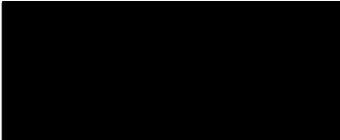




OLMS Director Decision No. 2015-1

March 10, 2015



Dear 

This is the final decision regarding your appeal, submitted on December 1, 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 Atlanta-Nashville District Office on June 19, 2013, you alleged violations of 29 C.F.R. §458.2(a)(1), §458.2(2), 458.2(5), and 458.28. The District Director dismissed your complaint and sent you a copy of his determination in a letter on November 10, 2014. Your request for review was made pursuant to 29 CFR § 458.59 and was acknowledged in a letter dated December 19, 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 CFR Part 458, including the union member Bill of Rights, such as the safeguards against improper disciplinary action. *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 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 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 his November 10, 2014 Dismissal Letter, your December 1, 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 dismissal of your complaint.

Background:

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

You received a letter dated August 2, 2012 from the American Federation of Government Employees (AFGE) which suspended you as president of AFGE Local 547 and set forth charges against you. These charges included allegations of financial misconduct, claiming that you paid yourself a stipend of 15% of the gross membership dues of your local, despite the fact that there was no record of any membership approval of this stipend. The original amount of the stipend per Local 547 policy was 10%. You were also charged with reimbursement of mileage in excess of the General Service Administration rate, and reimbursement, twice, for the same mileage expenses. You were also charged with collusion with management to conduct an unofficial investigation of a fellow union officer. By letter dated December 10, 2012, National AFGE President David Cox informed you that a trial committee had been selected and a trial date of January 25, 2013 had been set. You assert in your appeal letter that there was a lack of evidence to support these charges and a failure to provide prior witness statements as provided by AFGE rules.

You assert that during the hearing you were not allowed a court reporter to make an accurate record of the proceedings, and that intimidating statements were made before, during, and after the trial. You allege that a member of the trial committee implied that a copy of the trial recording would be sent to the Department of Labor, that the prosecutor stated that you violated federal law by having Local 547 buy personal insurance for you, and that after the trial, the trustee allegedly publicly stated to the membership that the decision of the trial committee would be sent to the Department of Labor for possible consideration of charges. Finally you state that there was ex parte communication between the prosecutor and the trial committee.

On April 26, 2013, the trial committee found you guilty of various charges and provided recommendations, but not decisions, that you be removed from office and barred from holding office for life.

In a letter dated May 1, 2013, David Cox, the National President of the AFGE, advised you of the trial committee's recommendations but incorrectly stated that they were a decision. You appealed to the AFGE National Executive Council (NEC) in a letter dated June 13, 2013, on the basis of Mr. Cox's error that the final decision on your case was not his determination to make. The NEC dismissed your appeal and characterized Mr. Cox's misstatement as "harmless error." You assert in your appeal letter that you cannot be removed or banned from office where there has been no decision by the proper decision maker.

As the Director of OLMS, I reviewed the complaint and the full record. I was not involved in the District Director's decision.

Discussion

As an initial matter, OLMS does not have jurisdiction over your complaint with regards to internal union matters, such as violations of the AFGE bylaws or constitution. Claims that exclusively involve a union's compliance with its own constitution or rules generally are not within OLMS' jurisdiction. A union member must enforce such claims privately, using the union's internal procedures or by filing an action in court.

Additionally, OLMS investigated your trusteeship complaint, and, in an October 2, 2014 letter, the Division of Enforcement provided you with a Statement of Reasons for dismissing your complaint. I do not have jurisdiction over this alleged violation of the CSRA Standards of Conduct provisions, related to the trusteeship pursuant to 29 C.F.R. § 458.27, since the CSRA Standards of Conduct regulations do not provide an appeal procedure for those provisions. *See* 29 C.F.R. § 458.66. Further, in your initial complaint to the Atlanta-Nashville District Office, and in your appeal, you cited the Bill of Rights provisions ensuring equal rights and freedom of speech and assembly. *See* 29 C.F.R. § 458.2(a)(1) and (2). However, you did not present any allegations for OLMS to consider pursuant to those Bill of Rights provisions.

