



Issue Date: 10 April 2015

CASE NO.: 2014-SOC-00001

In the Matter of:

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

v.

**ASSOCIATION OF ADMINISTRATIVE LAW
JUDGES, JUDICIAL COUNCIL NO. 1,
INTERNATIONAL FEDERATION OF
PROFESSIONAL & TECHNICAL ENGINEERS,
Respondent.**

**RECOMMENDED DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION, DENYING COMPLAINANT'S
MOTION FOR SUMMARY DECISION, AND DISMISSING CLAIM**

This matter arises under Title VII of the Civil Service Reform Act of 1978 ("CSRA"), 5 U.S.C. § 7120, *et. seq.*; the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), as amended, 29 U.S.C. § 401 *et. seq.*; and the Standards of Conduct Regulations ("SOC") issued pursuant to the CSRA promulgated at 29 C.F.R. Parts 457 to 459. The matter was initiated by a complaint filed by Complainant Patricia Fox, Chief, Division of Enforcement, Office of Labor-Management Standards (OLMS), United States Department of Labor ("Complainant") against Respondent Association of Administrative Law Judges, Judicial Council No. 1, International Federation of Professional & Technical Engineers ("Respondent" or "AALJ"), seeking to declare as void the election for President held by AALJ in 2012.

Presently before the undersigned administrative law judge are two motions: Respondent's Motion for Summary Decision, dated October 31, 2014 and Complainant's Motion for Summary Decision, dated November 4, 2014. The dispositive issue in this matter is whether, prior to filing his complaint with the Department of Labor, the union member exhausted internal union remedies under section 402(a) of the LMRDA, 29 U.S.C. §482(a), applicable to private sector unions, and 29 C.F.R. § 458.63, which applies essentially the same requirements to proceedings brought before the Office of Administrative Law Judges for Standards of Conduct violations in

Federal union elections.¹ For the reasons set forth below, I am granting Respondent's Motion for Summary Decision and denying Complainant's Motion for Summary Decision and am therefore recommending that the complaint be dismissed.²

PROCEDURAL BACKGROUND

Complainant Patricia Fox, Chief, Division of Enforcement, Office of Labor-Management Standards, United States Department of Labor filed a complaint with the United States Department of Labor Office of Administrative Law Judges ("OALJ") on March 21, 2014, alleging that the Respondent AALJ had violated the LMRDA (as incorporated into the CSRA) by distributing a notice of nominations that failed to give timely notice of Respondent's deadline for submitting nomination petitions by mail, thereby denying a member in good standing a reasonable opportunity to be nominated for union office. The complaint further alleged that the violation may have affected the outcome of Respondent's November 12, 2012 election for the office of President and asked that the election be declared null and void and that Respondent be directed to conduct a new election. The complaint noted that that a complaint had been filed with the Chief by Thomas Snook on July 3, 2013; however, that complaint was not attached or otherwise transmitted.

An Answer was filed by Respondent AALJ on April 21, 2014. In the Answer, Respondent responded to the specific allegations and asserted as affirmative defenses failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction.

The case was initially assigned to District Chief Administrative Law Judge Paul C. Johnson, from the Newport News Office of Administrative Law Judges.

On May 7, 2014, Complainant filed a motion to amend complaint which was granted by Judge Johnson's Order of June 16, 2014. On July 8, 2014, Respondent's Answer to the First Amended Complaint was filed.

Thereafter, Judge Johnson granted the parties' motion for change of venue to Washington, D.C. and the case was reassigned to the undersigned administrative law judge. A hearing scheduled for October 9, 2014 was cancelled pursuant to the joint motion of the parties and a briefing schedule was adopted.

As discussed further below, both parties filed motions for summary decision with supporting affidavits and documentation, and both parties filed responses to each other's motions.³ After reviewing the moving and reply papers, the evidence attached thereto, and the

¹ Although the parties have referenced the LMRDA exhaustion provision throughout, the LMRDA relates to private sector unions and, while some parts of it are applied to Federal unions under the CSRA and implementing Standards of Conduct regulations, not all parts are. *See generally Knight v. Intl. Longshoremen's Assn.*, 457 F.3d 331 (3d. Cir. 2006). The pertinent exhaustion requirement applicable to Federal unions appears in 29 C.F.R. §458.63.

² Both parties also addressed the underlying issue of the timeliness of Administrative Law Judge Snoot's nomination petition; however, it is unnecessary for me to address that issue in view of my disposition of the threshold exhaustion issue.

³ As used in this decision, "Ex." refers to Exhibits 1-32 offered in support of Complainant's summary decision motion and Exhibits A through D attached to Linda Stagno's Declaration and offered in support of Respondent's

administrative record as a whole, I have determined that this matter may be resolved on summary disposition. I have therefore issued this recommended order and decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

UNDISPUTED FACTS

Background Concerning AALJ

The Association of Administrative Law Judges (“AALJ”) is a federal government labor organization representing administrative law judges employed by the United States Social Security Administration nationwide. (Fox Decl. ¶¶ 3-5). AALJ represents approximately 1,100 active and retiree members. (Fox Decl. ¶ 4). AALJ’s parent body is the International Federation of Professional and Technical Engineers (“IFPTE”), AFL-CIO. (Fox Decl. ¶ 4; Idris Decl. ¶ 3). The National Executive Board (“NEB”) refers to the executive board of the AALJ. (Ex. 7).

