

U.S. Department of Labor

Office of Administrative Law Judges
11870 Merchants Walk - Suite 204
Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)



Issue Date: 09 January 2015

CASE NO.: 2013-SOC-00002

In the Matter of:

BRIAN K. THORNTON,
Complainant,

v.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFGE LOCAL 2274,
Respondent.

APPEARANCES:

Mr. Brian K. Thornton
Complainant, in pro per

Mr. Robert Pritchard
President of AFGE Local 2274
For the Respondent

BEFORE:

PAUL C. JOHNSON, JR.
District Chief Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This action arises under Title VII of the Civil Service Reform Act of 1978 (“CSRA”), 5 U.S.C. §7120, and the Standards of Conduct Regulations (the “Regulations”) issued pursuant to the CSRA and codified at 29 C.F.R. §§457-459.

On July 3, 2012, the Complainant filed a complaint with the Department of Labor Office of Labor-Management Standards (the “OLMS”), Detroit District Office, alleging that the Respondent committed numerous violations of the Bill of Rights and Prohibited Discipline provisions of the Regulations. The Regulations require that when the OLMS district office receives a Bill of Rights complaint, it must conduct an inquiry to determine whether a complainant has raised a “reasonable basis” for pursuing the CSRA action. *See* 29 C.F.R. §§458.58 and 458.60. OLMS reported that at the time the Complainant filed his complaint, he was a member in good standing but had since been suspended from membership for three years.

(CX 9, RX 11).¹ The suspension was made final by a decision of the American Federation of Government Employees National Executive Council on December 6, 2012. (CX 9, RX 11). OLMS conducted its inquiry into the Complainant's allegations and found that there was a reasonable basis upon which to refer the allegations to the Department of Labor Office of Administrative Law Judges for further proceedings pursuant to Subpart C of the Regulations. (CX 9, RX 11). OLMS found four bases on which to refer the case for hearing:

1. Pursuant to 29 C.F.R. §458.2(a)(1), Complainant may have been denied his right to participate in the union's membership meetings;
2. Pursuant to 29 C.F.R. §458.2(a)(2), Complainant may have been denied his rights of freedom of speech and assembly when he was allegedly removed from one union meeting and barred from attending a second meeting;
3. Pursuant to 29 C.F.R. §458.38, Complainant may have been deprived of his free speech right to participate in a union meeting by actual or threatened force or violence; and
4. Pursuant to 29 C.F.R. §458.37, Complainant may have been improperly suspended from union membership for exercising his rights of free speech and assembly, and his right to file a suit against the union and its officers. *See* 29 C.F.R. §458.2(a)(4).

ISSUES

The hearing was held in Flint, Michigan, on March 26, 2014, to resolve the below issues:

1. Whether the Complainant was denied his right to participate in the union's membership meetings;
2. Whether the Complainant was denied his rights to freedom of speech and assembly when he was allegedly removed from one union meeting and barred from attending a second meeting;
3. Whether the Complainant was deprived of his free speech right to participate in a union meeting by actual or threatened force or violence; and
4. Whether the Complainant was improperly suspended from union membership for exercising his right to file a suit against the union and its officers.

PARTIES' POSITIONS

Complainant's Position (CX 6)

The Complainant requests a total of \$125,000 for the violations alleged in the Issues section above. (CX 6). Specifically, the Complainant requests \$25,000 for the violation of his

¹ In this Decision, the following abbreviations apply: CX= Complainant's Exhibit, RX= Respondent's Exhibit, TR=Transcript.

right to participate in membership meetings and the resulting embarrassment and retaliation he suffered. The Complainant requests \$25,000 for the violation of his free speech right of assembly when he was barred from attending a meeting and the resulting embarrassment and humiliation. The Complainant requests \$50,000 for the violation of his rights by threatened or actual force when he was struck in the face at a meeting in front of other members and his wife and the resulting embarrassment and Post-Traumatic Stress Disorder (PTSD). The Complainant requests \$25,000 for the violation of his right to sue the Respondent and its officers by the retaliatory suspension proceedings and the resulting embarrassment.

Respondent's Position

In its pre-hearing statement, the Respondent stated that the situation is not as simple as the Complainant describes and that many incidents led up to the specific events at issue. The Respondent states that none of the officers charged by the Complainant remain in office having been replaced in a recent election. The Respondent also states that a public apology to the Complainant and reinstatement of membership is a "viable remedy."

RELEVANT EVIDENCE

At the March 26, 2014 hearing, Complainant's Exhibits (CX) 1-11 and Respondent's Exhibits 1-12 were admitted into evidence without objection and considered in rendering this Recommended Decision and Order. Respondent submitted an Exhibit 13 that was not admitted into evidence and was not considered in the hearing or deliberations as it contained evidence of settlement efforts.

Complainant's Testimonial Evidence (TR 8-65)

The Complainant testified to his employment history and history of membership with the Respondent. The Complainant stated that he first joined the union in 2010 and began attending union meetings regularly at that time. The Complainant also began training to become a union steward in early 2011.

