropriate remedy for an LMRDA

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40 *Corns*, 62 F. Supp. 3d at 1111.

41 29 C.F.R. § 458.91(b); *see also* 5 U.S.C. § 7120(d) ("In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section."). The overarching purpose of the CSRA's standards of conduct provisions are to ensure that federal-sector labor unions are free from corrupt or undemocratic influences. 5 U.S.C. § 7120(a).

42 *See* 29 U.S.C. § 412 (authorizing courts to order "such relief (including injunctions) as may be appropriate.").

43 *Hall v. Cole*, 412 U.S. 1, 11 (1973) (internal citations and marks removed).

violation."[44] The same is true for the Board's remedial power under the SOC regulations. Pursuant to that power, we find that the appropriate relief in the instant case is to refund Complainant $1.72 for each payday during the period of February 1, 2020, through December 31, 2022.

As an initial matter, we note that injunctive relief is not warranted given that the membership of Local 2145 has now voted to set dues at $18.78 and this change was implemented by Respondent on December 31, 2022.[45] The record contains no indication that this vote violated the SOC's Bill of Rights.[46]

In regard to monetary relief, we find that Respondent is liable to Complainant for the excess dues it collected from her when it unlawfully raised dues until the implementation on December 31, 2022 of the membership's February 2022 vote to set dues at $18.78. In other dues increases cases, courts have found that ratification votes (in which union members are provided with a vote in which they can choose to ratify the unlawful dues increase) can abate a violation and, where appropriate, can even be ordered as a remedy. Some decisions have even given such votes retroactive effect.[47] Although not a ratification vote, the situation here is analogous—Respondent abated the SOC violation when it implemented the membership's vote to set dues at $18.78. However, we do not see a compelling reason to afford the vote retroactive effect. Further, we reject Respondent's argument that Complainant is only entitled to a refund of $1.22 for the time period

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44 *Barnes v. Sanzo*, 680 F.2d 3, 5 (2d Cir. 1982).

45 Remedy R. D. & O. at 7.

46 In a filing entitled Motion to Enforce the Honorable William P. Farley's, Administrative Law Judge, May 8, 2024 Recommended Decision and Order Awarding Remedy, Complainant asserts that she was informed by email that dues would be raised on January 17, 2024. Complainant did not support these new claims and has not even suggested that such a dues increase would not be done in accordance with the requirements of the SOC's Bill of Rights.

47 *See, e.g.*, *Barnes*, 680 F.2d at 5; *Myers v. Hoisting & Portable Loc. 513*, 653 F. Supp. 500, 510-11 (E.D. Mo. 1987) (recognizing that "applying a ratification vote retroactively is a more appropriate form of relief."); *Kelly v. Loc. No. B-183 of Int'l All. of Theatrical Stage Emps.*, 566 F. Supp. 1199, 1202 (S.D.N.Y. 1983) (directed the union to conduct a secret ballot ratification vote for a dues increase that would have retroactive effect); *but see*, *Loc. No. 2, Int'l Bhd. of Tel. Workers v. Int'l Bhd. of Tel. Workers*, 362 F.2d 891, 896 (1st Cir. 1966) (holding that "dues increases illegally collected cannot be ratified, and that they should be refunded."); *Dornan v. Sheet Metal Workers' Int'l Ass'n*, 905 F.2d 909, 916-17 (6th Cir. 1990) (holding that a ratification vote could abate a section 101 violation but did not have retroactive effect).

between February 15, 2022, and December 31, 2022.[48] Respondent has provided no explanation for the more than ten-month delay between the vote to set dues at $18.78 and the implementation of that dues reduction. It would go against the purposes of the CSRA and SOC regulations to permit Respondent to rely on a membership vote that it had not yet implemented to claim it owes less to Complainant, especially given that Respondent continued to collect more dues than it lawfully could from all Local 2145 members during the period between when the membership voted to lower dues and when Respondent implemented that vote.

Although Complainant is entitled to a refund, affording similar monetary relief to non-parties, *e.g.*, the other members of Local 2145, would not be appropriate. Other union members whose rights were infringed when Local 2145 set dues at $20.00 may be able to avail themselves of the SOC regulations' enforcement provision if they desire to vindicate their rights. The Board's decision entering default against Local 2145 would have a collateral estoppel effect as to other members of Local 2145, which we expect would act as a strong incentive for all parties to settle any related cases rather than engage in additional costly and time-consuming litigation.[49] Further, we are cognizant of the significant financial strain that would be placed on Respondent if it were required to refund all members of Local 2145.[50] We are mindful that "a remedy that destroys the entity it is meant to protect would not be in keeping with" the CSRA's purpose of ensuring that unions are free of corrupt and undemocratic influences.[51] We find it appropriate to order a more limited remedy when, as is the case here, ordering a refund of all unlawfully

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[48] Pet. for Review at 6-7.

[49] *Cf. Hummel v. Brennan*, 83 F.R.D. 141, 144 (E.D. Pa. 1979) (recognizing that the court's "determination of the reimbursement issue as to the party plaintiffs does have a collateral estoppel effect as to the other members of the Local.").

[50] Pet. for Review at 11 (noting that the members of Local 2145 have twice voted to settle in order "to avoid bankrupting the Local.").

[51] *Corns*, 62 F. Supp. 3d at 1111.

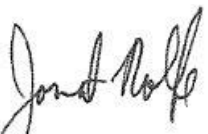
collected dues would be as disadvantageous to the membership as to the Local 2145 officials that raised dues in violation of the SOC regulations.[52]

CONCLUSION

For the foregoing reasons, we **REVERSE** the ALJ's recommend remedial order. Respondent shall reimburse Complainant $1.72 for each payday during the period of February 1, 2020, through December 31, 2022.

SO ORDERED.

ANGELA W. THOMPSON
Administrative Appeals Judge



JONATHAN ROLFE
Administrative Appeals Judge

[52] *Barnes*, 680 F.2d at 5; *see also Myers*, 653 F. Supp. at 510-11 (declining to order a refund of all members when "[t]he costs of accounting for the money collected over five and one-half years and then redistributing it to the 2700 members would likely be as harmful to the union members as it would be to the union officials.").