U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
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Covington, Louisiana 70433

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Issue Date: 19 December 2006

CASE NO. 2005-SOC-3

IN THE MATTER OF:

A complaint alleging denial of due process Under 29 C.F.R. Section 458.2(a)(5)(iii) of the Standards of Conduct Regulation by

JOHNNY FRIDAY

Complainant

v.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1920 (AFGE LU 1920),

and

JEANETTE WILSON, President of AFGE LU 1920

Respondents

APPEARANCES:

JAY R. BEATTY, ESQ.

For the Complainant

HARRY DAWSON, ESQ.

For the Respondents

BEFORE: LEE J. ROMERO, JR.
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. §§ 7101, et seq. (CSRA), the Labor-

Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481, et seq. (LMRDA), and the Standards of Conduct Regulations (SOC) issued pursuant to the CSRA at 29 C.F.R. Parts 457-459.

On April 13, 2004, Complainant filed a complaint with Employment Standards Administration, Office of Labor-Management Standards (DOL), alleging that Respondents deprived him of his rights to a full and impartial hearing under 29 C.F.R. § 458.2(a)(5)(iii) of the SOC Regulations. On September 7, 2005, DOL notified Respondents of the complaint filed by Complainant. After an investigation, DOL found there was a reasonable basis for the complaint and referred this matter to the Office of Administrative Law Judges (OALJ) for a formal administrative hearing.

On September 28, 2005, Associate Chief Judge Thomas M. Burke notified the parties that the case was being docketed for a hearing. After responses from the parties, this matter was referred to the undersigned for formal hearing. On March 7, 2006, a Notice of Hearing issued setting a hearing date of July 18, 2006, in Austin, Texas. At the hearing, five ALJ exhibits were received along with 13 exhibits proffered by Complainant (CX) and five exhibits by Respondents (RX). This recommended decision is based solely on the testimony presented at the hearing (Tr.) and the exhibits admitted into evidence. Post-hearing briefs were received from both parties on or before the due date of September 28, 2006.

Issue

Whether Respondents violated the rights of Complainant under 29 C.F.R. § 458.2(a)(5)(iii), [Bill of Rights of members of labor organizations; Safeguards against improper disciplinary action], during the process of expelling Complainant from AFGE LU 1920 by failing to afford Complainant a full and fair hearing.

Complainant's Contentions

Complainant contends that his due process rights were violated by Respondents "in a multitude of ways."

He asserts that the investigating committee went beyond its scope of investigation by adding additional charges or findings which violates the AFGE National Constitution.

He argues the trial committee was not properly elected by the local membership at the next regular membership meeting after the charges were filed against him or at a special meeting called for the purpose of electing a trial committee in contravention of Article XVIII, Section 4 of the AFGE National Constitution.

He contends that the trial committee met on at least six occasions before his trial to review and discuss documents and testimony related to his charges and discuss his innocence or guilt.

He avers that the membership meeting conducted on November 6, 2003, was not in accordance with the local or National Constitution.

Lastly, Complainant contends he was not accorded any notice of his appeal rights when formally notified of the Local union's actions and his expulsion from membership.

Complainant seeks a remedy to include lost wages, travel expenses, "damages" from a lost job opportunity, emotional stress and embarrassment in the amount of $50,000.00 and attorney's fees.

Respondents' Contentions

In post-hearing brief, Respondent argues that the investigative committee provided a copy of their report to the trial committee which "met in private several times examining the investigative report." No decision was made prior to trial regarding Complainant's guilt or innocence. Respondent claims that there is no evidence that Complainant's right to a fair trial was diminished or that the trial committee would have reached a different conclusion in the absence of the "early review of the investigative committee report."

Respondents contend that Complainant has failed to show how he was harmed by the local's application of the disciplinary process and their actions should be sustained "even if it is found procedural errors did occur."