The Complainant then described the specific events giving rise to the first charge in the instant case. On October 19, 2011, the Complainant "attempted to attend" a union meeting, and upon entering heard then-president Mr. E. Mason addressing the members and stating that the Respondent was filing charges against, investigating, and attempting to remove from membership the Complainant because the Complainant had filed charges against the union. (TR at 11). The Complainant stated that after Mr. Mason finished his address, he directed a federal police officer who was present to remove the Complainant.

The Complainant described the nature of the charges he had brought against the local union chapter and certain of its executive board members. The Complainant stated that he made both "internal" charges based on union rules or processes and "external" charges that were reported to authorities outside the union. The Complainant stated he filed several "internal" charges related to the union's budget process, financial reports, and minutes. The Complainant stated that these charges were investigated by the National Vice President of the union, Ms. D.

James. The Complainant stated that the “internal” charges were filed beginning in approximately June of 2011 through December of 2011. The Complainant stated that the “external” charges were based on the Respondent’s alleged gambling violations, which were filed with the State of Michigan on approximately October 16, 2011, and were pending as of the date of the October 19, 2011, meeting.

The Complainant testified to the events giving rise to the second charge in this case. The Complainant stated that this charge is based on conduct in another union meeting on December 14, 2011. On this date, when the Complainant arrived for the meeting, he found the door locked, which he stated was not the normal practice during meetings. The Complainant stated that the Chief Steward Ms. D. Whitehead came to the door to inform the Complainant that he was not welcome at the meeting, that he should go home, and that once she had said this she re-locked the door. In response, the Complainant testified that he did in fact return home and called the National Representative Mr. J. Dolan. The Complainant stated that this locked door incident was the basis for one of the “internal” charges that was investigated by the National Vice President.

The Complainant testified about the events giving rise to the third charge in this case regarding possibly being deprived of his free speech right to participate in union meetings by actual or threatened force or violence. The Complainant stated that this charge relates to the October of 2011 meeting from which he was removed by the federal police officer. The Complainant testified that Mr. Mason stated to the members after the Complainant had been removed that the removal was not because Mr. Mason feared the Complainant, but because of what Mr. Mason would do to the Complainant if he stayed at the meeting. The Complainant clarified that he had not been present at the time this statement was made, having been escorted from the meeting previously. However, the Complainant also testified that Mr. Mason told him that “no one has ever come in here and done the things that you’ve done to this Local and walk away.” (TR at 17).² The Complainant testified that Mr. Mason made this statement on July 11, 2012, at the disciplinary hearing, and that the Complainant considered this statement a threat to his physical safety. The Complainant stated that the suspension that ultimately resulted from the disciplinary hearing was for a term of three years and was still in effect as of the date of his testimony.

The Complainant then testified about the events giving rise to the fourth charge in this case regarding possibly being improperly suspended from union membership for exercising his rights to free speech, assembly, and bring suit against the union and its officers. The Complainant testified that he believed that his suspension was in retaliation for exercising his rights because the charges filed by the union against the Complainant specifically state that they were filed because the Complainant filed charges and brought suit against the union. The Complainant also stated that Mr. Mason referred to the charges the Complainant brought against the union at the meeting from which the Complainant was removed by the federal police officer. The Complainant stated that the *Committee of Investigation Guidelines and Procedures Manual*

² The Complainant appears to be referring to Mr. Mason’s statement in the transcript from the disciplinary hearing that “No one has ever come in here and done the things that you’ve done to this Local and walk away.” (CX 5 at 28.).

(the “Investigation Manual”) CX 4, give members the right to bring “internal” charges, for example regarding budget policies.³

The Complainant testified to the concerns he had regarding the disciplinary investigation and resulting suspension. The Complainant stated that he was concerned because Mr. Mason stated that he would put together an investigatory committee himself, though the Investigation Manual directs that the investigation committee must be selected at a meeting. The Complainant stated that he was also concerned about the timeline for the union bringing charges against the Complainant. The Investigation Manual requires that an investigation into charges take place within 120 days of the filing of the charges. However, the Complainant stated that when time for the investigation period was nearing an end, the union amended the date of filing the same charges to extend the time period for investigation. The union then used investigation material from before the new filing date in pursuing the date-amended charges. The Complainant stated that part of his concern was that Mr. Mason, his accuser, was also the person who formed the committee to do the investigation and may have pre-determined what the outcome of that investigation would be. Furthermore, the Complainant stated that his investigation interview before the investigation committee was not scheduled in advance. The Complainant stated he appeared to attend a meeting, which he arrived to find had been canceled due to lack of a quorum, but that the members of the committee were there and decided to simply go ahead with the interview at that time. The Complainant stated that he was told he could either participate in the interview at that time or that the committee would “say that I refused to cooperate.” (TR at 21). The Complainant stated that during the July 11, 2012, disciplinary hearing, Mr. Mason acted as the “prosecutor,” as was his right as the union president.

