

U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5603
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-1203



May 22, 2018

Case Number: 130-60103 [REDACTED]
LM Number: 504-132

[REDACTED]

Dear [REDACTED]

I am writing in response to your December 30, 2017 letter to this office in which you appeal the decision rendered by the New York District Office on September 22, 2017. The decision in question surrounds your complaint made pursuant to the Civil Service Reform Act (CSRA) Standards of Conducts provisions, 5 U.S.C. § 7120(c), *et seq.*

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 CSRA Standards of Conduct provisions, and their implementing regulations, 29 C.F.R. Part 458, including the union member Bill of Rights. *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 are governed by the standards prescribed in section 101 of the LMRDA, 29 U.S.C. § 411, as well as applicable court precedents under the LMRDA. 29 C.F.R. § 458.1.

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 for up to four months before bringing an action against the union in court or before a government agency. 29 C.F.R. § 458.54. Consistent with 29 C.F.R. § 458.1, in applying the CSRA Bill of Rights exhaustion requirement, OLMS follows the standards outlined by Federal courts in LMRDA Title I matters. *See, e.g., Clayton v. Int'l Union of Auto., Aerospace & Agric. Implement Workers*, 451 U.S. 679, 689 (1981).

In the CSRA context, the role of the District Director upon receipt of a timely 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 to determine if there is a reasonable basis for the complaint. *See* 29 C.F.R. §§ 458.57-58.

If the District Director determines that the complaint is timely and there is a reasonable basis for it, she refers the case to the Chief Administrative Law Judge (ALJ), 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 the complaint is procedurally defective, or fails to establish a reasonable basis for alleged Bill of Rights violations, then she will send the complainant a written statement of the

grounds for the dismissal and will provide the complainant with his or her appeal rights. *See* 29 C.F.R. § 458.58. Upon receipt of a timely submitted appeal, the OLMS Director reviews the decision of the District Director to dismiss the complaint. *See* 29 CFR § 458.59.

In this matter, OLMS initially received your complaint on April 11, 2017 in which you alleged that the American Federation of Government Employees (AFGE) Local 3369 acted improperly when it took action prohibiting you from attending union membership meetings. Upon receipt of your complaint, the New York District Office initiated an investigation into the matter. The investigation revealed that pursuant to a district court settlement agreement between you and AFGE Local 3369, the union lifted your prohibition from attending membership meetings, and provided you various other forms of relief.¹ Given this information, on September 22, 2017, the OLMS New York District Office issued a decision dismissing your complaint. Subsequently, you appealed that decision to this office by letter dated December 30, 2017 asking that I reverse the dismissal of your complaint on the grounds that an officer of the local violated the Bill of Rights without consequences.

As you requested, I have reviewed your complaint, the district office's investigative findings, the district office's dismissal letter, and your appeal letter. I affirm the decision of the New York District Office to dismiss your complaint.

After the local union prohibited you from attending local membership meetings, you challenged this prohibition internally within AFGE, as required, as well as filed the complaint in question with OLMS. Further, on June 28, 2017, you filed a civil lawsuit regarding this, and other matters, in the U.S. District Court for the Southern District of New York. [REDACTED] (S.D.N.Y. 2017). Your lawsuit lists [REDACTED] the former officer in question, along with AFGE Local 3369 and the AFGE National Union as defendants. In that case, a settlement agreement was executed on September 10, 2017 and filed with the court which addresses the meeting attendance issue. Specifically, the agreement states in part, "The Local agrees to comply with future requests allowed by the constitution and by-laws for review of its financial records; and welcomes the Retired member in Good Standing and his associate to attend all future meetings; and that the Parties mutually agree to treat each other with dignity, respect, and unity." *See* Attachment A. Further, a clearly stated purpose of the agreement was "to avoid additional and/or unnecessary litigation before any other federal or state court or any other forum of competent jurisdiction." *Id.*

¹ The September 10, 2017 Settlement Agreement is included as "Attachment A."

As discussed above, if there were reason to believe that the Bill of Rights had been violated, as alleged, our agency would have the opportunity to refer the matter to the Office of Administrative Law Judges. However, in this case, you sought legal recourse through a U.S. District Court and mutually resolved the dispute by accepting the terms of the settlement agreement. This is the same dispute that you have continued to pursue with OLMS. As you have settled the issues raised, OLMS has no basis to forward your case to the OALJ. The September 22, 2017 decision to dismiss this complaint is hereby affirmed.