Regarding your reference to 29 CFR § 458.2(a)(5), the Bill of Rights provision that provides safeguards against improper disciplinary action, ordinarily, removal from an officer position in a union cannot form the basis for a Title I claim. 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). However, when a labor organization renders a member ineligible from seeking union office, this affects him or her as a member and permits the member to challenge the fairness of the procedures that resulted in discipline. *See Schonfeld v. Penza*, 477 F.2d 899, 904 (2d Cir. 1973). Therefore, I have reviewed the procedure that led to the decision to remove you from office and rendered you ineligible to run for AFGE office in the future.

The provision referenced, 29 CFR § 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. You were served with written charges by letter on August 2, 2012. Your trial date was January 25, 2013, which gave you reasonable time to prepare a defense.

You were also afforded a full and fair hearing. In your appeal letter you assert that the hearing held against you was not fair because there was a lack of evidence to support the charges, the trial panel refused to allow a court reporter to be present to make an accurate record of the proceedings, intimidating statements were made to you before and during the trial, there were ex parte communications between the trial panel and the prosecutor, no one at AFGE attempted to obtain an explanation from you regarding the charges prior to the trial, and you were not given a full opportunity to present all relevant evidence and exhibits. In his letter to you, the District Director addressed most of these issues, and you did not provide any additional evidence in your appeal that would demonstrate an error in the District Director's conclusions. As the District Director noted, nothing in the regulations requires that a verbatim transcript of a hearing be made or that a court reporter be present. The OLMS review and investigation of the hearing did not find any evidence of intimidation before, during, or after the trial. Further, your appeal provided no support for the notion that merely invoking criminal charges or contact of the Department constitutes a "threat" or "intimidation." OLMS' investigation also found that the only ex parte communications between the prosecutor and trial committee regarded scheduling issues. I find that the District Director did not err in his analysis. Your union's refusal to allow you, prior to the trial, to provide an explanation regarding the charges against you also does not violate any regulations.

Furthermore, the full and fair trial provision of the LMRDA affords to accused members 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 (1) the existence of "some evidence" to support the charges made, *International Bhd. of Boilermakers v. Hardeman*, 401 U.S. 233, 246, 91 S.Ct. 609, 617, 28 L.Ed.2d 10 (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.

After reviewing the evidence you have presented it appears that none of your fundamental due process rights to a fair hearing were violated. Despite your claim that there was no evidence presented against you, the OLMS investigation conducted found that there was both written evidence and oral testimony used as evidence against you in the disciplinary proceeding. Further, as the District Director stated in his November 10, 2014 letter, there is no requirement in the regulations or AFGE disciplinary procedures that union members subject to discipline be afforded access to all of the information held by the union prior to a hearing. Nevertheless, the District Director's investigation revealed that, prior to trial, the AFGE prosecutor provided you copies of the evidence that would be presented during the trial even though the parties have no right to pre-trial discovery. Even your appeal letter acknowledges that the AFGE did provide you documents, although you allege AFGE did so after the trial started. Additionally, pursuant to the information gathered by the OLMS Atlanta-Nashville District Office, you also were given the opportunity to confront pertinent witnesses and present evidence during the trial, and on appeal you did not present any evidence to contradict this information.

Finally, the OLMS review is limited to determining whether the member received a "full and fair hearing," and not in reviewing the substantive decision, as you assert in your appeal that OLMS should do. The OLMS investigation also found that the hearing committee was composed of three members who were not members of Local 547. The investigation found no evidence that this tribunal was not impartial, and you also have presented no evidence that this committee was not impartial.

As a result, after reviewing the evidence presented, I conclude that the district director correctly determined that there was no reasonable basis for your CSRA Bill of Rights complaint. Therefore, I affirm the OLMS Atlanta-Nashville District Office's dismissal of your complaint.

Sincerely,

A black rectangular redaction box covering the signature of Michael Hayes.

Michael Hayes
Director

cc: OLMS Atlanta-Nashville District Director
President, AFGE Local 547