The principal documents relating to AALJ election protests are the AALJ Constitution and the IFPTE Constitution, which provide members with a means of protesting an election-related decision. (Ex. 6, 25; Ex. A, D to Stagno Decl.) Article VI, Section 3 of the AALJ Constitution states that “nominations will be closed on midnight September 25.” (Ex. 6; Ex. A to Stagno Decl.) Article VI Section 4 provides “nominations for President, Executive Vice-President, Secretary, and Treasurer may be made by a petition signed by at least 15 members in good standing...Nominations shall be submitted in writing to the Nominating Committee.” (*Id.*) Article VI, Section 9 of the AALJ Constitution requires that an election-related protest be made in writing and received by the Elections Committee within 14 days after the tally of ballots. (*Id.*) Article VII requires the exhaustion of all remedies available under the AALJ constitution or the IFPTE constitution prior to seeking relief from any court or agency. (*Id.*) Under the IFPTE Constitution, a member is entitled to three levels of appeal: (1) First, the member may appeal the local union’s unfavorable decision to the IFPTE President; (2) Then if the member receives an unfavorable decision, he may appeal to the IFPTE Executive Council; (3) Finally, if the member receives an unfavorable decision from the Executive Council, he may appeal the decision to the IFPTE Convention. (Ex. 25; Ex. D to Stagno Decl.).

In addition to the IFPTE Constitution, the AALJ adhered to the AALJ Nominations Memo, which contained the union’s rules and procedures for submitted petitions for nominating candidates in the 2012 election. (Fox Decl., 8). AALJ posted the Memo on its website on September 1, 2012. (Fox Decl. ¶ 8; Stagno Decl. ¶ 6; Compl. Stmt. ¶ 11-12). The union also distributed the Nominations Memo in the September 3, 2012 edition of the AALJ President’s

summary decision motion; “Fox Decl.” refers to the Declaration of Complainant Chief Patricia Fox; “Stagno Decl.” refers to the Declaration of Administrative Law Judge Linda Stagno; “Idris Decl.” refers to the Declaration of Teresa Idris, General Counsel of the IFPTE; “Art.” followed by a section number refers to the Article of the AALJ Constitution; “Compl. Stmt.” refers to Complainant’s Statement of Material Facts with Respect to Which There Is No Genuine Dispute; “Resp. SD” refers to Respondent Motion for Summary Decision; “Compl. SD” refers to the memorandum supporting Complainant’s Motion for Summary Decision; “Compl. Opp.” refers to Complainant’s Opposition to Respondent’s Motion for Summary Decision; and “Resp. Opp.” refers to Respondent’s Opposition to Complainant’s Motion for Summary Decision.

weekly newsletter. *Id.* In relevant provisions, and their corresponding number, the nominations notice read:

1. The period for nominating candidates for AALJ Offices shall open on September 1, 2012 at 12:01 a.m. and run until 12:00 a.m. (midnight) September 25, 2012.

5. Nominating petitions may be submitted by three means: Letter via USPS/Fed Express/UPS; Email with attachments (pdf. Or Word document) or via facsimile.

10. Although petitions may be submitted via facsimile or as an email attachment, the original petition with original signatures of the petitioners must be submitted via USPS, Fed Express or UPS to Judge Leroy Bryant, Chair, nominating committee...Judge Bryant must receive a copy of the original petition not later than October 1, 2012.

11. Concurrent with submission of Petition, a petitioner should notify each member of the Nominating Committee via home email that a petition has either been posted via USPS or other ground methods (FedEx/UPS) or sent to the facsimile number noted supra paragraph 5.

12. To consider whether a nomination petition has been timely filed, the Nominating Committee shall use the date/time of facsimile transmission or date/time of email transmission.

14. As soon as possible after September 25, 2012, the Nominating Committee will notify the nominees of their nominations. Nominees must notify the Nominating Committee no later than October 1, 2012 if he/she would refuse to accept office if elected.

18. To reiterate and summarize timelines[;] (A) Nominations for offices open September 1, 2012[;] (B) Nominations will close September 25, 2012[;] (C) Nominees will be certified to Secretary October 1, 2012[;] (D) Original petition of which were submitted via email or facsimile must be received by Judge Bryant, Chair, Nominating Committee by October 1, 2012[;] (E) Certified Officers will be notified on October 1, 2012 and candidates may commence campaigning.

(Fox Decl. ¶ 8-9; Stagno Decl. ¶ 7; Compl. Stmt. ¶ 13; Ex. 7).

Snook's Nominating Petition

Administrative Law Judge Thomas Snook ("Snook") is an AALJ member of good standing who sought nomination for the office of AALJ President for the November 2012 election. (Fox Decl. ¶ 10; Stagno Decl. ¶ 9; Compl. Stmt. ¶ 14-15). Snook submitted his nominating petition by mail on September 25, 2012. (Fox Decl. ¶¶ 10-11). In addition, Snook emailed the Nominating Committee on September 27, 2012, regarding his petition. (Fox Decl. ¶

11; Stagno Decl. ¶10; Compl. Stmt. ¶ 17-18). Nominating Committee Chairman Judge Leroy Bryant received Snook's nominating petition and email on September 27, 2012. (Fox Decl. ¶ 11; Stagno Decl. ¶ 10).