The Complainant testified to his behavior in union meetings before he was escorted out of the October of 2011 meeting stating that while he was an active member attending meetings regularly, he was not a disruptive member. The Complainant stated that there was one meeting during which many members reacted negatively to a statement by the chief steward that the president could do whatever he wanted without being questioned, but that he did not believe that he was disruptive, despite being charged by the union for the behavior of the other members.

The Complainant testified to his involvement in an email sent out to members by Ms. Donaldson on May 7, 2011, which the Complainant stated he was aware of but that Ms. Donaldson prepared and sent on her own. The Complainant stated that he shared the concerns Ms. Donaldson stated in that email regarding the Respondent’s failure to comply with the financial reporting requirements. The Complainant stated that he adopted as testimony the facts presented in his letter to OLMS at CX 6.

On cross examination, the Complainant clarified that he had been a steward in training, but that he did not complete the training because Ms. Whitehead removed him in May of 2011 following the email sent out by Ms. Donaldson. The Complainant stated that Ms. Whitehead told him she was removing him from the position of steward in training at the direction of Mr.

³ “Under the AFGE National Constitution (Article XVIII), any member may bring charges against a fellow member or officer...Charges against officers must relate directly to the official duties and responsibilities of the position of the officer in his/her capacity as an official of the AFGE. The charges must contain allegations of fact which, if true, constitute acts or omissions of a serious nature that exceed or are contrary to the authority of the officer.” CX 4 at 4.

Mason. The Complainant stated that after becoming a steward in training, he attempted to attend the next regularly-scheduled meeting in May of 2010 but found the door locked and no one present. The Complainant stated that his concern regarding union processes and meeting processes began with this incident and that he discussed the issue with Ms. Whitehead.

The Complainant further discussed his behavior at meetings. He stated that while he did not believe his actions to be disruptive, he admitted that some of the issues he raised about the union's compliance with the local bylaws and national constitution may have caused arguments among the members. However, the Complainant stated he did not raise the issues with the purpose of causing arguments among the members. The Complainant stated his opinion that it was not his raising of the issues that truly caused argument among the members but the response of the union officers that was the cause of arguments and also caused further concern. The Complainant discussed a particular incident at a January of 2012 meeting with Ms. Whitehead yelling at members regarding the gambling charges and threatening to garnish the Complainant's wages to recoup money the union allegedly lost as a result of the gambling charges. The Complainant stated that Ms. Whitehead then positioned herself in front of the Complainant's wife and would not move away when the Complainant asked her to. The Complainant stated that when he stood up to ask Ms. Whitehead to move again, she then stood in front of him and struck him in the face saying "now what are you going to do about it?" (TR at 37). The Complainant clarified that this incident took place after he was removed from one meeting and blocked from attending another.

The Complainant discussed the timeline for the internal disciplinary process that ultimately resulted in his suspension. The Complainant stated his hearing was in July of 2012 and the decision to suspend was issued in September of 2012. The Complainant also elaborated on the "internal" charges he brought against the Respondent and its officials. The "internal" charges were brought against Mr. Mason, Ms. Whitehead, and other board members because the Complainant believed the financial reports, the meeting minutes, and annual audits were not being conducted in accordance with the national constitution. The Complainant stated that he may have also brought charges for less egregious issues such as providing refreshments at the meetings, but he could not recall every individual charge that he brought.

The Complainant discussed the incident in which he was removed from the meeting by a federal police officer acting under the direction of Mr. Mason. The Complainant stated that he left the meeting without questioning the officer stating that "If you're familiar with [the officer], 99 times out of 100, when he is speaking, he already has his hand on his gun." (TR at 47).

On re-direct examination, the Complainant testified to the monetary damages he was seeking. The Complainant stated that he outlined in CX 6 his reasoning why the damages were appropriate. The Complainant testified that his actions were initially for the purpose of bringing the Respondent's behavior into compliance with the regulations by following the proper procedures. The Complainant stated that he followed the proper procedures all the way up to his interaction with the national representatives and exercising his rights, he experienced harassment and embarrassment in return. The Complainant stated that he was used as an example by the Respondent's officers of what happens to members who speak against the union. The Complainant stated that other federal officers treated him as a "troublemaker," and at every

interaction with a federal officer he had to wonder if the officer was approaching him as a friend or on behalf of the union. The Complainant stated that after serving six years in the U.S. Marine Corps he was discharged without a diagnosis, but due to the stress and embarrassment caused by the Respondent, he has been diagnosed with PTSD. The Complainant stated that he was unsure he would ever be part of any union again. The Complainant reiterated that his behavior at meetings was not disruptive in that he did not swear or rant; that he quietly exercised his rights. The Complainant summarized that his behavior did not warrant the Respondent's response and reiterated that the Respondent's behavior was ongoing for several years, which he believed justified the amount he was seeking. The Complainant testified that he had not lost any income as a result of these events because he used approximately 60 hours of sick leave, and that he did not have any medical expenses that were not covered by insurance. The Complainant stated he had not filed any claim with the VA based on PTSD.

