U.S. Department of Labor

Office of Labor-Management Standards
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Dear

This is in response to your June 12, 2018 letter (Request) requesting a review of the May 23, 2018 Statement of Reasons (SOR) dismissing your complaint concerning the election of union officers conducted by National Treasury Employees Union (NTEU), Chapter 22, on September 25, 2017. Your complaint was dismissed by the Chief of the Division of Enforcement (DOE) of the Office of Labor-Management Standards (OLMS). For the reasons that follow, I affirm the dismissal.

The election of officers of federal sector unions is governed by the standards of conduct provisions of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120(c), *et seq*. The CSRA requires that the regulations implementing the standards of conduct conform to the principles applicable to private sector labor organizations. 5 U.S.C. § 7120(d). Accordingly, the regulations at 29 C.F.R. § 458.29 adopt the officer election provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481(a)-(g). The Department's interpretative bulletin on union officer elections under the LMRDA at 29 C.F.R. Part 452 also applies to officer elections under the CSRA standards of conduct regulations. Further, court decisions under the LMRDA are followed in applying the standards of conduct. *See* 29 C.F.R. § 458.1.

I. Standard of Review

The regulations provide for review of the determination dismissing your complaint, but only on the basis of deciding whether the decision by the DOE Chief to dismiss the complaint "was arbitrary and capricious." 29 C.F.R. § 458.64(c);[1] *see also Dunlop v. Bachowski*, 421 U.S. 560 (1975).

I have carefully reviewed your request for review, as well as the DOE Chief's dismissal. For the reasons identified below, I have determined that the DOE Chief did provide a reasoned basis for

[1] Under 29 C.F.R. § 458.64(c), a request for the review of a dismissal of a CSRA election complaint must be made within fifteen days after service of notice of dismissal. The statement of reasons was dated May 23, 2018. However, in a subsequent July 16 letter to OLMS, you stated that you did not receive the statement of reasons until June 5, 2018. Further, your appeal was dated June 12, 2018, within 15 days of the June 5, 2018 service of the notice of dismissal. Thus, your appeal was timely.

the dismissal of your complaint and that, as a result, the dismissal was not arbitrary and capricious.

II. Allegations in Complaint

The National Treasury Employees Union (NTEU), Chapter 22 held a regularly scheduled election for union officers on September 25, 2017. You filed a post-election protest with NTEU's national president on several grounds, including that certain members of Team Horatio were not eligible to run for office. The national president ordered a rerun election on the basis of some of your allegations; however, he rejected your arguments regarding the eligibility of Team Horatio's candidates. You appealed this determination and the national president affirmed that Team Horatio's full slate was eligible to run in the April 2018 rerun election.

On January 5, 2018 and January 16, 2018, you filed protests with OLMS alleging, among other things, that because the workspaces of certain Team Horatio candidates were relocated to the Philadelphia IRS Service Center, which is located within the geographic jurisdiction of Chapter 71, those candidates: (1) were not members of Chapter 22; (2) were not eligible to run in the 2017 election; and (3) were not eligible to run in the April 2018 rerun election.

According to your complaint, a change made to the Chapter 22 bylaws that purportedly allowed individual members who were relocated to the Philadelphia IRS Service Center to choose whether to remain members of Chapter 22 violated NTEU's national constitution because: (1) it was not ratified by a majority of Chapter 22's total membership, but rather only by a majority of those members who attended a ratification meeting; and (2) no vote occurred among the workers who transferred to the Philadelphia IRS Service Center but sought to remain in Chapter 22.

III. The Statement of Reasons

The DOE Chief noted in the SOR that "Article IV, Section 5 of the NTEU constitution provides, 'the National president may realign the jurisdiction of existing NTEU Chapters, provided the NTEU Chapter members who seek realignment, and the Chapter into which they seek to be realigned, each by majority vote, ratify the proposed realignment of jurisdiction.'" SOR at 2. Pursuant to this provision, Chapter 22 and Chapter 71 entered into an agreement allowing individual Chapter 22 members whose workspaces were relocated to the Philadelphia IRS Service Center to choose whether to remain members of Chapter 22 or join Chapter 71. *Id.* Subsequently, this agreement was codified by an amendment to the Chapter 22 bylaws. *Id.* The SOR addressed your arguments that this agreement did not comply with the relevant provision of NTEU's constitution.

First, the DOE Chief noted that "the bylaw change was voted on and approved by a majority of the Chapter 22 members present at the meeting at which the bylaw change was ratified." *Id.* While the DOE Chief acknowledged that the constitution was "silent" on whether the bylaw change needed to be approved by a majority of all Chapter 22 members or merely a majority of all members who voted at the ratification meeting, she noted that the Department's governing regulations afford unions great deference when interpreting their own constitutions. SOR at 1-2. Specifically, 29 C.F.R. § 452.3 provides that "[t]he interpretation consistently placed on a

union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable." The DOE Chief concluded that it was reasonable for NTEU to interpret its constitution such that a majority of those members present at the Chapter 22 ratification meeting could satisfy Article IV, Section 5. SOR at 2.