On September 28, 2012, the Nominating Committee met to discuss the timeliness of Snook's petition and, after reviewing the nomination rules, voted unanimously to certify Snook's petition as timely. (Fox Decl. ¶ 15).

After hearing that the Nominating Committee received Snook's petition on September 27, 2012, Election Committee Chairman Edward Pappert send a memorandum to the National Executive Board (NEB), objecting to the Committee's position that Snook's petition was timely, and arguing that nominations must be received by September 25, 2012, the date that the nominations closed. (Fox Decl. ¶ 16).

The NEB considered the timeliness of Snook's petition over the course of three meetings, held September 30, October 2, and October 3, 2012. (Stagno Decl. ¶ 11; Compl. Stmt. ¶¶ 25, 27, 30-34, 37). After the September 30, 2012, meeting, the NEB passed a motion to request the nominating committee reconsider its decision and to ask Snook to submit a statement as to why the NEB should consider his petition timely filed. (Fox Decl. ¶ 19). On October 1, the Nominating Committee unanimously reaffirmed its decision that Snook's petition was timely filed. (Fox Decl. ¶ 25).

During the October 2, 2012 meeting, the NEB passed a motion to certify Snook's petition. (Fox Decl. ¶ 25). After the October 2, 2012 meeting, the NEB received Snook's written statement supporting the timeliness of his petition. (Fox Decl. 27). With regard to his reading of the nominations procedures, Snook stated: "Certainly in retrospect I should have read the rules more closely. However, I felt certain that it was the time of mailing that determines timeliness." (Fox Decl. ¶ 28; Stagno Decl. ¶ 11; Compl. Stmt. ¶¶ 26, 29, 34-37, 40).

During the October 3, 2012 NEB meeting, Snook's remarks were read to the NEB members present, with particular consideration given to Snook's statement that he should have read the rules more closely. (Fox Decl. 33; Stago Decl. 13.). At the end of the October 3, 2012 meeting, NEB determined that Snook's petition was untimely filed and removed Snook from the ballot. (Fox Decl. ¶34; Stagno Decl. ¶ 14; Compl. Stmt. ¶ 35, 40-41).

President Frye ran unopposed and won reelection for president. (Fox Decl. ¶ 35).

Snook's AALJ Appeal

Article VI Section 9 of the AALJ Constitution requires that an objection to conduct affecting the results of an election be made in writing and received by the Elections Committee within 14 days after the tally of the ballots. (Stagno Decl. at Ex. A; EX 6; see also Fox Decl. ¶ 36; Compl. Stmt. ¶ 44). Article XVII of the AALJ Constitution mandates that members must exhaust all internal AALJ and IFPTE remedies before seeking relief from an outside agency or court. (Stagno Decl. at Ex. A; Ex. 6).

On October 5, 2012, Snook filed an internal protest with AALJ's National Grievance Chair, Judge John Madden, challenging his disqualification. (Fox Decl. ¶ 37; Stagno Decl. ¶ 15). Thereafter, an NEB investigation was conducted by Linda Stagno, AALJ Vice President, which yielded a report, dated November 24, 2012. (Stagno Decl. ¶ 16; Ex. 12). The investigation concluded that NEB's actions in excluding Snook's petitions as untimely were "fair and reasonable." (Ex. 12).

On December 2, 2012, the NEB voted to affirm its denial of Snook's election protest and Snook was informed of this denial on December 9, 2012. (Fox Decl. ¶ 41; Stagno Decl. ¶ 17; Compl. Stmt. ¶ 45.).

Snook's IFPTE Appeal

The International Federation of Professional and Technical Engineers ("IFPTE") is the AALJ's parent body. Article 8, Section 8.10 of the IFPTE provides:

The President shall decide any questions respecting the construction or interpretation of the Constitution, and any protests and questions regarding local union elections. His/her decisions may be appealed to the Executive Council and thereafter to the convention. However, pending any such appeal, the President's decision shall be accepted by and be binding upon the Federation, the local unions, other subordinate bodies, and officers and members thereof.

(Stagno Decl. at Ex. D; Ex. 25; see also Fox Decl. ¶ 42; Compl. Stmt. ¶ 50 [misquoting "construction" as "constitution"])).

By email dated March 11, 2013, Snook appealed to IFPTE President Junemann.⁴ (Fox Decl. ¶ 44; Stagno Decl. ¶ 17; Compl. Stmt. ¶¶ 35, 40-44; Ex. 1). IFPTE President Junemann denied Snook's appeal in an email on June 7, 2013. (Fox Decl. ¶ 46; Stagno Decl. ¶ 18). Snook did not appeal to the Executive Council or convention, as provided by the IFPTE Constitution. (Stagno Decl. ¶ 19; Idris Decl. ¶¶ 7-13.). The next convention was scheduled for the summer of 2015. (Fox Decl. ¶ 47; Ex. 26).

Complaint before OLMS and Investigation

Snook filed a complaint with the U.S. Department of Labor on July 3, 2013, protesting the rejection of his nomination petition as untimely. (Fox Decl. ¶ 46; Stagno Decl. ¶ 20.)

