

UNITED STATES DEPARTMENT OF LABOR  
BEFORE THE ASSISTANT SECRETARY  
FOR EMPLOYMENT STANDARDS

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IN THE MATTER OF \*

CHICAGO DISTRICT DIRECTOR, \*  
OFFICE OF LABOR-MANAGEMENT STANDARDS \*  
EMPLOYMENT STANDARDS ADMINISTRATION \*

Complainant \*

AND \*

CASE NO. [REDACTED]

NATIONAL COUNCIL OF FIELD LABOR LOCALS, \*  
COUNCIL 73, AMERICAN FEDERATION OF \*  
GOVERNMENT EMPLOYEES \*

Respondent \*

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DECISION AND ORDER

This proceeding arose under the standards of conduct provisions of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 7120, and the implementing regulations, 29 CFR parts 457-459, as a result of a complaint filed by the Director of the Chicago District Office of the Office of Labor-Management Standards (OLMS). The complaint alleged that respondent, the National Council of Field Labor Locals, Council 73, American Federation of Government Employees (AFGE), violated 29 CFR 458.3 by failing to make books and records available to Mr. William Wheatley, a member of AFGE Local 648, an affiliate of Council 73, necessary to verify the content of annual financial reports it filed with OLMS.

The requirement that a union make available such books and records to members for just cause is contained in the standards of conduct regulations at 29 CFR 458.3. That provision adopts the regulations implementing the union reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 CFR parts 402,403. and 408, which apply to private sector unions. In particular, LMRDA section 201(c), 29 U.S.C. 431(c), and the implementing regulations at 29 CFR 403.8 deal with unions' obligations to make books and records available to members. In addition, the CSRA at 5 U.S.C. 7120(d) provides generally that the regulations implementing the standards of conduct requirements shall conform to the principles applicable to private sector labor organizations, and the standards of conduct regulations at 29 CFR 458.1 provides that interpretations and court decisions under the LMRDA will be followed in applying the standards of conduct.

On May 12, 1999, Chief Administrative Law Judge John M. Vittone issued his Recommended Decision and Order finding that Council 73 is required to allow Mr. Wheatley to examine certain of its records. Council 73, after requesting and receiving an extension for filing exceptions, submitted exceptions and a supporting brief by letter dated June 9, 1999. The District Director submitted a brief in answer to the exceptions on June 16.

In its exceptions, Council 73 contested only one issue. Chief Judge Vittone's finding of law that Mr. Wheatley is a member of Council 73 as well as a member of its affiliated Local 648 for purposes of examining union records. Council 73 asserts that, under its constitution and bylaws, its only members are its affiliated locals and not the individual members of those locals. Chief Judge Vittone had concluded that, given the structure and purpose of the LMRDA, a local union member may be considered to be a member of the parent intermediate body. He stated that the Council's position would only allow examination of the supporting records of an intermediate body through action of local union officers, which would be contrary to the spirit and purpose of the LMRDA. Chief Judge Vittone cited the ruling in Mallick v. International Brotherhood of Electric Workers, 749 F.2d 771,777 (D.C. Cir. 1984), a case involving LMRDA section 201(c), for the proposition that the LMRDA places ultimate power in the hands of the individuals who comprise the membership of unions. He held that the Council's interpretation would "move the right of inspection from the individual members, where Congress intended the right to lie, to incumbent local officers."

Council 73 argues that the definition of "member" in LMRDA section 3(o), 29 U.S.C. 402(o), allows it to define and set the conditions for membership, and that it accordingly limited membership to its affiliated locals and not the individual members of those locals. That is, LMRDA section 3(o) provides in pertinent part that "member" includes "any person who has fulfilled the requirements for membership . . ." and LMRDA section 3(d), 29 U.S.C. 402(d), defines "person" to include labor organizations as well as individuals. In this connection, Council 73 notes that, in contrast to its constitutional requirements for membership, the National AFGE would be required to allow individual members of its affiliated locals to examine the records supporting its reports for just cause because the National constitution defines "members" to include those individual members.