Findings of Fact and Conclusions of Law

On April 4, 2003, Respondent Jeanette Wilson, President of AFGE LU 1920, filed charges against Complainant, Ex-President of LU 1920, for "conduct unbecoming an officer, engaging on gross neglect of duty or conduct constituting misfeasance or malfeasance as an officer or representative of a local, committing any act of fraud, embezzlement, mismanagement to one's own use any money, property, or thing of value belonging to the Federation or any affiliate and refusing, failing or neglecting to deliver . . . in accordance with the Constitution and bylaws . . . a full account of all monies, properties, books, and records for examination or audit."

Specifically, President Wilson accused Complainant of removing "computer equipment and several boxes with financial reports and other pertinent information that belonged to AFGE Local 1920" and cashing a $22,000.00 bond without approval of the membership in March 2002. (RX-2).

An investigative committee was formed by the "executive board" to investigate the charges. (Tr. 125-126). On June 27, 2003, James Hill, the Chairman of the Investigative Committee, sent Complainant a "Notice to Appear" for an interview scheduled for July 7, 2003. (RX-1). On July 30, 2003, Complainant was sent a "Certified Letter of Charges" by Chairman Hill. (CX-3).

On August 1, 2003, the Investigative Committee entered "findings" that Complainant had engaged in the specific charges filed by President Wilson. The Investigative Committee also included "Additional Findings" that "a large amount of money was spent . . . on a monthly basis for office supplies and unknown merchandise" and "some Stewards were being paid in large amounts for mileage," without further validation. (RX-4).

On August 7, 2003, President Wilson chaired a membership meeting of LU 1920. "New Business" included the "need to elect a Trial Committee." Seven individuals were nominated of which two accepted their nominations. A motion was made to postpone the election and to call a special meeting for the purpose of selecting the Trial Committee which was seconded and "passed." (CX-1). No special meeting was held. (Tr. 141-142).

On September 4, 2003, President Wilson again chaired a general membership meeting at which normal business was "set aside" to elect a Trial Committee to hear the charges against Complainant. Seven individuals were nominated and accepted nominations on the Trial Committee; two alternates were also nominated. A motion was made to close nominations which was seconded and passed. The meeting minutes do not reflect any vote by the membership to "elect" the nominated individuals. (CX-2).

On October 17, 2003, the Trial Committee conducted a trial on charges filed by President Wilson against Complainant. The Trial Committee found Complainant guilty of the charges filed against him by President Wilson. The Trial Committee recommended that Complainant be suspended from union membership for 13 years, with reinstatement after repayment of $3,744.36; that he not be allowed to hold office in the union for life either by election, appointment or selection; and that he not be allowed to hold any position of leadership in the union for life. No findings were entered with respect to the additional charges included by the Investigative Committee. (CX-8, pp. 2-3).

On November 6, 2003, a general membership meeting was called at which normal business was "set aside" for the Trial Committee to report their findings. Complainant was provided an opportunity to speak before the membership regarding the charges. Complainant made a motion to conduct a vote on the Trial Committee recommendations by secret ballot, which was seconded, but failed. President Wilson and Complainant were excluded from the meeting during the membership vote which resulted in the acceptance of the Trial Committee's recommendations. (CX-5).

On November 24, 2003, the General Counsel of AFGE acknowledged receipt of Complainant's appeal of his disciplinary action, dated November 17, 2003, to the National Executive Council. (CX-12). On the same date, the General Counsel also informed President Wilson of the Complainant's appeal. (CX-13).

On December 4, 2003, President Wilson notified Complainant that his membership was cancelled effective December 8, 2003, pursuant to the membership vote to accept the Trial Committee's recommendations. No appeal rights were communicated to Complainant. (CX-8, p. 1).

On December 15, 2003, Complainant advised the General Counsel that his appeal letter included attached records and tapes and the final decision of the LU 1920 did not contain any appeal rights. (CX-10).

Discussion

Title VII of the CSRA sets forth minimum conduct requirements for labor organizations in the federal sector and prescribes procedures and principles which the Assistant Secretary of Labor will utilize in enforcing union standards of conduct.

