

[REDACTED]

Dear [REDACTED]:

This is the final decision regarding your appeal, submitted on October 6, 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 Washington District Office on July 18, 2014, you alleged, in part, that the American Federation of Government Employees (AFGE) violated your union member Bill of Rights, as it removed from office and suspended from membership you and other former officers of AFGE Local 2798, without a fair hearing. The OLMS Washington District Office supervisory investigator dismissed your union member Bill of Rights complaint by letter dated September 29, 2014. Your request to the OLMS Director for review was made pursuant to 29 C.F.R. § 458.59 and was acknowledged in a letter dated October 15, 2014.

OLMS enforces provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 401-531, 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 Service Reform Act of 1978 (CSRA), 5 U.S.C. §§ 7120(c) *et seq.*, and its implementing regulations, 29 C.F.R. Part 458, including the union member Bill of Rights, such as the safeguards against improper disciplinary action. *See* 29 C.F.R. § 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 C.F.R. § 458.1. Accordingly, the CSRA union member Bill of Rights is governed by the standards prescribed in section 101 of the LMRDA, 29 U.S.C. § 411.

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 C.F.R. § 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 he deems necessary and then determine whether 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, he refers the case to the Chief ALJ, U.S. Department of Labor, for issuance of a notice of hearing before an ALJ. 29 C.F.R. § 458.60.

Following the District Director's determination, the Standards of Conduct regulations provide for review of the dismissal of a member's complaint alleging violations of the Bill of Rights provisions if the complainant files a request for review within fifteen days of service of the notice of dismissal. A copy of such request shall be served on the District Director and the respondent, and a statement of service shall be filed with the OLMS Director. The request shall contain a complete statement of the facts and reasons upon which the request is based. 29 C.F.R. § 458.59. This review is conducted by the Director of OLMS.

My review of the Supervisory Investigator's decision to dismiss your Bill of Rights complaint is based on consideration of the reasons for dismissal of your complaint given by the Supervisory Investigator in her September 29, 2014, Dismissal Letter; your October 6, 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.

Background

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

On March 5, 2013, AFGE National placed Local 2798 under trusteeship and suspended its officers, including you, based on allegations of mismanagement. [REDACTED], who was already the Local's National Representative, became its trustee. On May 3, 2013, you represented the Local in a trusteeship hearing before an independent panel. In a later-issued decision, the panel found that the trusteeship was improper and recommended the removal of [REDACTED].

By memo dated June 7, 2013, the AFGE National suspended you and the other officers again, for alleged gross financial misconduct, pursuant to new charges based on the Union's constitution and bylaws. On October 28, 2013, the National issued another letter to the suspended officers with more charges, including an allegation that they were advocating secession. There were two hearings before [REDACTED] to determine whether the charges against you were valid and what penalty would be appropriate, which were conducted on January 13, 2014, and February 5, 2014. On February 20, 2014, [REDACTED] ruled that you should be suspended from the union for five years, barred from being an officer for ten years, and ordered to pay \$1,600 in restitution to the local. The total was based on two incidents: the withdrawal of \$1,000 from the local's checking account in January 2013 for gift cards and the withdrawal of \$600 for the secretary in November 2012.

On July 18, 2014, you filed a complaint with the OLMS Washington District Office. In your complaint you requested that OLMS investigate various allegations related to the trusteeship, as well as various alleged violations of the AFGE national constitution, the CSRA union member Bill of Rights, and other laws, concerning your removal from office and suspension of your membership. After reviewing the alleged CSRA Bill of Rights matters, the OLMS Washington District Office dismissed those aspects of your complaint by letter dated September 29, 2014. You then requested a review of the dismissal of the complaint from the Director of OLMS on October 6, 2014. In your letter requesting review, you mentioned that you did not have a full and fair hearing, in part because you were denied the right to representation at the initial hearing.

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

Discussion

Initially, I note that, by inference, your complaint references the CSRA Standards of Conduct Bill of Rights provision that provides safeguard against improper disciplinary action. *See* 29 C.F.R. § 458.2(a)(5). This provision refers to actions taken against a union member that affect his rights *as a member of the union* in good standing. Your rights and status as a union member were not affected by the actions of the AFGE to remove you as an officer or take other actions against you as an officer. 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).

By contrast, the AFGE's action to suspend your union membership is covered by 29 C.F.R. § 458.2(a)(5), which states that no member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for nonpayment 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. However, you did not present evidence that the OLMS Washington District Office erred in dismissing your Bill of Rights complaint on the ground that your fundamental due process right to a fair hearing was violated during the arbitration hearing.

You were served with written charges on June 7, 2013, and October 28, 2013, in the form of letters from AFGE National President David Cox. The arbitration hearing was scheduled to commence on November 22, 2013. However, only one respondent appeared at the hearing, and it was rescheduled for January 13, 2014. This gave you two and a half months to prepare for the first hearing, which is a more than reasonable period of time.

You were also given a full and fair hearing. The full and fair trial provision of the LMRDA affords to accused member of unions ““fundamental and traditional concepts of due process.”” *Ritz v. O’Donnell*, 566 F.2d 731, 735 (D.C. Cir. 1977) (quoting *Tincher v. Piasecki*, 520 F.2d 851, 854 (7th Cir. 1975)). However, the procedures of a union hearing need not be as rigorous as a federal court’s procedures. *Frye v. United Steelworkers of Am.*, 767 F.2d 1216, 1224 (7th Cir. 1985). The fundamental due process rights guaranteed under the LMRDA include the following: (1) the existence of “some evidence” to support the charges made, *Int’l Bhd. of Boilermakers v. Hardeman*, 401 U.S. 233, 246 (1971); (2) an impartial tribunal, *Tincher*, 520 F.2d at 854; (3) an opportunity to confront “pertinent witnesses,” *Ritz*, 566 F.2d at 735-36; and (4) an opportunity to present evidence, *Tincher*, 520 F.2d at 854. They do not include a right to counsel or other representation.

Documentation that you have provided indicates that there was evidence of misconduct that led to your suspension from Local 2798, that the hearing was in front of an impartial arbitrator, and that you were given the opportunity to present evidence and confront witnesses. Therefore, there was no reasonable basis to conclude that you were not offered a full and fair hearing.

The other alleged violations of the CSRA Standards of Conduct provisions, such as those related to the trusteeship pursuant to 29 C.F.R. § 458.27 and inadequate officer removal pursuant to 29 C.F.R. § 458.30, are not within the scope of this review since the CSRA Standards of Conduct regulations do not provide an appeal procedure for those provisions. *See* 29 C.F.R. § 458.66.

OLMS does not have jurisdiction over your complaint with regard to other internal union matters, the alleged violations of your labor organization’s constitution and bylaws, or any alleged violation of other laws. A union member must enforce claims that involve a union’s compliance with its own constitution privately, by using the union’s internal procedures or by filing an action in court.

After reviewing the evidence you have presented, I conclude that the supervisory investigator correctly determined that there was no reasonable basis for your CSRA Bill of Rights complaint. Therefore, I affirm the OLMS Washington District Office’s dismissal of your complaint.

Sincerely,

Michael Hayes
Director

cc: OLMS Washington District Director
President, AFGE Local 2798