On re-cross examination, the Complainant stated that no officer of the national union beyond the local stopped him from exercising his rights. The Complainant testified that he was aware of the results of the recent election of the Respondent's board and that Mr. Mason and Ms. Whitehead had been removed from office, though not all of the officers against whom he filed charges had been removed. The Complainant stated he had never heard of an incident in which Mr. Mason physically assaulted anyone. When questioned about whether he thought that being charged with defamation of character of the union was unfair, the Complainant testified that he filed charges based on the actions of the officers and that if the officers believed they were defamed, it was their own actions that defamed them, not the charges the Complainant filed.

The Complainant was given the opportunity to testify to anything else he believed was relevant and he summarized the contents of the documentary evidence he submitted as CX 1-11.

Respondent's Testimonial Evidence

Witness Testimony: Ms. Michelle Hurd-Riddick (TR 66- 68)

The Witness testified that she is the current Chief Steward for the Respondent local union chapter. She testified that all six of the stewards were new and two of the three total trustees were new following the recent election.

Respondent's Representative Testimony (TR 68-91)

The Respondent's representative, and current president (for purposes of this testimony, the "Respondent"), testified that the local union chapter had undergone many changes under his leadership following a recent election. The Respondent testified that none of the old stewards are part of the local anymore and twenty new stewards have come in. The Respondent testified that he had been the local vice president under Mr. Mason and during that time Mr. Mason and Ms. Whitehead de-facto ran the local chapter day-to-day. The Respondent testified that the six stewards who had been in place during Mr. Mason's administration did not have "anything to do with any of the daily happenings. Everything was completely ran by them two people with an iron hand at our Local." (TR at 70). The Respondent testified that Mr. Mason and Ms. Whitehead had been in office for approximately thirteen to sixteen years and that during their

tenure people besides the Complainant had tried to change how things were run, but did not succeed. The Respondent stated that he believed the results of the recent election showed how the members wanted the local union chapter run differently.

The Respondent stated that he believed the Complainant had tried to create change and be a productive member of the local by volunteering to be a steward. The Respondent stated that he observed personality differences when the Complainant and Ms. Whitehead began working together and that he believed the Complainant felt slighted by being dismissed by Ms. Whitehead from his position of steward in training. The Respondent stated he felt the Complainant had overstepped his bounds during his training and that led to some of the issues between the Complainant and Ms. Whitehead. The Respondent stated that he agreed with the Complainant on some of the changes to procedure that were required, but that the Complainant's method of pursuit of the changes was disruptive to the meetings. The Respondent confirmed the Complainant's report of being struck by Ms. Whitehead stating that, "[a]t one point in time there was a physical argument between [the Complainant] and [Ms. Whitehead] as he stated earlier." (TR at 72). The Respondent stated that the escalating tensions with the Complainant over time caused Mr. Mason to have a federal police officer escort the Complainant out of the meeting following Mr. Mason's announcement that the Complainant would be charged with conduct unbecoming. The Respondent testified that the Complainant's issues have been addressed and that his rights were not restricted in any way because his appeal went all the way to the President of the National Council of the American Federation of Government Employees (AFGE).

The Respondent testified that Mr. Mason likely made procedural mistakes in the process of attempting to disbar the Complainant because he was not experienced in the procedure. The Respondent stated that he did not believe that the e-mail the Complainant alleges was sent out by Ms. Donaldson alone and that he believed that the Complainant directed her to send the e-mail out. The Respondent stated that the charge of defamation of character is a valid reason for a member to be suspended or expelled from membership. The Respondent reiterated that the executive board that had been in place is no longer in place and that since he took office, he has made procedural changes to bring the local chapter into compliance with the regulations. The Respondent testified that an award of the monetary damages requested by the Complainant would only hurt the local and would only punish the members and officers in place now, rather than Mr. Mason and Ms. Whitehead who are no longer in office.

On cross examination the Respondent stated that the Complainant's disruptive behavior at meetings included raising his voice but not the use of profanity. In response to questions about the Complainant bringing other members to meetings who were disruptive, the Respondent stated that in his opinion, if a member were to invite another member to a meeting the first member would not be responsible for the behavior of the second member at that meeting. The Respondent testified to the procedures he has put in place for availability of financial reports and minutes to the members. The Respondent stated that he did not believe that locking a member out of a meeting was appropriate unless the member was exhibiting threatening behavior. The Respondent also stated that he has dealt with several upset members since taking office but has not locked anyone out of a meeting; however he stated that there is gray area in which to consider both the individual's and the membership's interests.

The Respondent's representative testified to his personal experiences as a trustee of the local union chapter. He stated that he was told by Mr. Mason and Ms. Whitehead that he had no duties in that position and was to be a trustee just on paperwork, but that he later found out that trustees have official responsibilities. He stated that since becoming president he has posted those responsibilities in the Respondent's office and has distributed them to the trustees to ensure that everyone is aware of their duties.