OLMS conducted its own investigation into the nominations procedures through interviews with AALJ members Randall Frye, Linda Stagno, Leroy Bryant, Edward Pappert, Todd Collaruso, Melinda Dula, and Marilyn Zahm, and IFPTE President Teresa Idris. (Ex. 5, 8, 9, 11, 13, 16, 26, 27, 28, 30).

⁴ By email dated February 19, 2013, Snook requested that the deadline for appealing the NEB's adverse decision to the IFPTE be extended from February 22, 2013 to March 11, 2013. (Exhibit 21). Snook's request to IFPTE President Junemann was granted on February 19, 2013. (Ex. 22).

Complaint filed with Office of Administrative Law Judges

On March 21, 2014, Patricia Fox, Chief, Division of Enforcement, Office of Labor-Management Standards, United States Department of Labor (“Complainant”) filed a complaint with the Office of Administrative Law Judges, initiating this action.

Motions for Summary Decision before Office of Administrative Law Judges

On November 3, 2014, Respondent, AALJ, filed a Motion for Summary Decision. (Resp. SD). Respondent asserts that Complainant’s claim that the AALJ violated the LMRDA, 29 U.S.C. § 401 *et seq.*, must be dismissed as there are not genuine issues as to any material facts and the AALJ is entitled to summary decision as a matter of law. (*Id.* at 1). First, Respondent alleges that in relation to AALJ’s 2012 election for the office of President, Administrative Law Judge (“ALJ”) Thomas Snook untimely filed his complaint with the Department pursuant to 29 U.S.C. §482(a), because he did not exhaust his remedies before the International Federation of Professional & Technical Engineers.⁵ (*Id.* at 2). Second, Respondent alleges that, assuming *arguendo* that the complaint was timely filed, the AALJ did not violate LMRDA Section 401(e) by distributing a notice of nominations that was unlawfully ambiguous regarding the deadline. *Id.* Moreover, Respondent argues, AALJ should be afforded deference for its interpretation of the September 25, 2012 deadline and for its enforcement of the nominating procedures in question. *Id.*

On November 5, 2015, Complainant filed a Motion for Summary Decision with supporting memorandum. (Compl. SD). Complainant asserts that AALJ violated Section 401(e) of the LMRDA, 29 U.S.C. § 401, during its November 12, 2012 election of union officers. (*Id.* at 2). Complainant first asserts that in relation to AALJ’s 2012 election for the office of President, Snook timely filed his complaint with the Department pursuant to 29 U.S.C. §482(a), because he exhausted his union remedies. (*Id.* at 12-16). Specifically, Complainant alleges that Snook obtained a final decision from the AALJ’s parent body, and that Snook had the option of treating the decision as final or of appealing to the Executive Council and the convention. (*Id.* at 15). Second, Complainant asserts that Respondent breached its duty by failing to fully inform members of AALJ’s deadline for submitting nominating petitions submitted by mail. (*Id.* at 17). Specifically, Complainant alleges that AALJ’s nomination notice failed to specify whether nominating petitions submitted by USPS or other ground methods (FedEx/UPS) had to be sent by the close of the nominations period or had to be received by the close of AALJ’s nominations period on September 25, 2012. (*Id.* at 17-18). Complainant alleges that this lack of clarity failed to meet the LMRDA reasonable notice requirement and amounted to enforcement of an undisclosed deadline because reasonable readers of the text could find different deadlines. (*Id.* at

⁵ In Respondent’s Motion for Summary Decision, Respondent AALJ combines the issues of timeliness under 29 U.S.C. § 482(a)(2) (and its regulatory counterpart, subsection (a)(2) of 29 C.F.R. § 458.63) and exhaustion of remedies under § 482(a)(1) (and its regulatory counterpart, subsection (a)(1) of 29 C.F.R. § 458.63). As Complainant asserts in her Motion for Summary Decision that Snook obtained a final decision from the IFPTE President, the question of whether Snook invoked administrative judicial remedies on the basis that he did not obtain a final decision within three months, which would fall within the confines of subsection (a)(2), is not within the scope of this inquiry. Therefore, the dispositive issue in this matter is whether Snook exhausted his internal union remedies under subsection (a)(1). See also footnote 1 above.

19-22, 22-24). Consequently, Complainant alleges that, as the incumbent ran unopposed due to Snoot's exclusion, the violation may have affected the outcome of the election for the office of President. (*Id.* at 22).

On November 25, 2014, Complainant filed an Opposition to Respondent's Motion for Summary Decision. Complainant asserts that Snook obtained a final, binding decision from the International Federation of Professional & Technical Engineers, and could properly file under 29 U.S.C. § 482(a)(1). (Compl. Opp. at 2). Second, Complainant asserts that Respondent violated LMRDA Section 401(e) by distributing a notice of nominations that was unlawfully ambiguous regarding Respondent's deadline for filing nominations. (*Id.* at 3)

On December 1, 2014, Respondent filed an Opposition to Complainant's Motion for Summary Decision. Respondent asserts that Complainant's Motion for Summary Decision on the claim that the AALJ violated the LMRDA, 29 U.S.C. § 401, *et. seq.*, must be denied because the Complainant failed to establish the exhaustion of union remedies based on the undisputed facts, failed to establish a violation of the LMRD, and relied on disputed facts and inadmissible evidence. (Resp. Opp. at 3-8, 12-17, 18-20).

