



MAY 20 2013

Dear [REDACTED]:

This is in response to your email to the Secretary of Labor, requesting a review of Office of Labor-Management Standards (OLMS) Washington District Office (WDO) Director's September 4, 2012 letter dismissing your complaint to the Department of Labor (Department). That complaint alleged that the American Federation of Government Employees (AFGE) denied members of your local labor organization, AFGE Local 727, adequate representation when AFGE failed to appoint AFGE Local 727's preferred candidate [REDACTED] to the position of Director of the Court Services and Offender Supervision Agency (CSOSA). For the reasons that follow, I am denying your appeal.

The Department enforces provisions of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et seq.* (LMRDA), which primarily promotes union democracy and financial integrity in private sector labor unions through standards for union officer elections and union trusteeships and safeguards for union assets. Additionally, the Department enforces provisions of Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. §§ 7101 *et seq.* (CSRA), which applies provisions of the LMRDA to Federal sector unions. The Department has issued regulations implementing the standards of conduct provisions of the CSRA, promulgated at 29 C.F.R. Parts 457-459. The CSRA's standards of conduct regulations establish a Bill of Rights for union members, which are based upon Title I of the LMRDA. *See* 29 C.F.R. § 458.2. Although you do not state in your complaint or current appeal that you are pursuing a violation of the Bill of Rights provisions, OLMS assumes that this is your intention, because the complaint does not relate to union finances, elections, or trusteeships, the other subjects of the regulations.

The standards of conduct regulations state 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. When an OLMS district director receives a union member's Bill of Rights complaint, the district director shall obtain such additional information as he deems necessary and then determine if there is a reasonable basis for the complaint; that is, whether the allegations raise matters which are covered by the bill of rights provisions of the regulations and there is some evidence to support the allegations. *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 Administrative Law Judge, U.S. Department of Labor, for issuance of a notice of hearing before an administrative law judge (ALJ). 29 C.F.R. § 458.60.

If, as in this case, the district director dismisses the Bill of Rights complaint, then the member may file a request for review of this determination within fifteen days of service of the notice of dismissal. 29 C.F.R. § 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. The regulations require that a request for review contain a complete statement of the facts and reasons upon which a request is based. *Id.* This review is conducted by the Director of OLMS, who has been delegated this function, which was previously performed by the Assistant Secretary for Employment Standards.¹

After reviewing your correspondence with the WDO, the materials that you provided to the WDO, and the district director's dismissal, I find that the district director correctly determined that your complaint was not properly before OLMS. Your complaint alleged that AFGE Local 727 received an email from the AFGE National Office inviting the local to submit the name of an individual that the local supported for appointment to the position of CSOSA Director. You stated that the local submitted [REDACTED] as its choice for Director. You were later informed that the position had gone to someone else. In essence, this appears to be a claim of inadequate representation or a claim alleging some violation of the union's internal rules and procedures; neither of which are claims covered by Title I of the LMRDA or the standards of conduct regulations.

In dismissing your complaint, the district director properly found that OLMS did not have jurisdiction over the matter. The WDO had a reasonable basis for its determination, as you did not identify any particular right provided under the LMRDA or CSRA that AFGE denied, nor did you present any facts suggesting that AFGE violated these rights. The Bill of Rights provisions safeguard members' rights, including freedom of speech and assembly, as well as freedom from improper union discipline. *See* 29 C.F.R. § 458.2. I note that you provided the WDO with the *American Federation of Government Employees, Local 2000 and Wilder M. Mixon* case in support of your position that OLMS has jurisdiction of your complaint. 8 FLRA 718 (1982). The *AFGE 2000* case simply provides that matters covered by the standards of conduct regulations, such as revocation of membership status or other improper discipline, are within the Department's jurisdiction. Your allegation, however, does not involve any of the membership rights provided for in the LMRDA or CSRA. Rather, you have presented an allegation of inadequate representation by the National Union. While the National Union may have violated some provision of the union's constitution and bylaws, claims that exclusively involve a union's compliance with its own constitution 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.

Moreover, although you timely filed your appeal of the dismissal, you did not otherwise follow the required appeal procedures contained in 29 C.F.R. § 458.59. You failed to serve the WDO District Director and the respondent union with a copy of the appeal. You also failed to provide a statement of the facts and reasons upon which the appeal is based. Accordingly, there are procedural grounds upon which to dismiss this appeal.

¹ As of November 8, 2009, the Department's Employment Standards Administration was dissolved into its four constituent components and consequently the position of Assistant Secretary no longer exists. The Secretary of Labor ordered the delegation of most provisions of Section 701 of the CSRA, specifically including 5 U.S.C. §7120, to the authority of the Director of the Office of Labor-Management Standards. *See* Secretary's Order 3-2012; 77 Fed. Reg. 69376 (Nov. 16, 2012).

Based on my review of the record, I conclude that the district director had a reasonable basis to issue the dismissal. You have not presented evidence of an actionable complaint under the CSRA provisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Auerbach', with a long horizontal flourish extending to the right.

Andrew Auerbach
Deputy Director

cc: President, AFGE
President, AFGE Local 727
Chief, OLMS Division of Enforcement
OLMS Washington District Office