The Respondent testified that he believed that the Complainant was escorted out of the membership meeting by a federal police officer and that he was locked out of another meeting. The Respondent stated that that would not happen under the current leadership.

Relevant Exhibits

Correspondence from Ms. D. James, National Vice President of AFGE, 4/27/2012 (CX 1, RX 1).

Ms. James addressed each of the Complainant's seven "internal" charges individually. Ms. James stated that most of these charges were resolved following her counseling the Respondent's officers regarding the proper procedure and that the Respondent's officers agreed to comply in the future with the requirements she described. Ms. James specifically stated that it was wrong for the Respondent to remove the Complainant from the October 19, 2011, meeting and to bar him from attending the December 14, 2011, meeting. Ms. James stated that following counseling on the importance of regular membership meetings and members' due process rights, the Respondent's officers assured Ms. James that such conduct would not be repeated in the future unless a member was causing a disturbance. Ms. James also stated that she specifically counseled the Respondent's officers regarding the impropriety of holding raffles. Ms. James stated that Mr. Mason agreed to discontinue the practice and that she considered this issue resolved as the local authorities declined to prosecute the Respondent.

AFGE Hearing Manual for Disciplinary Trials (CX 3).

The manual states that any member may act as the "prosecutor" in disciplinary trials. The manual also states that the charged party is entitled to, *inter alia*, written charges in sufficient detail to enable a defense and "reasonable time, not less than two weeks, to prepare a defense." The manual describes internal disciplinary procedures and explains that once charges are filed against a member, an investigatory committee is formed. If the committee finds there is probable cause that the charged party violated the AFGE National Constitution, the committee "prefers" the charges, meaning the committee refers them for trial.

Committee of Investigation; Guidelines and Procedures Manual (CX 4).

The manual described procedures for the investigatory committee that decides whether or not to prefer charges. The manual states that the investigation must be completed within 120 days of the date the charges were filed. The manual also states that the president of the local appoints the members of the committee, unless the charges are against the president, in which case the executive board appoints the committee members by majority vote. The manual does

not prescribe the appointing procedure in a case such as this, where the president is the charging or counter-charging party.

Transcript of Disciplinary Hearing, 7/11/2012 (CX 5).

The transcript reports the Complainant's disciplinary hearing on July 11, 2012. Mr. Mason was present, but not a member of the trial committee. The transcript reflects Ms. Whitehead's testimony regarding the Complainant's removal from his steward in training position. Ms. Whitehead stated that

[t]aking the Local to court because you feel that you – well in my opinion, I feel that this is what started it. You being dismissed from Local 2274 because you were not, you did not meet the requirements of a steward. And in fact, that's what I told you when I told you that we would not be able to use you.

(CX 5 at 10, transcript 39-40). The transcript also reflects Mr. Mason's testimony that he would disregard Ms. James' instructions to discontinue the raffle. (CX 5 at 24, transcript 86). Mr. Mason also stated several times that procedural rules do not matter (CX 5 at 21, transcript 7-8) and engaged in irregular, in the opinion of this court, hearing procedures such as questioning the Complainant while himself testifying as a witness (CX 5 at 24-25, transcript 96-97). Mr. Mason stated that he did have the Complainant removed from the October meeting by a federal officer. (CX 5 at 24, transcript 95). Mr. Mason also stated that the Complainant was barred from the meeting in December, "[b]ecause the members did not want you [the Complainant] there." (CX 5 at 25, transcript 99). Mr. Mason stated his opinion that members are permitted to vote to keep other members out of meetings "after the things that [the Complainant] had done," and that despite counseling from Ms. James he would bar a member from a meeting under similar circumstances in the future. (CX 5 at 25, transcript 100). Mr. Mason further stated that the Respondent would continue to hold raffles if the members voted to do so, despite the counseling from Ms. James and despite her statement that Mr. Mason agreed to discontinue the practice. (CX 5 at 26, transcript 101-102). Mr. Mason characterized the Complainant's suit against the Respondent and its officers as the Complainant seeking an injunction "against 200 and something employees having a good time." (CX 5 at 26, transcript 104).

Letter Transmitting the Trial Committee Decision, 9/17/2012 (CX 7, RX 8).

The letter states that, "with the recommendation of the Trial Committee, the local adopted its decision to suspend your membership for a period of **three (3) years** for a charge of conduct unbecoming of a member." (emphasis in the original).

Letter Reporting Decision to Prefer Charges, 6/13-14/2012(CX 7, RX 4).

The letter summarizes the investigatory committee's procedure, including the interview of the Complainant by two of the three appointed committee members. The committee found probable cause to prefer the charge of "Conduct Unbecoming of a Member."

Letters Advising Filing of Charges Against Complainant, 1/5/2012 (CX 8), May 1, 2012 (RX 2).