Second, the DOE Chief noted that your complaint to OLMS arose within the context of a rerun election NTEU voluntarily implemented in response to your internal union protest. The SOR also explained that the Department generally defers to a union's decisions in a rerun election:

> . . . [T]he Secretary accords a degree of deference to decisions on internal union election protests providing for the conduct of a new election. The Department will not seek to reverse a union's remedial decision to hold a new election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; the decision is otherwise contrary to the principles of union democracy embodied in the statute, or; the union's decision to hold a new election is otherwise unreasonable.

SOR at 3. The DOE Chief further noted that NTEU considered and rejected your arguments about the eligibility of Team Horatio's candidates in both your initial protest and your subsequent appeal to the national president. SOR at 3-4. The SOR therefore implicitly deferred to the union's conclusion that the agreement between Chapter 22 and Chapter 71 satisfied Article IV, Section 5 of the NTEU constitution.

IV. Request for Review

In your Request, you state that "the Department did not consider my full argument. The response only addressed one of the necessary conditions to change the jurisdiction of the Chapter." Request at 1. Specifically, you state that, while the SOR addressed your arguments regarding the vote taken by Chapter 22 members, it did not address your arguments regarding the lack of a vote by those members who transferred to the Philadelphia IRS Service Center and sought to remain in Chapter 22. *Id.* You assert that the lack of a second vote renders the bylaw change ineffective and should bar certain members of Team Horatio from standing in Chapter 22 elections. *Id.* at 5.

V. Discussion

This case turns on whether the decision by the DOE Chief to dismiss the complaint was arbitrary and capricious. You contend that the dismissal was incorrectly decided because it did not address your allegation that the Chapter 22 members who transferred to the Philadelphia IRS Service Center failed to vote on the agreement that would allow them to remain in Chapter 22. I disagree. The SOR addressed all issues raised in the complaint. I begin first, however, with a brief discussion of the relevant legal principles.

As noted in the SOR, NTEU's actions are afforded significant deference not only because the controversy involves an interpretation of the union's constitution, but also because the dispute arises within the context of a rerun election the union voluntarily instituted.

First, with respect to interpreting a union's constitution, the LMRDA provides, in pertinent part, that an "election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter." 29 U.S.C. 481(e). The applicable interpretive regulation requires that unions hold elections as provided in Title IV, and that they must be conducted in accordance with their validly adopted constitution and bylaws insofar as they are not inconsistent with the provisions of the Act. 29 C.F.R. § 452.2. Significantly, the interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted by OLMS unless the interpretation is "clearly unreasonable." 29 C.F.R. § 452.3; *see also Brennan v. Employees Indep. Ass'n-Pennsylvania Power & Light Co.*, 381 F. Supp. 23, 25-26 (M.D. Pa. 1974) (rejecting the Department's complaint that a union member was an ineligible candidate for office and, deferring to the union's constitution, held that the candidate remained a member of the division from which he had been transferred and was fully eligible to hold office and vote as president of that division).

Second, with respect to voluntary actions taken by a union to remedy election violations, Title IV of the LMRDA embodies two policies: the need to afford the Secretary sufficient authority to ensure free and democratic union elections, and the policy against unnecessary governmental intrusion into union affairs. *See Brock v. Writers Guild of Am., W., Inc.*, 762 F.2d 1349, 1353 (9th Cir. 1985). The legislative history of the LMRDA provides:

> The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by the legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 403 (1959). Therefore, it is not the role of the Secretary or the courts "to intervene at will in the internal affairs of unions . . . except in the very limited instances expressly provided by the Act." *Brennan*, 381 F. Supp. at 25, quoting *Gurton v. Arons*, 339 F.2d 371, 375 (2d. Cir. 1964).

Finally, an SOR need not contain "detailed findings of fact" to satisfy the arbitrary and capricious standard of review. *Bachowski*, 421 U.S. at 573. Rather, an SOR need only contain "the grounds of decision and the *essential facts* upon which the Secretary's inferences are based." *Id.* at 574 (emphasis added).

With these principles in mind, I turn to the resolution of this case.

The SOR included the essential facts that warrant dismissal of this complaint. It noted that an agreement existed between Chapter 22 and Chapter 71 that would allow members who transferred from Chapter 22 to the Philadelphia IRS Service Center to retain their membership in Chapter 22. The SOR also stated that you believed this agreement violated Article IV, Section 5 of NTEU's national constitution. The SOR explained that you raised these arguments before the union twice and that the national president considered and rejected them both times. The DOE Chief did not find that NTEU's rejection of your interpretation was unreasonable. On these facts, it was not arbitrary and capricious for the DOE Chief to defer to NTEU's interpretation of its own constitution. Similarly, it was not arbitrary and capricious for the DOE Chief to defer to NTEU's decisions regarding the rerun election.

For the reasons discussed above, I find that there was a reasoned basis for the dismissal of your complaint. I affirm that dismissal.

Sincerely,

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Director

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