The safeguards afforded against improper disciplinary action provide that the member be: (i) served with written specific charges; (ii) given a reasonable time to prepare his defense; and (iii) afforded a full and fair hearing. 29 C.F.R. § 458.2(a)(5). It is undisputed that Complainant received specific charges against him and had reasonable time to prepare his defense to such charges. (Tr. 9-10).

As noted at the hearing, my focus is on the issue of whether Complainant received a full and fair hearing before the union. It is not to address the merits of the various charges filed against Complainant which is a matter of internal union discipline. The U.S. Supreme Court has instructed courts to review findings of union disciplinary proceedings with deference. International Brotherhood of Boilermakers, Iron Shipbuilders, Forgers and Helpers, AFL-CIO v. Hardeman, 401 U.S. 233, 246 (1971). However, a predicate of judicial deference to union discipline is compliance with fundamental due process required by the SOC regulations. Myers v. Affiliated Property Craftsman, Local No. 44, 667 F.2d 817, 821 (9th Cir. 1982).

The pivotal issue is whether the process of Complainant's expulsion was legal, regardless of cause.

In a hearing concerning an alleged Bill of Rights violation, the complainant shall have the burden of proving the allegations of his complaint by a preponderance of the evidence. 29 C.F.R. § 458.79. The Courts have recognized that one violation of due process rights is sufficient in itself to determine that the accused has not been afforded an impartial and fair hearing. Falcone v. Dantinne, 420 F.2d 1157 (3d Cir. 1969); Myers v. Affiliated Property Craftsman, Local No. 44, supra.

In Falcone, the Court observed "what constitutes a full and fair hearing in a union disciplinary proceeding must be determined from the traditional concepts of due process of law, the common law precepts governing the judicial control of internal union affairs and the sparse case law since the adoption of the LMRDA." 420 F.2d at 1165.

"Due process is flexible and calls for such procedural protections as the particular situation demands in order to minimize the risk of error." Tillman v. Lebanon County Correctional Facility, 221 F.3d 410, 421 (3d Cir. 2000).

Violations of Due Process

The Additional Charges

The Investigative Committee included two additional charges during the investigation of the charges filed by President Wilson. Complainant testified that the two additional allegations were not filed by President Wilson. (Tr. 64). The "AFGE Committee of Investigation Guidelines and Procedures Manual," which provides instructions and responsibilities to members of an investigative committee, admonishes the committee to:

> . . . investigate the actual charges as filed, and may not go beyond the scope of those charges. That is, it cannot go on a "fishing expedition" to find new improprieties not included in the charges as filed.

(CX-6, p. 3).

Clearly, the Investigative Committee exceeded its charter to investigate **only** the charges filed against Complainant by President Wilson. Such action violates the mandate and spirit of the AFGE Investigation Guidelines and Procedures Manual to conduct the investigation with fairness, consistency and justice. (CX-6, p. 1).

Although the Trial Committee entered no findings with respect to the two additional charges, the alleged wrongdoing may have arguably adversely impacted or influenced the Trial

Committee's opinion and decision. The record is devoid of any notification to Complainant regarding the ultimate status/findings of the two additional charges, i.e. whether sustained or dismissed.

I find and conclude that the LU 1920 Investigative Committee went beyond its limited scope by expanding the charges for which it was constituted to investigate and by doing so violated Complainant's safeguards as a member of a labor organization to be confronted with specific charges.

The "Election" of the Trial Committee

Article XVIII, Section 4 of the AFGE National Constitution provides, in pertinent part:

> The trial shall be conducted . . . by a trial committee composed of not less than three nor more than seven members of the local . . . The trial committee shall be elected by the membership of the local at the **next regular meeting after the charges** have been filed **or** at a special meeting called for that purpose to be held **not less than five days** after a copy of the charges have been filed with the local.

(CX-7, p. 48).