STANDARD FOR SUMMARY DECISION

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges provide that an Administrative Law Judge ("ALJ") "may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision."⁶

No genuine issue of material fact exists when the "record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The party moving for summary decision has the burden of establishing the "absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

In reviewing a request for summary decision, I must view all of the evidence in the light most favorable to the non-moving party. *Darrah v. City of Oak Park*, 255 F.3d 301, 305 (6th Cir. 2001).

LEGAL BACKGROUND

The purpose of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) is, inter alia, to ensure "free and democratic" elections. *Wirtz v. Hotel, Motel & Club Employees Union*, 391 U.S. 492, 496 (1968); *Wirtz v. Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463,

⁶ 29 CFR § 18.40(d); *see also* Fed. R. Civ. P. Rule 56(c), incorporated by reference into the OALJ Rules of Practice and Procedure by 29 CFR § 18.1(a) ("The Rules of Civil Procedure of the United States shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation.")

470-471. As such, Congress intended that the LMRDA limit official interference in internal affairs of unions and leave areas not covered by the Act to decision of unions themselves. *Shultz v. United Steelworkers of America*, 312 F. Supp. 1044 (1970).

Title IV of the LMRDA regulates the procedures that private sector labor unions must follow when conducting elections. 29 U.S.C. §§ 481-83. Generally, under the Act, the Secretary of Labor (“Secretary”) is authorized to initiate lawsuits in federal district court challenging union elections that violate the terms of the LMRDA. LMRDA’s procedural requirements for filing a complaint in federal district court contesting an election are located at Section 402, 29 U.S.C. § 482. Section 402(a), establishes two procedural requirements that must be met before the Secretary may file a complaint in federal district court challenging a union election. *See, e.g., Reich v. Local 399, IBEW*, 3 F.3d 184, 188 (7th Cir. 1993); *Schultz v. Local 1291, Int’l Longshoremen’s Ass’n*, 429 F.2d 592, 595 (3d Cir. 1970). First, the union member must have either (1) fully exhausted all remedies available under the union’s constitution and bylaws; or (2) invoked the remedies provided by the union’s constitution and bylaws for a period of three months and not obtained a final decision. *See* 29 U.S.C. § 482(a)(1). Second, the union member must file an administrative complaint with the Secretary within one month of either full exhaustion of the union’s remedies or the expiration of the three-month period of futile invocation of union remedies. *See Local 399*, 3 F.3d at 188. If relief is not forthcoming under internal union remedies, the LMRDA provides that any union member may challenge an election believed to be held in violation of the statute’s fair election procedures by filing a complaint with the Secretary of Labor. 29 U.S.C. § 482(a). The Secretary then investigates the complaint, and if the Secretary finds probable cause to believe that there has been an election violation, may bring a civil action against the union to set aside the invalid elections. 29 U.S.C. § 482(b). If a court finds that there was a violation of § 401 of the LMRDA that may have affected the outcome of the election, the court must declare the election to be void and direct the conduct of a new elections under the supervision of the Secretary, and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. *Id.* at § 482(c).

The Civil Service Reform Act (“CSRA”), *inter alia*, accords recognition to Federal employee “labor organizations” that abide by certain “standards of conduct.” *See* 29 U.S.C. § 7120. A labor organization is bound by the CSRA’s standards of conduct provisions if it is “composed in whole or in part of employees...,” who are “employed in an [Executive] agency...” *See* 29 U.S.C. § 7103(a)(2), (a)(3), and (a)(4). The CSRA sets out “Standards of conduct for labor organizations” that include the “maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, [and] to receive fair and equal treatment under the governing rules of the organization....” 5 U.S.C. § 7120(a)(1).

The CSRA empowers the Assistant Secretary of Labor for Labor Management Relations to “prescribe such regulations as are necessary to carry out the purposes” of the standards of conduct provisions of the CSRA applicable to Federal unions. 29 U.S.C. § 7120(d). That provision reads:

Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matters arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

*Id.*⁷

The Department of Labor issued CSRA standards of conduct regulations regarding complaints arising from the election of Federal union officers at 29 C.F.R. Part 458. Terms used in the LMRDA are generally incorporated into the CSRA by section 458.1 of the regulations. 29 C.F.R. §458.1.⁸ Under section 458.29, every labor organization subject to the CSRA [or Foreign Service Act] shall conduct periodic elections of officers in a “fair and democratic manner,” and elections must be conducted under standards prescribed in the LMRDA (and specifically subsections (a) through (g) of section 401 of the LMRDA [codified at 29 U.S.C. § 481].)

The Department’s regulations authorize the Chief, Division of Enforcement of OLMS to investigate and prosecute alleged election and other violations.⁹ 29 C.F.R. § 458.50-458.66. Although section 458.67 indicates that the Chief (or district director, for cases so brought) will be the only complaining party and need not disclose the identity of the person who called the violation to his attention, that provision does not apply to election violations under section 458.29. When the Chief “concludes that there is probable cause to believe that a violation has occurred which may have affected the outcome” of an election and the violation has not been remedied, OLMS is required to initiate enforcement action. 29 C.F.R. § 458.65(a).