Respectfully,



Andrew Auerbach
Acting Director

Enclosure

Reply

SETTLEMENT AGREEMENT

This settlement agreement and mutual release dated this 25 day of September, 2017 is entered into by and between the Parties to Civil Action [REDACTED] filed in the United States District Court for the Southern District of New York by [REDACTED]

[REDACTED] Plaintiff and hereinafter referred to as "the Retired Member in Good Standing" or "Retired Member". The Defendants in that matter are the American Federation of Government Employees (hereinafter referred to as "AFGE") and its affiliate Local 3369 (hereinafter referred to as "the Local"); and all collectively referred to as "the Parties".

WHEREAS, the Parties agree that the Local's constitution and by-laws require a disclosure of the Local's expenditures and disbursements at the general membership meetings;

WHEREAS, the Retired Member in Good Standing has been seeking to review the Local's records of 2016 for all expenditures and disbursements, in person, at the September 2016 general membership meeting; and by telephone and email several times thereafter;

WHEREAS, the Local's compliance with the Retired Member's requests, above, was not satisfactory to the Retired Member in Good Standing which resulted in the filing of Civil Action [REDACTED]

WHEREAS, all Parties are in agreement that the Retired Member's requests should and will be complied with, the Parties enter into the following [REDACTED]

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, and to avoid additional and/or unnecessary litigation before any other federal or state court or any other forum of competent jurisdiction, it is hereby agreed by and between the Parties that:

1. The Retired Member in Good Standing will withdraw without prejudice his

COMPLAINT FOR A CIVIL CASE in Case No. [redacted] filed in the

United States District Court for the Southern District of New York *not later than*

September 13, 2017 ~~calendar days from the completion of the financial review~~ and that he will provide

all Parties with notice of such withdrawal. In consideration for this withdrawal and immediately upon receiving notice of the withdrawal, the Local will reimburse the Retired Member for the following Court costs: four-hundred (\$400) dollars filing fee; and service of process fees of eighty-five (\$85) dollars

and forty-five (\$45) dollars for a total of five-hundred and thirty (\$530) dollars;

plus any other Court/withdrawal expenses
2. The Local shall comply with the Retired Member's March 5, 2017 request to

review the financial records of the Local; and that these financial records include:

passed to former Pres. A. Paulos, Jr.
expenditures and disbursements for 2015 and 2016 including identification *is of*

[redacted] to whom payments were made and a description or explanation of the

items or services received for the payments; and that signed receipts, invoices,

vouchers and cancelled checks will be provided; prior to the financial review the

Local will furnish the Retired Member the minutes of the general membership and [redacted]

special membership meetings he requested for membership meetings occurring March 21, and March 30, 2016 and all ~~meetings occurring thus far in 2017.~~ *other 2016 minutes.*

3. The Retired Member in Good Standing shall be entitled to have up to two (2) other members in good standing present at this review of the financial records and has indicated his choice of the Local's EVP and Secretary, in addition to
4. The AFGE and the Local shall also be entitled to two (2) observers each in addition to the Local President and the Local Treasurer; and the Local President shall chose the Local's observers of their choice; the AFGE shall choose its observers. The presence of such AFGE observers does not imply or impose any duty on the AFGE that it did not have prior to the filing and settling of this case;
5. This review of the Local's financial records shall take place at the Local's office on Barclay Avenue, Flushing NY at a dates(s) and time(s) mutually agreeable to the Parties by and through their representatives but no later than October 31, 2017;
6. Every effort will be made to resolve and explain any issues, disputes, discrepancies or contentions raised by the Retired Member in Good Standing at the time of the review of the Local's financial records; and that these efforts may include: (a) mutual agreement in regards to the issue as to whether it was a mistake, error in judgment or a non-issue; (b) a mutual agreement as to how any

[redacted] 'flagged' issue will be handled in the future; and (c) a mutual agreement to have the matter reviewed and resolved as ^{it is agreed to by the Parties of [redacted]} provided. Notes may be taken during the review.

The Local agrees to comply with future requests allowed by the constitution and by-laws for review of its financial records; and welcomes the Retired Member in Good Standing and his associate to attend all future meetings; and that the Parties mutually agree to treat each other with dignity, respect and unity.

Resolution.

The Parties recognize the importance of this resolution for the benefit of the Local and its members. [redacted]

Sept 10, 2017
Date

9-10-17
Date

For the AFGE

Date