



December 5, 2023

[REDACTED]

Dear [REDACTED]:

This is to advise you of the disposition of your complaint filed with the Secretary of Labor alleging that violations of Title III of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as made applicable to federal sector unions by the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120(d) and 29 C.F.R. § 458.26, occurred with respect to a trusteeship imposed by the American Federation of Government Employees (AFGE) imposed over AFGE Council 170 in Tucson, Arizona.

After carefully reviewing the investigative findings, and after consulting with the Solicitor of Labor, we determined that legal action was not warranted in this case. In addition, AFGE restored Council 170's autonomy in April 2022. As a result, the complaint under Title III is moot and the case has been closed.

The basis for this decision is set forth in the enclosed Statement of Reasons.

Sincerely,

[REDACTED]

Tracy Shanker
Chief, Division of Enforcement

cc: [REDACTED], Associate Solicitor
Civil Rights and Labor-Management Division

U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143



December 5, 2023

Everett Kelley, National President
American Federation of Government Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dear Dr. Kelley:

This is to advise you of the disposition of your complaint filed with the Secretary of Labor alleging that violations of Title III of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as made applicable to federal sector unions by the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120(d) and 29 C.F.R. § 458.26, occurred with respect to a trusteeship imposed by the American Federation of Government Employees (AFGE) imposed over AFGE Council 170 in Tucson, Arizona.

After carefully reviewing the investigative findings, and after consulting with the Solicitor of Labor, we determined that legal action was not warranted in this case. In addition, AFGE restored Council 170's autonomy in April 2022. As a result, the complaint under Title III is moot and the case has been closed.

The basis for this decision is set forth in the enclosed Statement of Reasons.

Sincerely,

[Redacted signature]

Tracy L. Shanker
Chief, Division of Enforcement

cc: [Redacted], Associate Solicitor
Civil Rights and Labor-Management Division

Statement of Reasons Dismissing a Complaint Concerning the Trusteeship Imposed by the American Federation of Government Employees on Council 170

This Statement of Reasons is in response to a complaint filed with the United States Department of Labor (Department) on April 24, 2021, alleging that the National Executive Council of American Federation of Government Employees (AFGE National) violated Title III of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 461-466, as made applicable to labor organizations subject to the requirements of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120, by 29 C.F.R. §§ 458.26-28, concerning AFGE National's imposition of a trusteeship over Council 170 on December 23, 2020.

The complaint alleges that the trusteeship was not imposed for a purpose allowable under Section 302 of the LMRDA or AFGE's National Constitution. The complaint also alleges that the trusteeship was not imposed in accordance with the AFGE National Constitution and improperly imposed an expedited trusteeship. The complaint further alleges that AFGE National did not afford Council 170 a fair and unbiased hearing.

Section 302 of the LMRDA specifies the purposes for which a union may impose a trusteeship over a subordinate: correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization. 29 U.S.C. § 462; *see also* AFGE National Constitution Art. IX, Sec. 5(a) (same). The imposing body need specify only one of these purposes to impose a trusteeship.

The Department's investigation revealed that in November 2018, two former Council 170 Treasurers and the Executive Vice President conducted a \$32,665 wire transfer of the entire council funds from Bank of America to J.P. Morgan Chase Bank. In November 2019, Bank of America investigated and concluded that the wire transfer was an unauthorized transaction and provided Council 170 with a \$32,000 check. However, Council 170 had maintained control of the original \$32,665 and had not lost those funds. In October 2020, AFGE General Counsel instructed Daniel Clark, President of Council 170, to reimburse Bank of America the \$32,000. In November 2020, after AFGE National had received no communication from Clark, AFGE National President Everett B. Kelly, sent Clark a letter requesting proof of the reimbursement or documentation from Bank of America establishing the Council's entitlement to the funds. During the Department's investigation, Clark stated that he viewed the additional funds as a "settlement" for the incident. Clark claimed that he attempted to return the funds to the bank but was unable to obtain instructions from bank representatives on how to do so and that the current Council 170 Treasurer would not comply with returning the funds.

In addition to the alleged financial malpractice, on September 18, 2020, East Vice President Grace Kestle, along with most locals within Council 170, requested that AFGE National conduct a special election for the positions of Council 170 Executive Vice President, Secretary, and West Vice President. Previously, in March 2020, Clark had appointed Donald Billman as Council 170's Executive Vice President. The request called for AFGE National to immediately conduct a special election of the Council, stating that the locals did not trust Council 170 to conduct the special election fairly and without bias. A week later, Clark convened a special election investigation committee and, in November 2020, Clark denied the request. Through the investigation committee, he determined that several of the locals requesting the special election were not in good standing and their representatives were not credentialed to request a special election.