If OLMS fails to reach an agreement with a person or labor organization over an alleged violation, then OLMS must “institute enforcement proceedings by filing a complaint with the Chief Administrative Law Judge, U.S. Department of Labor....” 29 C.F.R. § 458.66(c). Section 458.70, empowers the OALJ to hear enforcement proceedings:

Each enforcement proceeding pursuant to this part shall be conducted before an Administrative Law Judge designated by the Chief Administrative Law Judge for the Department of Labor....

29 C.F.R. § 458.70.

⁷ In the memorandum in support of Complainant’s motion for summary decision at page 4, Complainant notes that “rather than adopting the enforcement scheme of section 402 of the LMRDA, 29 U.S.C. § 482, which authorizes the Department to seek relief in federal court, the CSRA provides that the Department, itself, is responsible for enforcing these standards.”

⁸ See footnote 1 above; see also footnote 1, page 2 of Complainant’s Motion for Summary Decision supporting memorandum (Compl. SD).

⁹ The regulations provide that (unless violations of the “[b]ill of rights of members of labor organizations” in section 458.2 or the “[p]rohibition of certain discipline” in section 458.37 is involved) the authority to investigate shall not be contingent upon receipt of a complaint. 29 C.F.R. § 458.50(c).

Upon conclusion of the proceedings, the administrative law judge issues a recommended decision. 29 C.F.R. § 458.88. Under procedures adopted in 2013 and amending section 458.88 in view of the demise of the Employment Standards Administration (ESA), final enforcement action on behalf of the Secretary now is ordered by the Administrative Review Board. 78 Fed. Reg. 8022 (Feb. 5, 2013). *See also Chief, Division of Enforcement, OLMS v. Local 12, AFGE*, ARB Case Nos. 13-094,14-0481, OALJ No. 2013-SOC-00001 (ARB, Sept. 24, 2014).

Exhaustion of Remedies under Section 402(a), 29 U.S.C. § 482(a) and 20 C.F.R. § 458.63(a)

Enforcement actions based upon standards of conduct violations brought before Office of Administrative Law Judges under 29 C.F.R. Part 458 are subject to essentially the same exhaustion requirements as actions brought under the LMRDA in district court. The exhaustion of remedies provision appears in section 458.63:

(a) A member of a labor organization may file a complaint alleging violations of §458.29 within 1 calendar month after he has (1) exhausted the remedies available under the constitution and bylaws of the labor organization and of any parent body, or (2) invoked such available remedies without obtaining a final decision within 3 calendar months of such invocation.

(b) The complaint shall contain a clear and concise statement of the facts constituting the alleged violation(s), the remedies which have been invoked under the constitution and bylaws of the labor organization and when such remedies were invoked.

29 C.F.R. § 458.63.¹⁰

Notice of Nominations Under 401(e), 29 U.S.C. § 481(e) and 29 C.F.R. 452.56

Section 401(e) of the LMRDA protects the right to be a candidate for union office subject to “reasonable qualifications uniformly imposed.”¹¹ *See* 29 U.S.C. § 481(e). That provision further reads:

In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 [29 U.S.C. § 504] and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof.

29 U.S.C. § 481(e).

¹⁰ Failure to comply with section 458.63(a) is a basis for the complaint not being investigated, 29 C.F.R. §458.64(a)(5).

¹¹ This provision is applicable to Federal union elections pursuant to section 458.29 of the Standards of Conduct regulations, 29 C.F.R. § 458.29.

The Department of Labor issued regulations for the notice of nominations for the election of union officers at 29 C.F.R. § 452.56. 29 C.F.R. § 452.56. Whether a particular qualification is “reasonable” and capable of uniform application under section 401(e) of the LMRDA, codified at 29 U.S.C. § 481(e), depends on whether members have “timely notice reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations.” 29 C.F.R. § 452.56(a). Accordingly, “notice of nominations may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice, so long as it is in accordance with the provisions of the labor organization’s constitution or bylaws.” *See* 29 C.F.R. 452.56. Thus, the “reasonable” requirement has been met where the members of a labor organization are fully informed of the proper method of making such nominations. *See* 29 C.F.R. 452.56(b).

DISCUSSION

Subject Matter Jurisdiction

Respondent, AALJ, is a “labor organization” under the Civil Service Reform Act (CSRA). A “labor organization” is composed “in whole or in part” of federal agency employees. *See* 29 U.S.C. § 7103(a)(2), (a)(3), and (a)(4). AALJ represents approximately 1,100 active and retired members. (Fox Decl. ¶¶ 4, 5). Therefore, AALJ is bound by the standards of conduct regulations for officer elections under the CSRA and its implementing regulations. *See* 5 U.S.C. § 7120.¹² Respondent AALJ does not dispute this fact and does not present any evidence to show otherwise.

Under the CSRA’s implementing regulations, enforcement actions relating to Federal officer election Standard of Conduct violations brought by OLMS against labor organizations are heard before the Office of Administrative Law Judges. 29 C.F.R. §§ 458.66(c), 458.70. This case concerns an alleged violation of the union officer elections provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481 *et. seq.*, during the November 2012 election of officers. (Fox Decl. ¶¶ 2, 5, 45). Thus, this case is properly before the OALJ.