The letter dated January 5, 2012, signed by Mr. Mason, informs the Complainant of the charges filed against him. Charge 3, “Engaging in conduct unbecoming of a union member” states that the Complainant’s conduct was unbecoming of a union member citing multiple incidents. Regarding one of these incidents, the letter states that the Complainant’s report to local authorities of the Respondent’s alleged illegal gambling activities, which was dismissed by the local authority for lack of jurisdiction, caused the Respondent to incur unnecessary legal fees. The letter states “[b]ecause you keep filing false charges against the local, your conduct is unbecoming of a union member.” The letter also states that the charges the Complainant filed on December 14, 2011, against several of the local officers were “dismissed with prejudice by a vote of the membership.” The letter states, “[f]or filing unsubstantiated charges against the local with the purpose of defaming the character of the officers and the local, your conduct is unbecoming of a union member.”

The letter dated May 1, 2012, signed by Mr. Mason, also informs the Complainant of the charges filed against him. However, this letter contains only one charge, that of “Engaging in conduct unbecoming of a union member.” The May 1, 2012, letter contains examples of the Complainant’s allegedly unbecoming conduct that differ from those in the January 5, 2012, letter. The most notable difference is the addition of two examples of allegedly unbecoming conduct by the Complainant, one of which postdates the first letter. Regarding the Complainant’s reports to local authorities about allegedly illegal gambling by the Respondent, the letter states, “Your actions are against everything the local represents, and for this reason your conduct is unbecoming of a union member.”

Email Correspondence Between the Complainant and AFGE and Respondent Representatives (CX 11).

This exhibit contains many email exchanges between AFGE and Respondent representatives and the Complainant. These exchanges discuss the “internal” charges both by the Complainant against the Respondent and by the Respondent’s officers against the Complainant. One such exchange is dated April 20, 2012, and seeks the Complainant’s written statement to the investigation committee regarding the charges filed against him. The exchange shows that the Complainant was given until April 27, 2012, to submit his written statement.

Decision of the Trial Committee (RX 6).

The Decision, dated September 5, 2012, states that the Trial Committee decided to suspend the membership of the Complainant for a period of 3 years, effective immediately. The Decision noted that the Complainant never testified on his own behalf, a factor that the Committee stated was weighted heavily in its decision. The Committee noted that the Complainant attempted to show that his rights were being violated by stating that Mr. Mason failed to follow the AFGE Disciplinary Manual. However, the Committee also stated that nothing was done that prevented the Complainant from actively defending himself other than his own actions.

Letter Transmitting Result of Appeal, 12/10/2012 (RX 10).

This letter is in response to the Complainant's appeal of the Trial Committee's decision to the AFGE National Executive Council. The AFGE National President stated that the Trial Committee's decision was upheld and advised the Complainant of his right to file a complaint with the Department of Labor in lieu of waiting until the next AFGE National Convention in August of 2015 to appeal the decision further.

DISCUSSION

The CSRA was enacted in 1978 and became effective in January 1979. Title VII of the CSRA governs labor-management relations in the federal government. Like Executive Order 11491 before it, title VII applies to most agencies of the executive branch of the federal government, their employees, and the unions that represent such employees. The Regulations implementing §7120 of the CSRA incorporate many of the provisions of Titles I through VI of the Labor-Management Reporting and Disclosure Act and make them applicable to covered federal employee unions.

Historically, the Administrative Review Board (ARB) did not review cases under Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. § 7101 et seq. Rather, Administrative Law Judge (ALJ) decisions were reviewed on appeal by the Assistant Secretary for Employment Standards (ESA). When the Department of Labor dissolved ESA, and OLMS became a standalone agency, Standards of Conduct (SOC) appeals were handled by the Chief, Division of Enforcement, OLMS. On February 5, 2013, OLMS published a Final Rule in the Federal Register designating the ARB as the appellate authority in SOC cases. 78 Fed. Reg. 8022 (Feb. 5, 2013); *See also* Secretary's Order 02-2012, para. 5.c.(3), Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 77 Fed. Reg. 69377 (Nov. 16, 2012) (effective Oct. 19, 2012). An ALJ's decision on a "standards of conduct" case is recommended. *See* 29 C.F.R. §§ 458.88. (i.e., the ALJ must automatically forward the record to the ARB, and the ARB renders the final decision).

Title VII of the CSRA sets the minimum conduct requirements for labor organizations in the federal sector and prescribes procedures and principles, which the Assistant Secretary of Labor will utilize in enforcing union standards of conduct. Under the Regulations, in order to prevail, the Complainant must show by a preponderance of the evidence that his rights under the Regulations were violated. 29 C.F.R. §458.79. My charter under the Regulations is to fully inquire into the facts of the matter before me and to render a recommended decision and order to the ARB in accordance with the Regulations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Violations of the Standards of Conduct

The Regulations lay out a Bill of Rights for members of labor organizations, 29 C.F.R. § 458.2, and prohibits the deprivation of those rights and certain disciplinary measures, 29 C.F.R.