Following both the unauthorized wire transfer and the refusal to hold a special election, on December 17, 2020, AFGE National President suspended Clark by letter which listed multiple charges against Clark. On December 18, 2020, unbeknownst to Council 170 or AFGE National, Clark unilaterally signed a Memorandum of Agreement with the Defense Contract Management Agency, reducing officer representation time from 100% to 20%. On December 20, 2020, Clark resigned as President of Council 170. Donald Billman, the appointed Executive Vice President, then assumed the role of Acting President. However, in a letter dated December 23, 2020, AFGE National President Kelly informed Council 170 of the imposition of trusteeship. Kelly cited "loss of leadership" as the basis for establishing the trusteeship in accordance with Article IX, Section 5(b)(4) of the AFGE National Constitution. He explained that due to the council's failure to conduct a special election as requested, Billman's appointment as Executive Vice President may be invalid. Thus, Billman would be ineligible to assume the office of President. Without a valid Executive Vice President, the council had no officer capable of filling the President vacancy.

This breakdown in the council's leadership jeopardized correcting financial malpractice, assuring the performance of duties of bargaining representatives, restoring democratic procedures and otherwise carrying out the legitimate objects of AFGE. Based on these findings, the trusteeship was imposed for an allowable purpose under section 302 and was presumed valid for 18 months from its imposition.

The LMRDA and the Department's regulations state that a trusteeship must be established in conformity with the procedural requirements of the labor organization's constitution and bylaws and authorized or ratified after a fair hearing. 29 U.S.C. §§ 462, 464(c); 29 C.F.R. §§ 458.26, 485.28. A trusteeship established in conformity with such requirements and authorized or ratified after a fair hearing is presumed valid for a period of 18 months from the date of its establishment. 29 U.S.C. § 464(c); 29 C.F.R. § 458.28.

Article IX, Section 5(b)(4) of the AFGE Constitution prescribes the procedures for imposing an expedited trusteeship. An expedited trusteeship process may apply in situations where there is confirmed loss of leadership. Under these procedures, the National President must remove incumbent officers and give notice of the imposition of trusteeship to the constituent locals of the council within five days, providing the time, date, and place of the trusteeship hearing. AFGE National Constitution, Art. IX, Sec. 5(b)(5). The hearing must take place within 60 days. *Id.* The trusteeship must end within 12 months. *Id.* at Art. IX, Sec. 5(b)(7).

In his December 23, 2020 letter informing the council of the imposition of trusteeship, AFGE National President Kelly stated that a separate notice with the date and location of the trusteeship hearing would be provided. That notice was provided on February 12, 2021 and the hearing occurred on February 25, 2021, each of which was beyond the respective five and 60-day timeframes set out in the AFGE National Constitution. Importantly, AFGE National did not terminate the trusteeship until April 28, 2022 – a year and four months past the imposition of the trusteeship on December 23, 2020. Although sixteen months would have ordinarily fallen within the presumption of validity, it exceeded the AFGE National Constitution’s deadline of twelve months. Nevertheless, even if there was a violation with respect to administering the trusteeship in accordance with the Constitution, AFGE filed an LM-16 Trusteeship Report with the Department asserting that the trusteeship had been terminated by the restoration of the autonomy of the subordinate labor organization. Accordingly, allegations concerning the validity of the trusteeship are moot. *See Vars v. Int’l Bhd. of Boilermakers*, 320 F.2d 576, 577 (2d Cir. 1963) (holding that a claim alleging improper imposition of a trusteeship becomes moot when the trusteeship is lifted).

In regard to the claim that the hearing was unfair, the complaint alleged that the panel did not question AFGE National’s evidence, but heavily scrutinized Council 170’s evidence; the panel did not recognize several of Council 170’s objections; and the panel did not follow proper procedures. The Department reviewed the hearing recording and confirmed that the hearing was fair. The panel provided both sides an equal opportunity to present their case. The panel allowed both parties to present their argument, provide witnesses, and cross-examine witnesses. The facts do not support the allegation of an unfair hearing. Therefore, there was no violation.

For the reasons set forth above, we are closing the Department’s file on this matter.