On August 7, 2003, the first regular membership meeting was held after the charges were preferred against Complainant by the Investigative Committee. Sam Tucker testified that efforts to select a trial committee failed because less than three members accepted nominations. (Tr. 21-22). He made a motion to have a special meeting for the purpose of electing a trial committee which was seconded and the motion passed. He does not recall a special meeting been called. (Tr. 22-23).

President Wilson testified that the trial committee was not selected until September 2003 because they "did not have enough members at the August meeting to select" a committee. (Tr. 134). She stated that there was not a "quorum" present at the August 2003 meeting. (Tr. 135). A special meeting for the sole

purpose of selecting a trial committee would have required a mass mailing to all members including retirees. President Wilson affirmed that she had an "option, according to the constitution, of going to the next meeting or to a special meeting." (Tr. 135).

President Wilson clarified a "quorum" in this instance as "there was (sic) people there [at the August meeting] but nobody wanted to be on the trial committee." (Tr. 136). There were enough members present to conduct a meeting, a meeting was held, but "we did not have enough people to elect for the trial committee." (Tr. 137). Only two of the seven nominees accepted a position on the trial committee. (Tr. 141). She acknowledged that the only authority to constitute a trial committee is set forth in the National Constitution, as noted above. (Tr. 139).

I conclude the record supports a finding that the question of a "quorum" was in actuality an issue of not having enough members (at least three) who were willing to accept a nomination on the Trial Committee.

President Wilson confirmed that a special meeting was not scheduled within five days of the filing of the charges even though the membership passed a motion to hold a special meeting for the purpose of electing a trial committee. (Tr. 142, 144).

Although the "Model Local By-Laws" set forth in Appendix B of the National Constitution provides that special meetings may be called by the President, two-thirds vote of the executive board or upon written petition of at least ten percent of the membership, President Wilson acknowledged that none of the foregoing requirements were met. (Tr. 146). However, the record is devoid of the total number of members of LU 1920 and the total number of members who actually voted on the motion to schedule a special meeting.

On September 4, 2003, the Trial Committee was constituted at the membership meeting. Members were nominated to serve on the committee. Nominations were closed by motion which passed. The membership did not vote on the members nominated for the Trial Committee. (Tr. 24-25). According to President Wilson, a vote by members to close the nomination process constituted an election or appointment by acclamation of the members nominated for the Trial Committee. (Tr. 127). Linda Ryan, who served on the Trial Committee, testified that she was nominated for the committee, but no votes were taken for the committee nominations. (Tr. 28). Sam Tucker also testified that no vote

was taken on the members nominated for the Trial Committee. (Tr. 25). President Wilson confirmed that she could not recall if a vote was taken on the nominees because "there was so much confusion in the meeting that I can't say yes or no." (Tr. 133).

I find and conclude that the Trial Committee was not properly elected by the membership. The National Constitution is clear that a committee shall be elected by the membership at the next regular meeting, in this instance August 7, 2003, **or** at a special meeting called for the purpose of electing a committee. Neither event occurred in this matter. Contrary to Respondent's argument, the constitution does not provide for a third option to permit election at a subsequent general membership meeting.

Moreover, Appendix B of the constitution, upon which Respondents rely, specifically mandates that Robert's Rules of Order Revised, (1996),[1] shall govern the proceedings of all meetings of the local. (CX-7, p. 91). The fundamental principal of Robert's Rules is that the conduct of all business is controlled by the general will of the whole membership-the right of the deliberate majority to decide. Robert's Rule 66 which governs "Nominations and Elections" requires when nominations are completed the assembly proceeds to the election of those nominated. See also Rule 26, "Motions relating to Nominations" regarding Closing and Reopening Nominations, which notes it is customary to make a motion to close nominations **before proceeding to an election** of nominees. Robert's Rules at Article VIII governing "Voting" does not provide for vote by "acclamation," but allows general consent or unanimous vote **after an election of nominees** if motion is made by the nominee with the greater number of votes. See Rule 48.

In view of the foregoing, I find and conclude that LU 1920 did not follow its own procedural by-laws and accordingly, did not properly elect the trial committee which in itself violated Complainant's right to a fair trial.

