

OLMS Director Decision No. 2014 - 1

[REDACTED]

Dear [REDACTED]

This is the final decision regarding your appeal, submitted on June 29, 2014, requesting a review of the dismissal of the complaint that you filed with the U.S. Department of Labor's, Office of Labor-Management Standards (OLMS). In your complaint filed with the OLMS Chicago District Office, on July 30, 2013¹, you alleged that the American Federation of Government Employees (AFGE) Local 2107 President and Executive Board violated your union member Bill of Rights by removing you from your appointed steward position. You stated that this action violated 29 CFR § 458.2(a)(5). The District Director dismissed your complaint and sent you a copy of her determination in a letter on June 19, 2014. Your request for review was made pursuant to 29 CFR § 458.59 and was acknowledged in a letter dated July 10, 2014.

OLMS enforces provisions of the Labor-Management Reporting and Disclosure Act of 1959, (LMRDA), 29 U.S.C. §§ 481-484, which promotes union democracy and financial integrity in private sector unions. OLMS also enforces similar provisions for federal sector unions pursuant to the Standards of Conduct provisions of the Civil Reform Act of 1978 (CSRA), 5 U.S.C. § 7120(c), *et seq.*, and its implementing regulations, 29 CFR Part 458, including the union member Bill of Rights. See 29 CFR § 458.2. 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); 29 U.S.C. § 458.1. Accordingly, the CSRA union member Bill of Rights are governed by the standards prescribed in section 101 of the LMRDA, 29 U.S.C. § 411.

The Bill of Rights includes those that safeguard against improper disciplinary action. See 29 CFR § 458.2(a)(5). Section 458.2(a)(5) states that no member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for non-payment of dues unless the member has been (i) served with written charges, (ii) given a reasonable time to prepare a defense, and (iii) afforded a full and fair hearing.

The standards of conduct regulations provide that a member may bring a Bill of Rights complaint with OLMS, although the member may be required to exhaust reasonable hearing procedures within his or her labor organization. See 29 C.F.R. § 458.54. Under the Standards of Conduct regulations, a member who alleges a violation of the Bill of Rights provisions is the complainant and, therefore, bears the burden of proving the allegations of the complaint by a preponderance of the evidence in a hearing before an Administrative Law Judge (ALJ). 29 CFR

¹ The July 10, 2014 acknowledgement letter sent by OLMS Director Hayes to the complainant incorrectly cited the date of the original complaint to the Chicago District Office. The complainant sent an email to Director Michael Hayes on July 21, informing him of the error. The error has been corrected and properly noted in the record.

§ 458.79. The role of the District Director upon receipt of a complaint from a union member alleging a violation of the member's Bill of Rights is to obtain such additional information as she deems necessary and then determine if there is a reasonable basis for the complaint. *See* 29 C.F.R. §§ 458.57-58. If the District Director determines that there is a reasonable basis for the complaint, she refers the case to the Chief Administrative Law Judge, U.S. Department of Labor, for issuance of a notice of hearing before an ALJ. 29 C.F.R. § 458.60.

Upon receipt of a timely submitted appeal, the Director may review the decision of the District Director to dismiss the complaint.² *See* 29 CFR § 458.59. My review of the District Director's decision to dismiss your Bill of Rights complaint is based on consideration of the reasons for dismissal of your complaint given by the District Director in her June 19, 2014 Dismissal Letter, your June 29, 2014 letter to the OLMS Director requesting review of the dismissal, and the file created by the District Director during the preliminary inquiry of this matter.

For the reasons set forth below, I affirm the dismissal of your complaint.

I. Background

A brief summary of the essential facts in this matter is as follows.

On August 29, 2012, you had a meeting with the AFGE Local 2107 President, Chief Steward, and Sgt. at Arms. During this meeting, the President announced that you were being removed from your appointed position as a steward. You were read and given a copy of the removal letter, explaining the President's actions. You were officially removed from your position on this same date.

Subsequently, you filed a timely appeal to the Executive Board on September 5, 2012. On appeal to the Executive Board, you argued that you were not given notice or a hearing before your removal and that the President's actions violated the union's bylaws. The Executive Board denied your appeal on December 10, 2012. Upon your denial, you requested a formation of an investigation committee. The union granted your request and the investigation committee upheld the President's decision to terminate you from the steward position.