§§ 458.37-38. Among the rights guaranteed in the Bill of Rights of members of labor organizations are:

Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views ... upon any business properly before the meeting subject to the organization's established and reasonable rules pertaining to the conduct of meetings.

29 C.F.R. §458.2(a)(2) (emphasis in the original). The Bill of Rights of members of labor organizations also provides:

Protection of the right to sue. No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceedings....

29 C.F.R. §458.2(a)(4) (emphasis in the original). The Regulations also prohibit labor organizations, and their officers and representatives, from disciplining any of its members for exercising any right provided under the Regulations. 29 C.F.R. §458.37. The Regulations specifically prohibit the deprivation of rights by violence or threat of violence. 29 C.F.R. § 458.38.

It is clear to me from the testimony of both the Complainant and the Respondent's representative and the relevant documents summarized above that the Complainant's rights under the Regulations were violated by the Respondent's officers, and on at least one occasion were violated by violence or threat of violence. As evidenced not only by the parties' testimony but also by the statements made by Mr. Mason during the Complainant's disciplinary hearing, the Complainant was removed from one meeting and barred from entering another in violation of his right to free speech and assembly under the Regulations. Additionally, the Complainant's rights to free speech and assembly were violated by actual violence when he was struck by Ms. Whitehead at a meeting, as alleged in the Complainant's testimony and confirmed by the Respondent's representative. The Complainant's rights also were violated by threatened violence when Mr. Mason stated that "No one has ever come in here and done the things that you've done to this Local and walk away." (CX 5 at 28). The Complainant's rights to participate in meetings, to free speech and assembly, and to sue were violated by the filing of charges, and resulting three-year suspension from membership, for conduct unbecoming of a union member in part because he had filed suit and made criminal complaints against the Respondent and its officers. Ms. Whitehead further confirmed that the Complainant's suits against the Respondent and its officers led to his ultimate suspension from membership and removal from his position as

steward in training during her testimony in the Complainant's disciplinary hearing, as summarized above. In view of the foregoing, I find and conclude⁴ that

1. The Complainant was denied his right to participate in the union's membership meetings;
2. The Complainant was denied his rights of freedom of speech and assembly when he was removed from one union meeting and barred from attending a second meeting;
3. The Complainant was deprived of his free speech right to participate in a union meeting by actual or threatened force or violence; and
4. The Complainant was improperly suspended from union membership for exercising his rights of free speech and assembly, and his right to file a suit against the union and its officers.

Appropriate Remedial Action

The Regulations at 29 C.F.R. §458.88(a) state that my Recommended Decision and Order shall contain "findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including the remedial action to be taken." However, little guidance is given regarding the forms of remedial action available to a complainant whose rights have been violated because he or she was removed or barred entirely from meetings. Some hint is given at 29 C.F.R. §458.91(b) discussing the actions the Administrative Review Board (the "ARB") may take upon finding a violation of the CSRA or the Regulations including ordering the respondent to cease and desist from the violative conduct, and taking "such affirmative action as [the ARB] deems appropriate to effectuate the policies of the CSRA." Other Administrative Law Judges who have grappled with this issue in the past have looked to the federal courts' interpretations of the LMRDA, the very similar legislation applicable to unions that represent private sector or mixed private and public sector workers, for guidance. *See, e.g., LaDieu v. American Federation of Government Employees, Local 1812*, 1997-SOC-00002, (Nov. 1, 1999).

In *LaDieu*, the Administrative Law Judge (the "ALJ") found that the federal courts considered the appropriate remedial action for violations to the complainant's process rights under the LMRDA included ordering a new trial, and reinstatement with an injunction against the union to ensure that reinstatement was effective. The ALJ considered the tensions in the recent history of the local union chapter and found that a new trial would not serve the local or the complainant and opted to grant the complainant reinstatement and enjoin the union from taking further disciplinary action against the complainant related to the events giving rise to the

⁴ While I am limited to the issues referred to me for hearing by OLMS, I was also troubled by the investigatory procedure followed by the Respondent when pursuing charges against the Complainant. There were two separate charging documents, as summarized above. The first was dated January 5, 2012, and the second dated May 1, 2012. There was contention regarding whether the Complainant intentionally refused to accept service of the first set of charges. However, the Respondent effectively gave itself two bites at the apple by revising the charges against the Complainant, including with later-developed charges, and yet engaged in investigation of the charges before the second filing date, which started the 120-day period during which investigation must occur. This procedure hardly qualifies as a full and fair hearing process guaranteed by the Regulations at §458.2(a)(5).

case. Citing *LaDieu*, the ALJ in *Friday v. American Federation of Government Employees, Local 1920*, 2005-SOC-00003, (Dec. 19, 2006), also found that reinstatement with injunction against further reprisals was the appropriate remedy for a complainant whose rights under the Regulations' Bill of Rights were violated when the union failed to provide a full and fair hearing.