The Pre-Trial Meetings

Ms. Ryan, the only Trial Committee member to testify in this matter, provided uncontradicted testimony that the Trial Committee met on six or seven occasions at which documentation was provided in the form of a notebook containing letters and

[1] http://www.roberts rules.org/

statements from various officers relating to the alleged conduct of Complainant. The members of the Trial Committee discussed the documentation at every meeting and reached a consensus that Complainant was guilty of the charges filed against him. She testified "it was preconceived that he was going to be found guilty of these charges to me." (Tr. 29-30).

Ms. Ryan further credibly testified that the Chairman of the Trial Committee would present the notebook at each meeting and discuss a subject "like . . . did he come to the union office after the election" or whether he had the "union's money." (Tr. 31). She testified that the charges against Complainant were discussed at all of the meetings held before the trial of Complainant. The Chairman informed the committee members that they were at the pre-trial meetings to discuss Complainant's guilt or innocence. (Tr. 33).

Ms. Ryan was present at Complainant's trial at which the same documentation was presented for consideration along with witness statements. (Tr. 38-39). No vote was taken after the trial nor was there any discussion of the charges or evidence offered at the trial. (Tr. 43). Two or three weeks after the trial, the committee met at which the Chairman announced Complainant was guilty of a lesser figure than that charged and had typed her findings requesting the members to sign. Ms. Ryan did not sign the finding. (Tr. 40, 44). Four of the five members signed the recommended findings. (Tr. 41). The Chairman concluded after reviewing the figures that the $22,000.00 amount set forth in the charge should be $3,000.00 and "some change." (Tr. 44). Ms. Ryan testified that no testimony was introduced at the trial of a lesser figure than charged. (Tr. 42).

Contrary to the foregoing, the AFGE Hearing Manual for Internal Disciplinary Trials provides that the purpose of the trial is to draw out the complete facts involved in the charges. The committee is to receive only a copy of the charges, and "does not look into the facts of the case before the trial starts." (CX-9, p. 4). Prior to the trial, the Trial Committee meets for the **sole purpose** of discussing the conduct of the trial and the functions and responsibilities of each member, and to define the procedure for the committee in preparing its findings and recommendations. (CX-9, p. 6).

An essential element of a fair hearing within the concept of due process is the impartiality or openmindedness of the trial body. Falcone, at 420 F.2d 1166; see also Goodman v. Laborers' International Union of North America, 742 F.2d 780, 783 (3d Cir. 1984). The prejudgment by a single decisionmaker in a tribunal of limited size [here a committee of five] is sufficient to taint the proceedings and constitute a denial of the right to a full and fair hearing. Id., at 784.

Based on the credible record evidence, I find and conclude that the Trial Committee engaged in pre-trial discussion of the charges and evidence against Complainant contrary to its own disciplinary manual and violated Complainant's safeguards to a fair hearing. Arguably, the members reached preconceived opinions of Complainant's guilt or innocence **before** the trial was convened which failed to provide Complainant with an impartial hearing and prejudiced his right to a fair trial. See also Knight v. International Longshoremen's Association, 457 F.3d 331, 342-344 (3d. Cir. 2006).

The November 6, 2003 Membership Meeting

The consensus of the testimony reflects that this meeting was crowded. Ms. Ryan testified "there was (sic) members that weren't members" present; "it was lots of people there. More than normal." She noted "there were people I hadn't seen ever." (Tr. 51-52). Ms. Ryan testified that membership is normally verified by badge or ID card and there was a sign-in sheet present. By a show of hands, the membership voted to accept the recommendations of the Trial Committee. (Tr. 52).

Complainant testified that he and President Wilson were excluded during the membership vote. However, after the vote was taken and while he was returning to the membership meeting, he heard Vice-President Edwards, who chaired the meeting in the absence of President Wilson, ask all the members to be sure and sign-in. (Tr. 71-72). He observed no verification of membership of the persons present at the meeting prior to the vote being taken. (Tr. 74, 90-91). Complainant testified that he did not know if any person who was not a member voted at the membership meeting. (Tr. 91-92).

