U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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April 9, 2013

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor on February 4, 2013, alleging that a violation of the election provisions of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), as made applicable to the elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the rerun election for president conducted January 10, 2013, by Local 476, American Federation of Government Employees (AFGE).

The Department of Labor conducted an investigation of your allegation. As a result of our investigation, the Department has concluded, with respect to your allegation, that there was no violation of the LMRDA.

You alleged that the decision by AFGE National President J. David Cox to prohibit you from serving concurrently as Local 476 president and Council 222 president violated the LMRDA because it was contrary to the plain language of article VII, section 6 of the Council 222 constitution. That provision reads as follows:

> To be qualified as a candidate for Council office, an individual must be a member in good standing of an affiliated local; must be a member of an AFGE local for one year immediately preceding the closing of the nomination process; and must not be a member in any labor organization not affiliated with the AFL-CIO. **Constituent Local Presidents may be candidates for council President, provided that, if s/he is elected as Council President, s/he resigns as a Local President within six (6) months of election as Council President.**

You ran for and were elected president of Council 222 on June 11, 2012. You were at that time president of Local 476. You stated that you resigned as Local 476 president on November 27, 2012, to abide by the constitutional provision quoted above. Subsequently, in a rerun election on January 10, 2013, you were elected president of Local 476.

AFGE did not permit you to take office as president of Local 476. By letter to you on January 10, 2013, Cox explained that, "[i]n accordance with Article VII, Section 6, you may not hold the office of Local 476 President and Council 222 President at the same time. You may choose to hold one position or the other, but not both. In the event that you have been elected President of Local 476, you are required to choose one position or the other, but you cannot hold both."

You allege that Cox's interpretation of the constitutional provision is erroneous because the language "is both specific and plain: It refers to sitting Local Presidents who subsequently are elected Council President. It does not address the reverse situation, that of council President who is subsequently elected to the Local office."

It is well settled that a union's interpretation of its constitution and bylaws is entitled to deference. *See, e.g.*, *Reich v. Int'l Alliance of Theatrical Stage Emps. & Moving Picture Mach. Operators*, 32 F.3d 512, 515 (11th Cir. 1994). Department of Labor regulations provide that "[t]he interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable." 29 C.F.R. § 452.3. Thus, a union's interpretation will be upheld if it is consistent, made by the responsible union official, and not clearly unreasonable. The Department's investigation revealed that all three requirements were met in this case.

First, there is no allegation that the union has interpreted the provision inconsistently. At its convention in June 2008, Council 222 unanimously adopted the amendment (the quoted sentence shown in bold on page 1 of this letter) to article VII, section 6 of the Council 222 constitution. The AFGE National Executive Council approved the amendment in October 2011. You and the union agree that the present situation is the first time since the provision took effect that Council 222 has elected a local president as council president. Thus, this is the first opportunity the union has had to apply this provision. Nevertheless, as discussed below, since the adoption of the amendment in 2008, the union has not placed any interpretation on the provision other than that it prohibits the council president from concurrently serving as a local president.

Second, the interpretation you challenged was provided by the responsible union official. Article II, section 3 of the Council 222 constitution specifies that, "[c]onsistent with the AFGE National Constitution, the AFGE National President shall ensure that all provisions of this Constitution are met, and shall take necessary action to do so." As noted above, National President Cox, the responsible union official, provided the interpretation of the provision that you contested. Further, Cox's interpretation is

consistent with that of Council 222 Executive Vice President Carolyn Federoff, who drafted the amendment, and of other officers of Council 222.

Finally, the union's interpretation of the amendment is not clearly unreasonable. The interpretation is supported both by pragmatic considerations and by clear evidence of the intended meaning of the provision.

Pragmatic considerations of the duties of the two offices show that the union's interpretation is not clearly unreasonable. The investigation confirmed that the offices of local president and council president both place significant demands on the officeholders. Article IX of Council 222's constitution outlines the duties of the council president, which include "function[ing] as the presiding officer of this Council," "exercis[ing] supervision over the affairs of the Council," "presid[ing] at Council Conventions and meetings of the Executive Board, sign[ing] all documents pertaining to her or his office," "serv[ing] as delegate ex officio to any and all conventions or caucuses to which this Council is allowed representation," and "hir[ing] and fir[ing] employee(s)." Article VI, section 3 of Local 476's constitution lists the general duties of the local president as follows:

> exercis[ing] general supervision over the affairs of the local and see[ing] that other officers comply with the responsibilities of their office and constitutional duties; comply[ing] with the National and Local Constitutions; keep[ing] the membership apprised of the goals and objectives of the Federation; serv[ing] as an ex-officio member of all committees; automatically serv[ing], by virtue of office, as a local delegate to district caucuses, council meetings, the National convention, and such other meetings participated in by this local as the local may be entitled; presid[ing] at all local meetings; and sign[ing] all documents pertaining to the office.

In addition, section 10 of Local 476's bylaws identifies several other roles that the local president must fulfill, including serving "as Regional Vice President of the HUD Council in accordance with the Council Constitution" and "as principal Local 476 representative." As officers of Council 222 explained in a January 17, 2013, letter to Cox, the amendment to the constitution protects Council 222's interests, specifically "the interest of the Council in having a full time Council President." Given the substantial commitments that the offices of local president and council president require, it is not clearly unreasonable for the union to interpret article VII, section 6 of the Council 222 constitution as prohibiting holding both offices simultaneously.

Further, there is clear evidence that the union's interpretation of the provision is consistent with the meaning intended to be given to the provision and is, therefore, not

clearly unreasonable. As noted above, delegates to Council 222's June 2008 convention voted unanimously to adopt the amendment to article VII, section 6 of the constitution. To introduce that amendment, the following resolution, submitted by Federoff, was distributed to the delegates prior to the convention:

> Whereas, the position of Council President is a full time position; and
>
> Whereas, the position of Local President demands a certain level of attention to meet representational and fiduciary responsibilities; and
>
> Whereas, we do not want the Council President to be distracted from Council duties by Local President responsibilities;
>
> Now therefore be it resolved, that the following change in bold [as reproduced on page 1 of this letter] be made to the Council Constitution: . . .

The resolution was titled "Convention Resolution to prohibit the Council President from concurrently serving as a Local President." Thus, the intended meaning of the contested provision is clear and is consistent with the union's interpretation.

You stated that you, as a delegate to Council 222's June 2008 convention, voted to adopt the provision in question. You also acknowledged that there may have been discussion about the intended meaning of the provision. However, you argued that the language of the amendment "is both specific and plain" and that it "must be understood as written."

Standard canons of construction are applicable to the determination of whether a union's interpretation of its constitution is clearly unreasonable. *See, e.g.*, *Int'l Alliance of Theatrical Stage Emps.*, 32 F.3d at 515 ("In interpreting a labor union's constitution, both the union and the court should follow the settled rules of statutory construction."). It is an accepted interpretive principle that the clear language of a provision governs. However, language cannot be understood in isolation but must be read in context. *See, e.g.*, *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (invoking "the cardinal rule that a statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context") (citation omitted); *see also Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892). Here, the language of the provision as a whole does not dictate the interpretation you advance. Federoff and other officers of Council 222 emphasized that the one-sentence amendment in question appears within a section of the constitution that "sets forth the qualifications to be a candidate for Council office." They explained that the requirements of this section do not cease to have effect once a candidate is nominated; "[r]ather, these are qualifications to remain in office." Therefore, just as the council president must, for example, continue to "be a member in

good standing of an affiliated local," he or she must also limit any tenure as a local president to six months.

Further, even if the meaning of a provision appears clear based on its plain language, the interpretation is to be rejected if it would result in absurdity. The Supreme Court has consistently held that "[n]o rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences." *United States v. Brown*, 333 U.S. 18, 27 (1948); *see also Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 453–54 (1989); *Holy Trinity*, 143 U.S. at 459; *United States v. Kirby*, 74 U.S. 482, 486–87 (1868). In this case, it would be absurd for the union to apply this qualification requirement only to a local president running for election as council president and not to a council president running for election as local president. As AFGE Attorney [redacted] explained, if the amendment were construed on its face without reference to its purpose, it might not prevent the local president from resigning and then running again for local president at any point while being council president. It would be illogical to force the local president to resign from office but then allow him or her to be in the position to get back into office immediately. Where, as here, the plain language yields an absurd situation that "makes it unreasonable to believe that the [enacting body] intended" such results, *Holy Trinity*, 143 U.S. at 459, evidence of contrary intent is relevant. As discussed above, there is clear evidence that the provision in question was intended to prohibit the council president from concurrently serving as a local president, regardless of the order in which the elections occur. The union's interpretation is not clearly unreasonable.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA, and I have closed the file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: J. David Cox
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