The two cases cited above considered violations of the Bill of Rights of members of labor organizations different from those I have found in the instant case. However, given the near complete overhaul of the Respondent's board and the testimony of the Respondent's new President regarding the changes in policy and procedure he has put in place, I am equally convinced that reinstatement of the Complainant, effective the date of this order and with no back dues penalty, rather than a new trial is the appropriate remedy in this case. Additionally, to ensure that reinstatement is not an empty award and to permit the Complainant to participate, if he so chooses, in the new direction the Respondent appears to be on, I recommend that the Respondent be permanently enjoined from taking further disciplinary action relating to the events that gave rise to this claim. Lastly, because of the publicly derogatory actions and statements by the Respondent's former officers regarding the Complainant, I recommend that the Respondent be ordered to notify each of its members in writing, and to post on its bulletin board and website, if applicable, in a conspicuous manner for no fewer than thirty (30) days, a notice addressed to its membership announcing that the Department of Labor Administrative Review Board has determined that:

1. The Complainant's right to participate in the union's membership meeting, codified at 29 C.F.R. §458.2(a)(1), was violated when he was removed from the meeting on October 19, 2011, and barred from attending the meeting on December 14, 2011;
2. The Complainant's right to freedom of speech and assembly, codified at 29 C.F.R. §458.2(a)(2), was violated when he was removed from the meeting on October 19, 2011, and barred from attending the meeting on December 14, 2011;
3. The Complainant was deprived of his free speech right to participate in a union meeting by actual or threatened force in violation of 29 C.F.R. §458.38; and
4. The Complainant was improperly suspended from union membership for exercising his rights of free speech and assembly and his right to file suit against the union and its officers in violation of 29 C.F.R. §§ 458.37.

This notice should also state that the Complainant has been reinstated to full membership with all rights and privileges in the union and with no loss of seniority, effective the date of this Recommended Order.

While I do not find the authority to award monetary damages in the Regulations, even if I do have such authority, the Complainant has not sufficiently documented his alleged damages. For example, the Complainant testified that he suffers from PTSD as a result of the Respondent's actions; however, he has not submitted any medical records or doctor's testimony on this issue. Furthermore, the Complainant testified that he has not lost wages or incurred out of pocket medical expenses as a result of the Respondent's actions. Further, I do not believe that the

requested damages should be awarded as a financial penalty. The remedial steps taken by the Union by replacing virtually all the officers and instituting reforms should reduce the likelihood of future violations, and the current president testified credibly that the Union does not have the resources to satisfy such an award.

RECOMMENDED ORDER

In view of the foregoing, I recommend that the ARB order that:

1. The Respondent reinstate the Complainant to membership with no loss of seniority and with no back dues penalty, effective the date of this Recommended Order;
2. The Respondent be permanently enjoined from taking further disciplinary action against the Complainant on the basis of the charges, both “internal” and “external” he filed against the Respondent or on the basis of the charges filed against him by the Respondent’s former officers both on January 5 and May 1, 2012; and
3. The Respondent send a notice by U.S. Mail to all its members, and post such notice on its bulletin board and website, if applicable, substantially as follows:

After investigation and hearing, the Department of Labor has determined:

Union Member Brian Thornton’s right to participate in the union’s membership meeting, codified at 29 C.F.R. §458.2(a)(1), was violated when he was removed from the meeting on October 19, 2011, and barred from attending the meeting on December 14, 2011;

Mr. Thornton’s right to freedom of speech and assembly, codified at 29 C.F.R. §458.2(a)(2), was violated when he was removed from the meeting on October 19, 2011, and barred from attending the meeting on December 14, 2011;

Mr. Thornton was deprived of his free speech right to participate in a union meeting by actual or threatened force in violation of 29 C.F.R. §458.38; and

Mr. Thornton was improperly suspended from union membership for exercising his rights of free speech and assembly and his right to file suit against the union and its officers in violation of 29 C.F.R. §§ 458.37.

The Department of Labor has ordered the following:

- a. **Mr. Thornton shall be reinstated to membership in AFGE Local 2274 (“Union”) with no loss of seniority and no back dues penalty, and**
- b. **AFGE Local 2274 (“Union”) has been permanently enjoined from taking further disciplinary action against Mr. Thornton on the basis of the charges, both “internal” and “external,” that he filed against the Union or on the basis of the charges filed against him by the Union’s former officers on January 5 and May 1, 2012.**

4. Within sixty (60) days of the Decision by the ARB, the Respondent report to the ARB that the above remedial action has been accomplished.

SO ORDERED.

PAUL C. JOHNSON, JR.
District Chief Administrative Law Judge

PCJ,JR./RMK/jcb
Newport News, Virginia

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. 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 Administrative Review Board at the following address:

Administrative Review Board
U.S. Department of Labor
Room S-5220
200 Constitution Ave, 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 Administrative Review Board may, at its discretion, without comment, adopt the Recommended Decision and Order.