President Wilson also testified that there "was always so much chaos that it was kind of hard to keep track of everything that was going on" at the membership meetings. (Tr. 129). At the November 6, 2003 meeting there "was a lot of commotion going on and there was a lot of people there in that room, so I could

not watch everything that was going on." (Tr. 149). She stated there were no persons in the meeting who were not members because an employee list and roster of members were being used to check people off. (Tr. 130). The sergeant-at-arms was verifying membership of attendees. (Tr. 148).

President Wilson testified that the subject of the November 6, 2003 meeting was not publicized before the meeting to her knowledge. (Tr. 149-150). She stated that the meetings were always well-attended "when we had special things come up where we needed to get something passed or people would come in and make sure." (Tr. 150). This meeting was special because "it was the vote to vote Mr. Friday out of the local." The subject of the meeting was communicated "by word of mouth." Id.

Article XVIII, Section 7 of the National Constitution provides that:

> "The local by a **majority vote of its members** voting may fine, suspend, or expel the accused from membership . . .

(CX-7, p. 51).

In view of the credible evidence of record, I find and conclude that no verification of membership was conducted at the November 6, 2003 meeting and that consequently, ineligible or non-members may have voted to accept the Trial Committee's recommendations. There has been no showing on the basis of the instant record that a **majority of members** voted to accept the Trial Committee's recommendations to expel Complainant from union membership. It is axiomatic that this failing violates Complainant's safeguards against improper disciplinary action.

No Appeal Rights

Article XVIII, Section 8 of the National Constitution provides, in pertinent part:

> The accused and those who preferred the charges shall be notified by registered or certified mail of the decision of the local. The notice to the accused shall be mailed to the last known address and **shall advise the accused of available appeal rights**.

(CX-7, p. 51).

The Hearing Manual For Internal Disciplinary Trials also mandates that the charged party be informed of the local's decision and **appeal rights** by certified mail. (CX-9).

On December 4, 2003, President Wilson notified Complainant that his membership was cancelled effective December 8, 2003, pursuant to the results of the Trial Committee and the vote of the membership on November 6, 2003. No appeal rights were included. (CX-8).

Complainant credibly testified that he was never advised in writing of his appeal rights. (Tr. 105-106, 108). President Wilson further acknowledged that she did not advise Complainant of his appeal rights when she notified him of his expulsion from membership. (Tr. 152).

Notwithstanding the foregoing, Complainant filed an appeal with AFGE on December 15, 2003. However, his filing an appeal does not excuse the failure of Respondents to advise him of his appeal rights pursuant to the National Constitution. I find the absence of notification of appeal rights is a fundamental violation of Complainant's safeguards against improper disciplinary action.

Based on the foregoing and the entire record, I find and conclude that Respondents violated Complainant's fundamental rights and safeguards to a full and fair hearing in violation of the standards of conduct.

Remedies

The LMRDA at 29 C.F.R. § 458.88(a) provides that my recommendations include "the remedial action to be taken." Complainant seeks as a remedy reinstatement of his union membership and its privileges to hold office and positions of leadership as well as damages for lost wages, travel expenses, loss of a job opportunity, emotional stress and embarrassment in the sum of $50,000.00 and attorney's fees.

There is no guidance established on what type of remedy is appropriate when a union member is improperly expelled by a union because he did not receive a full and fair hearing. In LaDieu v. American Federation of Government Employees, Local 1812 and American Federation of Government Employees, AFL-CIO, Case No. 1997-SOC-2 (ALJ Nov. 1, 1999), one of my colleagues turned to the federal courts for guidance. He determined that

two different remedies are considered: a remand to the lower court with instructions that the court order the union to conduct a new disciplinary trial; or a determination that reinstatement is the proper remedy where the Bill or Rights provision of the LMRDA was violated and the union member expelled. See Rosario v. Amalgamated Ladies Garment Cutter's Union, