



February 8, 2017

[REDACTED]
[REDACTED]
[REDACTED]
Dear [REDACTED]:

I am writing in response to your November 29, 2017 letter requesting a review of the Office of Labor-Management Standards (OLMS) determination to not accept your complaint concerning the election of union officers conducted by the American Federation of Government Employees (AFGE) Local 2778 on April 21, 2016. The OLMS Atlanta-Nashville District Director made a formal determination in a letter dated September 28, 2016 not to accept your August 25, 2016 complaint, concluding that you were not a member of AFGE Local 2778 at the time of your complaint.

OLMS enforces certain 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 Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120(c), *et seq.*, and its implementing regulations, 29 C.F.R. Part 458. Further, the CSRA requires that the regulations implementing the Standards of Conduct must conform to the principles applicable to private sector labor organizations. 5 U.S.C. § 7120(d).

Accordingly, the CSRA Standards of Conduct regulations at 29 C.F.R. § 458.29 adopt the officer election provisions of the LMRDA, 29 U.S.C. §§ 481(a)-(g). The Department's interpretative bulletin on union officer elections under the LMRDA at 29 C.F.R. Part 452 also applies to officer elections under the CSRA standards of conduct regulations. Further, court decisions under the LMRDA are followed in applying the standards of conduct. *See* 29 C.F.R. § 458.1.

Additionally, a determination to not open an election investigation or to dismiss an election complaint may be reviewed by the OLMS Director, but only on the basis of deciding whether the decision to dismiss was arbitrary and capricious. *See* 29 C.F.R. § 458.64(c). The request for review must be made within 15 days after service of notice of dismissal. *Id.*

I have carefully reviewed your request for review and all of the materials associated with your complaint. First, I am dismissing your appeal, as it was not made within 15 days after service of the notice of dismissal. Rather, the dismissal letter was dated September 28, 2016, and your appeal was dated November 29, 2017, more than a year later.

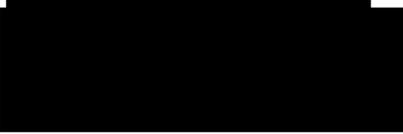
Second, I am dismissing your appeal, since you did not have AFGE membership at the time you filed your complaint with OLMS. As stated by the Atlanta-Nashville District Director, the Standards of Conduct regulations specify that only a member of a labor organization may file an election complaint with OLMS. *See* 29 C.F.R. § 458.63; *see also* 29 C.F.R. § 458.64(a)(1). The evidence available indicates that you were not a member of AFGE Local 2778 at the time of your complaint. Further, you state in your appeal letter that you did not officially pursue retired membership status because you did not believe that union leadership would be responsive to your request. You concede, however, that you did not take any steps to obtain retired membership status following your May 28, 2016 retirement. Given this evidence regarding your membership status at the time you filed your complaint with OLMS, the Atlanta-Nashville District Director's decision to dismiss your complaint was neither arbitrary nor capricious.

Related to your allegations that pursuing retired membership status would have been futile, you also asserted that in September 2016, Local 2778 "retaliatory rejected" your dues for retiree membership, because you filed an election complaint against the union earlier that year. Please note that the CSRA Standards of Conduct regulations also establish a Bill of Rights for union members, which include equal rights to participate in the union, freedom of speech, freedom of assembly, and safeguards against improper disciplinary action, among others. *See* 29 C.F.R. § 458.2(a)(1), (2) and (5); *see also* [*Bill of Rights of Members of Federal Sector Unions: A Complainant's Guide*](#). 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 a period of up to four months. *See* 29 C.F.R. § 458.54. Given your allegations of retaliation in your appeal letter, you may wish to consider whether it is appropriate to pursue a Bill of Rights complaint with the union.

Finally, you stated that you were "forced out of [my] employment into disability retirement due the action of my employer and the inaction of my union." You also asserted similar violations by the union in previous years. These allegations do not fall within the scope of OLMS' authority. Rather, to the extent that you, as a former Federal employee, may be alleging employment discrimination based on disability, you may want to contact the Equal Employment Opportunity Commission (EEOC), at www.eeoc.gov/federal/fed_employees/index.cfm. Additionally, to the extent that you may be alleging a violation of the union's duty of representation, you may wish to contact the Federal Labor Relations Authority (FLRA), at www.flra.gov, as that agency governs labor-management relations in the Federal sector. The

EEOC and FLRA are separate Federal agencies, and OLMS and the Secretary of Labor have no authority to intervene in matters within their purview.

Sincerely,

A large black rectangular redaction box covering the signature area.

Andrew Auerbach
Acting Director

cc: OLMS Atlanta-Nashville District Office