U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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December 9, 2015

[redacted]

Dear [redacted]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on March 15, 2015, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481, *et. seq*., as made applicable to federal sector unions subject to the Foreign Service Act, 22 U.S.C. § 4117, by 29 C.F.R. § 458.29, occurred in connection with the regularly scheduled election of officers conducted by the American Foreign Service Association (AFSA), on June 4, 2015.

The Department of Labor (Department) conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to the specific allegation, that there was no violation affecting the outcome of the election. Following is an explanation of this conclusion.

You alleged that [redacted], president of the AFSA, served as the dean of the Leadership and Management School (LMS) at the Foreign Service Institute during the two years preceding the 2015 election of AFSA officers and that the dean of the LMS is a management official. You also alleged that as a management official administering labor relations, [redacted] was prohibited from holding union office by the Foreign Service Act (FSA), which prohibits an individual from holding union office if the individual has served as a prohibited management official during the two years preceding nominations.

Section 1002 of the FSA defines "management official," as encompassing a variety of positions, including, as relevant here, any "individual who is engaged in the administration of this subchapter." The subchapter at issue is subchapter 10 of the FSA. Subchapter 10 contains the labor-management relations provisions of the statute, including dispute resolution, unfair labor practices, employee rights, collective bargaining, management rights, representation rights and duties, standards of conduct for labor organizations, and grievances. The FSA further provides that any

"management official" who is engaged in the administration of the labor-management relations provisions of subchapter 10 may not participate in the management of, or act as a representative of, a labor organization.

Further, section 1017(e) of the FSA bans an individual who "has served" in certain management positions listed under section 1002 of the FSA from participating in the management of a labor organization for purposes of collective bargaining or acting as a representative of a labor organization for such purposes for two-year's. The House of Representatives' Committee on Foreign Affairs explained Congress' intent in enacting the two year "cooling off period" in its report on H.R. 2333, a bill virtually identical to the final version of section 1017(e)(1)(A) of the FSA. The Committee stated, "The section [1017(e)(1)(A) of the FSA] clarifies and strengthens provisions prohibiting management officials from directing the activities of a Foreign Service labor organization." (Emphasis added). *See* H.R. Rep. 126, 103rd Cong. 1st Sess. 1993, 1993 WL 2288753. Section 1017(e) of the FSA was enacted by Congress to ensure that a management official does not act in the interest of management at the bargaining table and then direct the affairs of the union without a two year break before assuming union office.

You alleged that Stephenson served as a management official in her capacity as dean of the LMS because she was involved in the discussion or development of mandatory courses, course curricula and training for management officials. Specifically, you believe that Stephenson participated in the development of a course curriculum that was the result of a 2013 settlement agreement reached by the agency and the AFSA. You stated that on May 5, 2014, representatives from the AFSA and the State Department met and discussed the development of an online course module and mandatory leadership supervisory training and that [redacted] participated in that meeting. You also stated that on October 9, 2014, you and [redacted] discussed the online course and other courses over lunch. Further you stated that [redacted] trained management officials on labor management issues and, therefore, is a management official.

However, in order for [redacted] duties as dean of the LMS to trigger the two-year cooling off period, they must have involved "engagement" in the "administration" of subchapter 10 of the FSA, such as unfair labor practices, employee rights, collective bargaining, grievances, *etc.* Your assertion that "providing training to management officials" who may be "involved with collective bargaining" falls within this definition is not supported by the terms of the statute. "Engagement" in the "administration" of labor management relations describes more direct participation in labor relations than merely training those who may eventually have some responsibility for administering labor relations. In short, participating in the discussion or development of course curricula and providing training for management officials, even if it relates to labor

management issues, are not duties that involve the actual administration of the policies. Nor do these duties involve the collective bargaining process.

Specifically, [redacted] stated during the investigation that she has never administered any policies or requirements governing labor management relations under subchapter 10 of the FSA in her role as dean of the LMS and that she is not familiar with them. [redacted] also stated that, while serving as dean, she never participated in the grievance process, engaged in collective bargaining, discussed matters with employees or management regarding subjects of bargaining, or interacted with AFSA officials. The investigation did not reveal otherwise. In addition, the investigation showed that [redacted] was not involved in the unfair labor practice claim filed by the AFSA against the State Department in July 2013, and did not participate in any matters regarding settlement discussions or the settlement agreement resulting from that claim. In fact, when [redacted] assumed her position as dean of the LMS, the parties had already executed the settlement agreement.

[redacted] further stated during the investigation that, although she participated in one meeting that was held at your request regarding the development of certain courses and training required by the settlement agreement, she was not involved in the parties' negotiations of those programs or involved in the parties' decision regarding what courses or training would be offered. The investigation did not reveal otherwise. Under these circumstances, it appears that any involvement [redacted] had regarding these courses or training was limited to the execution of these programs, after the parties had already negotiated and determined the programs that would be offered. With respect to your October 9 meeting with [redacted], [redacted] stated that she met with you over lunch so that she could obtain your views on an intermediate leadership class you were enrolled in, and obtain any suggestions you had on ways to improve the program. This discussion did not involve the actual administration of labor management policies or the administration or implementation of the collective bargaining agreement.

Finally, you claim that dean of the LMS is equivalent to the position of Coordinator, Senior Seminar, which was included on a list of management officials that was compiled by the State Department's Director Office of Employee Relations in 1981. The Department's review of the 1981 list showed that the list is a "proposed" list of management officials. In any event, the investigation showed that the position of Coordinator, Senior Seminar and any programs relating to that seminar have been abolished. Whether the prior position of Coordinator or the current position of dean fall under one of the categories of management official included in the FSA, the positions only fall under the two-year cooling off period if they include the administration of the labor management subchapter of the FSA. As previously discussed, the duties of dean of the LMS do not involve the actual administration of the labor management policies under chapter 10 of the FSA. Nor do they involve the

collective bargaining process. Thus, even if dean of the LMS is the equivalent of the coordinator position, the duties of the dean of the LMS do not constitute management official responsibilities that trigger the cooling off period.

On these facts, there is no basis for concluding that [redacted] was a "management official," subject to the cooling off period, as that term is defined under the FSA, during the disqualifying period or at the time of the 2015 election. In that [redacted] was not a "management official" there is no basis for concluding that she was barred for two years from participating in the management of the AFSA for purposes of collective bargaining or acting as a representative of the AFSA for such purposes.

The investigation determined that, during the preceding two years, [redacted] did not serve as a "management official," as that term is defined in the FSA and was not serving in that capacity at the time of the 2015 election of AFSA officers. Nor did [redacted] engage in collective bargaining on behalf of management during the disqualifying period. Thus, [redacted] was not subject to the two-year bar or prohibited from participating in the management of, or acting as a representative of, a labor organization for purposes of collective bargaining, pursuant to section 1017(e) of the FSA.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Pursuant to the Department's regulations at 29 CFR 458.64(c), you have the right to appeal a dismissal of your complaint by filing a request for review within 15 days of service of the Statement of Reasons with the Director of the Office of Labor-Management Standards at U.S. Department of Labor, OLMS, Office of the Director, Room N-5603, Francis Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Any review by the Director of OLMS shall be made only on the basis of deciding whether my decision is arbitrary and capricious. A copy of this request for review should be served on the Chief of the OLMS Division of Enforcement (Sharon Hanley) and the union and a statement of such service should be filed with the Director of the Office of Labor-Management Standards. Any request for review should contain a complete statement of the facts and reasons upon which the request is based.

Sincerely,

Sharon Hanley, Chief
Division of Enforcement

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