On May 30, 2013, you requested to have your case reviewed by District 7, National Vice President. On June 10, 2013 your request for review was declined.

After pursuing these internal remedies, you filed a complaint with the Chicago District Office on July 30, 2013 and alleged that your rights as a union member had been violated pursuant to 29 CFR § 458.2(a)(5). In her final determination, the District Director stated that membership rights, pursuant to 29 CFR § 458.2(a)(5), do not extend to one's right to serve as a steward. Further, she asserted that the union's constitution and bylaws are silent as to timeframes during

² As of November 8, 2009, the Department of Labor's Employment Standards Administration (ESA) was dissolved into its four constituent components and consequently the position of Assistant Secretary no longer exists. The Secretary of Labor ordered the delegation of Section 701 of the Civil Service Reform Act, specifically including 5 U.S.C. 7120, to the authority of the Director of the Office of Labor-Management Standards. *See* Secretary's Order 8-2009; 74 Fed. Reg. 58835 (Nov. 13, 2009).

which actions relative to steward removal must take place. Finally, she informed you that, because you maintained your status as a union member in good standing of AFGE Local 2107, she could find no reasonable basis for your complaint. Subsequently, your complaint to the Chicago District Office was dismissed by letter dated June 19, 2014.

On June 29, 2014, you requested a review of the dismissal of the complaint from the Director of OLMS. In your letter for review, you reiterated three main arguments in support of your Bill of Rights claim, pursuant to 29 CFR § 458.59: 1) You were removed from your position without proper notice for dismissal; 2) You should be afforded due process of a full and fair hearing and be afforded time to prepare a defense and; 3) The bylaws clearly state that stewards may be removed by the President only for cause after written notice, training designed to correct deficiencies, and failure to improve within a reasonable time. Moreover, you state that, although the union appointed you to the steward position, you also served as an employee of the union, as it was a paid position.

As the Director of OLMS, I reviewed the complaint and the full record. I was not involved in the district director's decision. Any OLMS employee who reviewed your initial complaint, or had any involvement in the initial decision, was precluded from the review.

II. Discussion

I am dismissing your complaint because the actions taken against you are not the type of discipline covered by 29 U.S.C. § 411(a)(5). Your rights and status as a union member were not affected by the actions taken against you. The removal as a steward, an appointed position, cannot serve as the basis for a successful LMRDA Title I Claim unless: 1) it affects the union member's rights as a union member or; (2) the removal was part of a pattern to suppress dissent within the union. Since the second argument is not raised in your complaint, nor does any evidence in the record support such a claim, I have limited my discussion to the first element.

To trigger a Title I claim, the actions taken against a union member must affect his rights as a member of the union in good standing. The removal of your appointed stewardship position did not affect your rights as a member in good standing. The phrase "otherwise disciplined" in 29 USCS § 411(a)(5) has a narrow meaning. "Discipline," under LMRDA provision regarding safeguards against improper disciplinary action, is a retaliatory act that affects a union member's rights or status as member of that union. Murray v. Laborers Union Local No. 324, 55 F.3d 1445, 1446 (9th Cir. 1995).

You have not provided any reason or evidence indicating that the district director erred in dismissing your complaint. The union's action affected your status as a union steward, but did not affect your union membership. Courts emphasize that Title I of the LMRDA was meant to protect *union members' rights as members*, not an individual member's right to employment or representative status with the union. Franza v. Int'l Bhd. of Teamsters, Local 671, 869 F.2d 41, 44 (2d Cir. 1989). Although you are no longer a steward, you are still permitted to attend union

meetings, participate in union meetings, and pay dues.³ You are still an active member of AFGE Local 2107 with full membership privileges and voting rights. Your union membership rights remain unaffected by your removal as steward, an appointed position. I have determined that a reasonable basis for your complaint has not been established. Accordingly, I affirm the Chicago District Office's June 19, 2014 determination to dismiss your complaint.

Sincerely,

Michael Hayes
Director

cc: President, AFGE Local 2107
Chief, OLMS Division of Enforcement
OLMS Chicago District Office

³ Although you suggest in your complaint to the district director that you are not "allotted time on the agenda to speak at [the] monthly membership meeting," the right to participate in meetings does not entail a right to be placed on the meeting agenda and be accorded a specific time allotment to speak.