



OLMS Director Decision No. 2014 – 2

[REDACTED]

Dear [REDACTED]

This is the final decision regarding your appeal, received July 20, 2014. You requested a review of the July 8, 2014 dismissal of the complaint you filed with the Boston District Director (District Director), U.S. Department of Labor Office of Labor-Management Standards (OLMS). In that complaint, received March 14, 2014, you alleged that you were improperly suspended from membership in the National Treasury Employees Union (NTEU) Chapter 68 (Chapter 68 or Chapter). Your request for review is made pursuant to 29 CFR § 458.59 and was acknowledged in a letter dated July 28, 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 file 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 § 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 or 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, he or 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. If the District Director determines that there is not a reasonable basis for the complaint, it may be dismissed. 29 CFR § 458.58.

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 by filing a request for review within fifteen days of service of the notice of dismissal. 29 CFR § 458.59. 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. *Id.* The request shall contain a complete statement of the facts and reasons upon which a request is based. *Id.*

My review of the District Director's decision to dismiss your Bill of Rights complaint is limited to consideration of the reasons for dismissal of your complaint given by the District Director in his July 8, 2014 Dismissal Letter, your July 20, 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. *See* 29 CFR § 458.59.

For the reasons set forth below, I affirm the District Director's dismissal of your complaint.

I. Background

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

On October 15, 2012 the Executive Coordinator of NTEU Chapter 68 brought charges of malfeasance against you as Chapter 68 Treasurer, on the grounds that you refused to sign checks. Thirteen months later, on November 12, 2013, you were removed as a member of the union for a period of three years after a trial conducted by the union. You appealed this removal to the President of the NTEU, who affirmed the Chapter's decision to suspend you on December 18, 2013. On April 12, 2014 the National Executive Board of the NTEU affirmed the President's

decision and the President sent a letter notifying you of the Board's decision dated April 14, 2014. You appealed this decision to the National Convention, but it was not received until May 15, 2014, which is untimely under the NTEU's Constitution, Article XVIII, § 3(C), which states that an appeal to the NTEU's national convention must be received, in writing, by the National President within thirty (30) days following the date of the letter notifying the appellant of the decision of the National Executive Board.

While you were pursuing these internal remedies, you filed a complaint with the Boston District Office on March 10, 2014. In your complaint you alleged that you were improperly removed as a member of the NTEU because the removal "violated Law, Rule and Regulation, Department of Labor Standards, public policy and violated the National Treasury Employees Union National Constitution and By-Laws." You claimed that you did not receive a timely membership trial because the trial was held more than a year after charges were filed against you, which you allege is in violation of the national constitution and bylaws. By letter dated July 8, 2014, the District Director dismissed your complaint.

On July 20, 2014, you requested a review of the dismissal of the complaint from the Director of OLMS. In your letter for review you made the following arguments: that the Department of Labor's investigation regarding the fairness of your trial was incomplete, that the District Director misinterpreted section 458.2(b) of the Department's regulations, and that you did not receive a fair hearing for a variety of reasons, among them that the charges against you were "bogus", that they were resurrected in order to intimidate you, and that the members who were more likely to vote in your favor were purposefully excluded from the meeting because the executive board conducted it during the evening shift, while they were at work. You further alleged that you were prejudiced by the delay in the suspension hearing for over a year, as many members quit their NTEU membership during this time period, thus preventing their participation in the "jury pool."

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

Initially, I note you did not exhaust internal union remedies as provided in 29 CFR § 458.54. You sent a complaint to OLMS on March 10, 2014, before the NTEU National Executive Board had dismissed your complaint within the union. In addition, the NTEU Constitution requires that a timely appeal to the National Convention "must be received, in writing, by the National President within thirty (30) days following the date of the letter notifying the appellant of the decision of the National Executive Board." NTEU Constitution, Article XVIII, § 3(c). The

National President informed you of a decision by the National Executive Board in a letter dated April 14, 2014. Your appeal to the National Convention was not received in the Office of the National President until May 15, 2014, which is more than 30 days after the date of the letter you received. As a result, your appeal was dismissed and you did not exhaust internal union remedies. Therefore, your Bill of Rights complaint was not properly before the Boston District Office.

In addition, OLMS does not have jurisdiction over complaints concerning internal union matters. While the actions of the Executive Board of NTEU Chapter 68 may have violated some provision of the NTEU's constitution and bylaws, claims that exclusively involve a union's compliance with its own constitution are not within OLMS' jurisdiction in Bill of Rights cases. Section § 458.1(a)(5) of the regulations requires notice, time to prepare a defense and a fair hearing. It contains no requirement that the disciplinary hearing conform to the union's constitution and bylaws. A union member must enforce such claims privately, using the union's internal procedures or by filing an action in court. The only reference in this regulation to a union's constitution and bylaws is that they may not be used as a "defense" in these proceedings if the provision is inconsistent with the regulations. 29 C.F.R. § 458.2(b). However, this does not apply to your claim, which attempts to enforce the constitution, rather than use it as a defense, and makes no claim that the constitution is contrary to law.

You have also not established that the District Director erred in finding that adequate safeguards were provided to you when discipline charges were brought against you. 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 fundamental due process rights guaranteed under the LMRDA include: (1) the existence of "some evidence" to support the charges made, *International Bhd. of Boilermakers v. Hardeman*, 401 U.S. 233, 246 (1971); (2) an impartial tribunal, *Tincher v. Piasecki*, 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 v. Piasecki*, 520 F.2d at 854.

As the District Director noted, you were served with written charges in October 2012, which provided you a reasonable time period to prepare a defense (the trial occurred approximately 13 months after charges were raised against you). Significantly, you do not deny the underlying facts of the charges against you or assert that you did not have an opportunity to confront witnesses and present your own evidence. Your arguments that the charges are "bogus" and that they were "resurrected to intimidate you" are neither supported by evidence nor related to the question whether you received the required procedures.

You also assert that the composition of the membership that attended the meeting was biased against you for two reasons. First, the delay in holding the hearing resulted in a membership that was not sympathetic to you, because numerous members left the union during the period preceding the hearing. Second, the hearing was held during the night shift, when members sympathetic to you were working. However, these conclusory assertions do not establish that the tribunal was not impartial. The fact that some members of Chapter 68 may have left the union or may have been inconvenienced by the hearing date and time also does not establish that you were denied a full and fair hearing. There is no evidence of actual bias and no member was foreclosed from attending the hearing. The full and fair trial provision of the LMRDA affords an accused union member “fundamental and traditional concepts of due process.” After reviewing the evidence you have presented, it does not establish a reasonable basis for concluding that the District Director erred in his determination to dismiss your complaint. Therefore I affirm the District Director’s determination.

Sincerely,

Michael Hayes
Director

cc: OLMS Boston-Buffalo District Director
President, NTEU Chapter 68