Council 73 further argues that the structure and purpose of the LMRDA support its position that the members of intermediate bodies are only affiliated locals. It states that the legislative history shows that ultimate power is exercised through participation in meetings and elections, and Congress gave the right to participate in meetings and elections of an intermediate body to delegates from the affiliated locals and not to the individual members of those locals. In this connection, it cited the following quotation from the legislative history, S. Rep. 187, 86<sup>th</sup> Congress, 1<sup>st</sup> Sess., Reprinted at 1959 U.S. Code Cong. & Admin. News 2336:

The bill recognizes that in some unions intermediate bodies exercise responsible governing power and specified that members of such bodies as system boards in the railroad industry be elected by secret ballot of the members of the union or union offices elected by a secret ballot.

The Council argues that this statement demonstrates that Congress acknowledged that the members of intermediate bodies are the **affiliated** locals **and/or** their delegates rather than the individual members of the affiliated locals.

Council 73 also cites three provisions of the LMRDA in support of its position. First, it argues that LMRDA section 101(a)(3)(B), 29 U.S.C. 411(a)(3)(B), gives affiliated local unions of intermediate bodies, and not individual members of those locals, the right to vote on dues increases. Second, it argues that LMRDA section 401(d) provides that affiliated locals or their representatives elect the officers of intermediate bodies. Third, it argues that LMRDA section 101(a)(1), 29 U.S.C. 411(a)(1), gives the enumerated democratic rights to affiliated local unions and not to individual members of those locals.

Council 73 concludes by arguing that Congress could not have intended individual members of affiliated locals to be members of intermediate bodies for purposes of examining intermediate body records but not for purposes of using that information for voting for dues increases or officers. According to the Council, Chief Judge Vittone's interpretation would require the "radical restructuring" of the LMRDA to require direct election of intermediate body officers by members of affiliated local unions.

In his brief, the District Director argues that the LMRDA and its legislative history do not support the proposition that a parent intermediate or national union "can avoid its obligations to individual members by defining subordinate bodies as its 'members.'" He cites Mallick for the proposition that Congress intended to put ultimate power in the hands of individual members and not institutional members, and that the officers of intermediate body unions cannot be made accountable to individual members merely by making them accountable to local union officers,

The District Director also disputes the import of the LMRDA provisions cited by Council 73, arguing that they in fact support Chief Judge Vittone's conclusion. Most importantly, he challenges the Council's argument that LMRDA section 401(d), 29 U.S.C. 481(d), which governs the election of intermediate body officers, demonstrates that Congress intended that the members of intermediate bodies are affiliated local unions, not the individual members of the local unions. The District Director states that section 401(d) merely provides that intermediate bodies have the option of electing their officers either directly "by secret ballot among the members . . .," or indirectly "by labor organization officers representative of such members who have been elected by secret ballot." (Emphasis added.) In either case, it is the individual members of the affiliated locals of intermediate bodies who elect the officers of intermediate bodies, either directly through their secret ballot votes or indirectly through the votes of officers whom they elected by secret ballot and who represent them. As the District Director observes, the fact that section 401(d) requires that local union members elect intermediate body officers, either directly or indirectly, underscores the fact that Congress intended intermediate bodies to be responsive to the individual members of the affiliated locals.

The District Director also notes that under the enforcement provision for officer elections, LMRDA section 402, 29 U.S.C. 482, complaints concerning the election of officers of all unions – local, intermediate, and national unions – are filed by individual members. The Council's interpretation of the meaning of the term "member" would provide that complaints concerning the election of the officers of intermediate and national unions could only be filed by affiliated local unions. This is contrary to 40 years of LMRDA enforcement history. The cases cited by the District Director are Donovan v. Air Transport Dist. Lodge 146, 754 F.2d 621 (5<sup>th</sup> Cir. 1985), Donovan v. Mo. Pac. System Fed. Joint Protective Bd., 737 F.2d 445 (5<sup>th</sup> Cir. 1984), and Hodgson v. District 6. United Mine Workers, 474 F.2d 940 (6<sup>th</sup> Cir. 1973).

