

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 11 February 2013**

**Case Number: 2012-SOC-00002**

*In the Matter of:*

**CHIEF, DIVISION OF ENFORCEMENT,  
OFFICE OF LABOR-MANAGEMENT STANDARDS,  
UNITED STATES DEPARTMENT OF LABOR,**

*Complainant*

v.

**LOCAL 2419, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES,**

*Respondent.*

**RECOMMENDED DECISION AND ORDER**

This matter arises under Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. §§ 7101, *et. seq.*, (CSRA), the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401, *et. seq.*, (LMRDA) and the Standards of Conduct Regulations (SOC), 29 C.F.R. Parts 457-459.

On April 30, 2012, Complainant filed a Complaint and proposed Notice of Hearing in the above captioned matter with the Office of Administrative Law Judges. I issued a Notice of Docketing on May 3, 2012 instructing Respondent to file an Answer with the Chief Administrative Law Judge within twenty days after service of the Complaint pursuant to 29 C.F.R. § 458.68. On August 3, 2012, I issued an Order to Show Cause why a default judgment should not be entered against Respondent because Respondent had not filed an Answer. I gave the Respondent thirty days to respond to my Show Cause Order. To date, Respondent has failed to respond to the Show Cause Order.

The Complaint in this case alleges, in relevant part, that Respondent has violated its financial reporting requirements under Title II of the LMRDA which requires that labor organizations annually file with the Department financial reports detailing their receipts, assets, liabilities, salaries, loans, and other disbursements “in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year.” 29 U.S.C. § 431(b). The Complaint further alleges that: Respondent is, and has been at all times relevant to this matter; a federal sector local labor organization within the meaning of section 701 of the

CSRA; it is required under section 201(b) of the LMRDA to file financial reports (Form LM-3) annually; and it failed to file such reports for the fiscal years ending December 31, 2009 and December 31, 2010. Compl. at 2-3. Based on the foregoing, Complainant seeks an order:

- a) Directing Respondent to file LM-3 reports for the fiscal years ending December 31, 2009 and December 31, 2010;
- b) Directing Respondent to cease and desist from violating section 201(b) of the LMRDA as incorporated into the CSRA by section 458.3 of the regulations;
- c) Directing Respondent to inform its members of the course and outcome of this litigation by all means possible including posting copies of all documents filed in this matter in a prominent position on all bulletin boards used to display information about the Union, and mailing a letter to all Union members informing them of the filing of the complaint and all orders issued in this matter;
- d) For the costs of this action; and
- e) Such other relief as may be appropriate.

Compl. at 4-5.

According to applicable regulations: “Failure to file an answer to or plead specifically to any allegation in the complaint shall constitute an admission of such allegation.” 29 C.F.R. § 458.68(b). The regulations further provide:

The admission of all the material allegations of fact in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge without further hearing shall prepare his recommended decision and order in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint.

29 C.F.R. §458.71. Inasmuch as Complainant’s allegations are deemed admitted by virtue of section 485.68(b), I find that Complainant is, with one exception, entitled to the relief sought.

As noted above, Complainant seeks relief against Respondent “[f]or the costs of this action[.]” Compl. at 5. However, Complainant cites no authority authorizing me to award the Department of Labor costs of litigation in this action, and the CSRA, LMRDA, and applicable regulations are silent with respect to the authority of administrative law judges to award such costs. In contrast, I note that 29 U.S.C. § 431(c) expressly grants state and federal district courts the authority to award “a reasonable attorney’s fee . . . and costs of the action” for actions by union members to inspect the reports of covered labor organizations. But the statute conspicuously does not give administrative law judges the power to order attorney’s fees or costs to enforce the covered labor organizations’ reporting requirements under § 431(b). I thus decline to recommend that Complaint’s request “[f]or the costs of this action” be granted.

## **RECOMMENDED ORDER**

Based on the foregoing, it is hereby **RECOMMENDED** that:

- A. The factual allegations set forth in Complainant's Complaint be adopted and incorporated by reference in any Order of the Assistant Secretary;
- B. Respondent be ordered to file an LM-3 report for the fiscal year ending December 31, 2009;
- C. Respondent be ordered to file an LM-3 report for the fiscal year ending December 31, 2010;
- D. Respondent be ordered to cease and desist from violating LMRDA, 29 U.S.C. § 431(b) [Section 201(b)];
- E. Respondent be ordered to inform its members of the course and outcome of this litigation by all means possible, including posting copies of all documents filed in this matter in a prominent position on all bulletin boards used to display information about the Union, and shall mail a letter to all Union members informing them of the filing of the Complaint and all orders issued in this matter.

**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

**NOTICE OF OPPORTUNITY TO FILE EXCEPTIONS:** On this date, pursuant to 29 C.F.R. § 458.88(b), I am transferring this Recommended Decision and Order, along with the case record to the Administrative Review Board ("Board"). Under 29 C.F.R. § 458.88(c), within fifteen (15) days of service of this decision upon the parties, the parties may file exceptions to my Recommended Decision and Order with the Board at the following address:

Administrative Review Board  
U.S. Department of Labor  
Suite S-5220  
200 Constitution Avenue, NW  
Washington, DC 20210

Title 29 C.F.R. § 458.89 discusses the necessary contents of exceptions to a Recommended Decision and Order and 29 C.F.R. § 458.90 discusses the requirements associated with briefs accompanying the exceptions. Under 29 C.F.R. § 458.91, absent timely exceptions, the Board may, at its discretion, adopt without discussion the Recommended Decision and Order, in which event the findings, conclusions, and recommendations in the Recommended Decision and Order automatically become the decision of the Board, after appropriate notice of the Board's action to the parties.