Exhaustion of Remedies

As stated above, the exhaustion requirement in the LMRDA reflects Congress’ intention that the LMRDA limit official interference in union internal affairs and leave areas not covered by statute to the decision of unions themselves. *See Shultz v. United Steelworkers of America*, 312 F Supp. 1044 (1970). Accordingly, under Section 402(a) of the LMRDA and its regulatory

¹² *See* 5 U.S.C. § 7120 (“Standards of conduct for labor organizations”) (emphasis added); 29 C.F.R. § 458.29 (“Every labor organization subject to the CSRA . . . shall conduct periodic elections of officers in a fair and democratic manner. All elections shall be governed by the standards prescribed in [section 401 of the LMRDA]...”).

counterpart relating to Federal union SOC violations, a complaining union member must exhaust the remedies available under the union's constitution and bylaws as a prerequisite to the Secretary filing a civil action. 29 U.S.C. § 482(a)(1), 29 C.F.R. § 458.63. Under the pertinent regulation, a union member wishing to contest a union election must file his complaint within one calendar month either of (1) his exhaustion of remedies available under the constitution and bylaws of the labor organization and of any parent body or (2) the elapse of three months from his initial invocation of internal remedies without obtaining a final decision. 29 C.F.R. § 458.63(a).

The internal union remedies available to AALJ members are outlined the AALJ Constitution and in the Constitution of its parent organization, the International Federation of Professional and Technical Engineers (IFPTE). (Ex. 6, Ex. 25). Article VI Section 9 of the AALJ Constitution requires that an objection to conduct affecting the results of an election within the meaning of Title IV of the LMRDA be made in writing and received by the Elections Committee within 14 days after the tally of the ballots, and Article XVII mandates that members exhaust all forms of relief provided under the AALJ Constitution or the IFPTE Constitution before resorting to any outside agency or court. (Ex. 6; Ex. A to Stagno Decl.) Article 8, Section 8.10 of the IFPTE Constitution provides:

The President [of the IFPTE] shall decide any questions respecting the construction or interpretation of the Constitution, and any protests and questions regarding local union elections. His/her decisions may be appealed to the Executive Council and thereafter to the convention. However, pending any such appeal, the President's decision shall be accepted by and be binding upon the Federation, the local unions, other subordinate bodies, and officers and members thereof. [Emphasis added.]

(Ex. 25; Ex. D to Stagno Decl.)

The threshold issue raised by the case at bar is whether union member Snook fully exhausted all available union remedies prior to bringing his complaint, as required by the Standards of Conduct regulations applicable to Federal unions. 29 C.F.R. § 458.63. After first invoking the appeals provisions within the AALJ without success, Snook appealed to IFPTE President Junemann via email on March 11, 2013. (Fox Decl. ¶ 41-45; Stagno. Decl. ¶ 16-18, Ex. C). President Junemann denied Snook's election protest in a final decision letter dated June 7, 2013. *Id.* Snook then filed his complaint with the Secretary on July 3, 2013 [over 90 days after filing his initial action but within 30 days of President Junemann's denial letter]. (Fox Decl. ¶ 41; Ex. 1; Compl. Stmt. ¶ 18). Complainant, OLMS, alleges that Snook timely filed his complaint with the Department because he exhausted his internal union remedies. (Compl. SD at 14; Compl. Opp. at 4). Specifically, Complainant alleges that Snook obtained a final decision from the IFPTE President, and that Snook had the option of treating the decision as final or of appealing to the Executive Council and the convention. (*See* Compl. SD at 14). To the contrary, Respondent AALJ contends that Snook failed to establish that he exhausted union remedies, as contained in the IFPTE constitution, because he did not appeal to the Executive Council or the convention. (Resp. Opp. at 3-6).

The parties do not materially dispute the facts, but differ in the legal conclusions that should be drawn from those facts. The cases cited by both parties involve the jurisdictional provisions in section 402(a) of the LMRDA applicable to private sector unions. *See, e.g., Reich v. Local 399, Int. Brotherhood of Elec. Workers*, 3 F.3d 184 (7th Cir. 1993) (finding appeal timely because decision was not final when not appealed to International Executive Council or International Convention and complaint was filed within 30 days of lapse of three-month period under section 402(a)(2)); *DeArment v. Local 563, Laborers Intern. Union of North America, AFL-CIO*, 751 F.Supp. 1364 (D. Minn. 1990) (finding exhaustion requirement under section 402(a)(1) did not require member to appeal to international parent of labor organization when appeal was optional and body only met once every five years). These cases and the others cited recognize that the exhaustion issue is dependent upon an examination of the constitution and bylaws of the local labor organization and its parent organization as applied to section 402(a) of the LMRDA. The provisions in section 458.63(a) of the Standards of Conduct regulations do not materially differ from those in section 402(a) and the parties have cited the sections interchangeably. *Compare* 29 U.S.C. § 482(a)(1) *with* 29 C.F.R. § 458.63.¹³ *See also* 29 C.F.R. §452.135.¹⁴

In contending that Snook exhausted all prerequisites before filing a complaint, Complainant asserts that the plain language of the IFPTE Constitution indicates that appeals to the President are compulsory, while appeals to the Executive Council and the convention, respectively, are optional. (Compl. SD at 14). Complainant asserts that the constitution's use of the word "shall," conveys mandatory levels of appeal, while the words "may be" denote permissive levels of appeal. *Id.* Complainant notes that the constitution states that "the President shall decide...questions regarding local or union elections." *Id.* Similarly, Complainant argues that "[D]ecisions [of the IFPTE President] may be appealed to the Executive Council and thereafter to the convention." (*Id.* Emphasis original). Complainant argues that this language gave "Snook the option of treating [the President's] decision as final or of appealing to the Executive Council and convention." (Compl. SD at 14). However, I am not persuaded by Complainant's argument.

