

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

**TRACY SHANKER, CHIEF, DIVISION
OF ENFORCEMENT, OFFICE OF
LABOR MANAGEMENT STANDARDS,
DEPARTMENT OF LABOR,**

ARB CASE NO. 2023-0001

**ALJ CASE NO. 2021-SOC-00002
ALJ WILLIAM P. FARLEY**

COMPLAINANT,

DATE: August 7, 2024

v.

**PATENT OFFICE PROFESSIONAL
ASSOCIATION,**

RESPONDENT.

Appearances:

For the Complainant:

Beverly Dankowitz, Esq., Eleanore I. Simms, Esq., and Christa N. Henderson, Esq.; *U.S. Department of Labor, Office of the Solicitor;* Washington, District of Columbia

For the Respondent:

Richard J. Hirn, Esq.; *Patent Office Professional Association;* Washington, District of Columbia

Before HARTHILL, Chief Administrative Appeals Judge, and THOMPSON, Administrative Appeals Judge

ORDER DECLARING ELECTION RESULTS AND FINAL JUDGMENT

HARTHILL, Chief Administrative Appeals Judge:

This case arises under Title VII of the Civil Service Reform Act of 1978 (CSRA),¹ the Labor-Management Reporting and Disclosure Act (LMRDA),² and the

¹ 5 U.S.C. §§ 7101-7135.

² 29 U.S.C. §§ 401-531.

Standards of Conduct (SOC) regulations issued pursuant to the CSRA.³ On November 16, 2022, the Administrative Review Board (ARB or Board) issued a Decision and Order Affirming Recommended Decision and Order and Ordering New Election (D. & O.).⁴ In the D. & O., the Board concluded that Respondent Patent Office Professional Association (POPA) violated the LMRDA. Consequently, the Board ordered POPA to conduct a new election for the office of president of POPA under the supervision of the U.S. Department of Labor (Department) Office of Labor-Management Standards (OLMS) by March 16, 2023.⁵

On June 14, 2023, the Federal Labor Relations Authority affirmed the Board's determination that POPA violated the LMRDA but remanded to the Board to issue a new remedial order because the March 16, 2023 deadline had already passed. On August 17, 2023, the Board ordered POPA to conduct an election for the office of union president under OLMS's supervision by January 31, 2024.

On September 18, 2023, the parties filed a Joint Motion to Amend Order for Supervised Election, asking for an extension to conduct the supervised election on February 29, 2024, which the Board granted on September 28, 2023.

On July 12, 2024, OLMS's Acting Chief, Division of Enforcement, filed a Certification of Election (Certification) with the Board, stating that the election was conducted pursuant to the Board's September 28 Order.⁶ The Certification further stated that the election was conducted in accordance with LMRDA and POPA's constitution and bylaws. Kathleen Duda was certified the winner of the election.

³ 29 C.F.R. Part 458 (2024).

⁴ The Board issued an Errata on December 6, 2022, to correct errors in the D. & O.'s case caption. Otherwise, the D. & O. did not change.

⁵ As we explained in the D. & O., when a union is found to have violated LMRDA section 401, the ARB, by delegation from the Secretary of Labor, has the discretion under the CSRA and SOC regulations to order appropriate relief. 5 U.S.C. § 7120(d); 29 C.F.R. §§ 458.88(c), .91(a); *see also* Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020); *Chief, Div. of Enft, Off. of Lab.-Mgmt. Standards, U.S. Dep't of Lab. v. Local 12, Am. Fed'n of Gov't Emp.*, ARB Nos. 2013-0094, 2014-0081, ALJ No. 2013-SOC-00001, slip op. at 3 (ARB Sept. 24, 2014).

⁶ The Acting Chief of the Division of Enforcement, Molly Wagoner, is serving in Complainant Tracy Shanker's capacity while Ms. Shanker is on detail.

In addition to the certification, the Acting Chief filed a declaration (Declaration) describing the election process, pre- and post-election challenges, and how OLMS resolved the challenges. The Declaration concluded:

The Department has concluded from its investigation of these protests that POPA's February 28, 2024 election for the office of President, conducted under the Department's supervision, complied with Title IV of the LMRDA, as made applicable to elections of federal sector unions by the Civil Service Reform Act, 5 U.S.C. § 7120, and 29 C.F.R. § 458.29, and was conducted, insofar as lawful and practicable, in accordance with POPA's constitution and bylaws and the LMRDA. Therefore, the results of this supervised election should be certified.^[7]

After a thorough review of the Certification and Declaration, the Board declares that Kathleen Duda is the Duly elected President of the Patent Office Professional Association.⁸

Accordingly, this case is dismissed.

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



ANGELA W. THOMPSON
Administrative Appeals Judge

⁷ Declaration at 9.

⁸ 29 C.F.R. § 458.65(c); 29 U.S.C. § 482(c)(2), as made applicable to elections of federal sector unions by 5 U.S.C. § 7120.