The District Director also disputes the Council's reliance on LMRDA section 101, 29 U.S.C. 411. Section 101(a)(3), like LMRDA section 401(d), merely gives intermediate bodies the option of increasing dues by the vote of delegates from affiliated locals or by membership referendum conducted by secret ballot. LMRDA section 101(a)(1) gives equal rights to individual members to participate in intermediate body elections for delegates, including the equal right to run for office, and to participate in any general membership meetings that are held (as opposed to executive committee or delegate meetings).

Finally, the District Director argues that Chief Judge Vittone's interpretation would not require a radical restructuring of intermediate bodies. The LMRDA allows intermediate bodies the choice of having either indirect elections or direct elections.

After reviewing the Recommended Decision and Order issued by Chief Judge Vittone, the record before him, Respondent's exceptions, and Complainant's answer, I find, in agreement with Chief Judge Vittone, that Mr. Wheatley is a member of Council 73 for purposes of 29 CFR 458.3. The Council's interpretation is, as Chief Judge Vittone concluded, antithetical to the structure and purposes of the LMRDA, which are to give rights to individual union members and impose on unions obligations to those members and limitations on the exercise of authority over those members.

In some cases, Congress gave rights to members to control or govern their unions collectively, through majority rule, for example, by the election of officers. Congress also allowed intermediate bodies and national unions the option of having their individual members exercise these collective rights indirectly through the election of representatives or delegates to parent bodies. The fact that Congress provided for majority rule and indirect elections of parent body officers does not alter the fact that the officers and delegates represent the individual members and are to be responsive to them.

The Council's reliance on the legislative history regarding the election of intermediate body officers and on LMRDA sections 401(d) and 101(a)(3) is misplaced since, as the District Director argued, those provisions clearly refer to direct elections by individual members as well as to indirect elections by representatives of affiliated locals. Those provisions all refer to secret ballot elections, which indicates that Congress intended the term "member" to refer to the individual members of affiliated locals, inasmuch as organizations such as a local labor organization cannot cast a secret ballot.

Moreover, in some cases, Congress gave rights directly to members regardless of the wishes of the majority. Examples are the aptly named "bill of rights" in LMRDA section 101, 29 U.S.C. 411, and LMRDA section 201(c). However, the Council's interpretation of "member" would, as Chief Judge Vittone observed, convert this right of an individual member, regardless of the wishes of the majority, to a right dependent upon the wishes of a majority of the officers of a local union, at least in connection with the obligations of intermediate and national unions.

Further, as the District Director observed, the Council's interpretation would, contrary to 40 years history of the LMRDA, deny individual members the right to file a complaint with the Department concerning the election of intermediate and national union officers and give that right solely to affiliated local unions acting through a majority of their officers.

In addition, a careful reading of other provisions of the LMRDA supports Chief Judge Vittone's conclusion. For example, LMRDA section 101(a)(3)(B) provides in part that the dues owed by members cannot be increased except, in the case of intermediate and national unions,

. . . (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot . . .

This clearly indicates that Congress intended the members of intermediate and national unions to be the individual members of the affiliated local unions.

Although the definition of "person" in the LMRDA includes labor organizations, as the Council observed, the structure and purpose of the LMRDA as well as 40 years of enforcement history clearly show that individual members of affiliated locals have the rights guaranteed to members under the LMRDA.

Indeed, in completing the annual financial reports required by 29 CFR 458.3, the officers of Council 236 indicated that they understand that its members are the individual members of the affiliated locals. Thus, the record shows that on the Form LM-3 filed by Council 73 for the fiscal year ending June 30, 1995, the officers reported in Item 19 that it had 4,200 members at the end of the reporting period. A review of the other publicly available reports filed by the Council since 1994, when this item was added to Form LM-3, shows that the Council reported similar numbers.

For the reasons discussed above, I hereby adopt the Chief Administrative Law Judge's Recommended Decision and Order.

#### ORDER

IT IS HEREBY ORDERED, THAT, Respondent allow William Wheatley and/or his auditors and/or attorneys to examine any books, records, and accounts of Council 73 necessary to verify its LM reports for fiscal years 1991 through and including 1996.

Dated: SEP 28 1999

Washington, D.C.



Bernard E. Anderson  
Assistant Secretary