As the language of Section 458.63 demonstrates, Snook had to exhaust all remedies that were available to him under the AALJ and IFPTE constitutions before he could file a complaint with the Secretary. 29 C.F.R. § 458.63. My review of the AALJ Constitution reveals no provision allowing the complaining union member to bypass union remedies under the facts provided. Rather, the procedure allows union members to appeal to the Executive Council and the convention if the complaining member elects to continue to pursue union remedies. If the complaining member does not pursue union remedies, the decision of the IFPTE President is binding.

In other words, the IFPTE Constitution's use of the words "may be," means that the complaining union member has the option to appeal an unfavorable decision if the member so chooses. The words "may be" do not, as Complainant asserts, imply that the member is allowed

¹³ See also footnote 1 above.

¹⁴ Complainant has cited 29 C.F.R. §452.135, the interpretive regulations for the LMRDA provision (29 U.S.C. §482(a)) to shed light on the substantially similar provision applicable to Federal unions, 29 C.F.R. § 458.63. (Compl. Opp. at 4-5).

to simply skip the appellate process that is delineated in the IFPTE Constitution. (Compl. SD 14). In order for a member to exhaust all available union remedies before filing a complaint with the Department of Labor, the complaining member must first comply with “all remedies available under the constitution and bylaws of the labor organization and of any parent body,” 29 C.F.R. § 458.63. That would include appeal to the Executive Council and the convention, as those avenues of appeal are provided under the constitution of AALJ’s parent body, IFPTE.

It is clear that Snook did not exhaust all of his union remedies as required under section 458.63(a)(1). The full process of appeal would have taken him to the Executive Council and the convention. The regulations require that exhaustion of remedies be effectuated before a complaint is filed before the Department of Labor. As that step was not completed, this action was not properly brought under the Standards of Conduct regulations and should therefore be dismissed.

As noted above, there is a second method by which a union member may exhaust administrative remedies, specifically, by waiting three months without final disposition and then filing a complaint within one calendar month. Here, Complainant asserts that Snook acted upon the basis that he obtained a final decision from the IFPTE President, in accordance with section 482(a)(1) and does not assert that he decided to act before obtaining a final resolution within the confines of section 482(a)(2).¹⁵ (Compl. SD at 4-5, 13-16). It is therefore unnecessary to address the question of whether Snook properly filed a complaint after invoking the union’s available remedies without obtaining a final decision within three months. If, however, that provision were applicable, Snook’s complaint was not timely filed, as Respondent argues, because it was not filed within four months following Snook’s initial protest (i.e., within one month of the expiration of the three-month period following the initiation of the protest, as required by section 482(a)(2) and, more importantly, 29 C.F.R. § 458.63(a)(2)). (Resp. SD at 10).

As a final matter, I note that Complainant has essentially conceded that the jurisdictional issue in this case is dependent upon whether Snoot exhausted his union remedies prior to filing the complaint with the Department of Labor that precipitated the investigation. Significantly, Complainant has not argued that the Chief of Enforcement, OLMS acted independently in filing an enforcement action relating to Standards of Conduct violations with respect to elections. 29 C.F.R. § 458.50(c). To the contrary, Complainant has argued that limited discretion was involved in Complainant’s decision to bring this action, which was initiated by Snook’s complaint, and Complainant has focused on whether Snook properly exhausted his internal union remedies.¹⁶ (Compl. SD at 4-5, 13-16).

Adequacy of Notice of Nominations

As I determined above that this tribunal does not have jurisdiction under 29 C.F.R. §458.63, the issue of whether Respondent violated the requirement in section 401(e) (29 U.S.C.

¹⁵ See footnote 1 above.

¹⁶ Complainant states: “Because Snook met the Act’s exhaustion requirement and filed a timely complaint with the Department under 29 U.S.C. §482(a), the prerequisites for the instant action have been met. Therefore, this Court has jurisdiction over the Secretary’s Complaint.” (Compl. SD at 16).

§481(e)) by distributing a Notice of Nominations that was “unlawfully ambiguous” need not be discussed.

CONCLUSION

I find that no genuine issue of material fact exists for a hearing in this case. Enforcement action was inappropriate as Snook did not exhaust all remedies available under the Constitution and Bylaws of the AALJ and IFPTE and has not therefore exhausted required internal union remedies as required by 29 C.F.R. § 458.63. Respondent has shown that the jurisdictional prerequisites have not been satisfied and Complainant has not shown the contrary. This matter should therefore be dismissed.

RECOMMENDED ORDER

IT IS HEREBY ORDERED that Complainant’s Motion for Summary Decision is **DENIED**; Respondent’s Motion for Summary Decision is **GRANTED**; and the complaint in this matter is **DISMISSED**.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.

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

Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board

through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov.

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 in its discretion, without comment, adopt the Recommended Decision and Order.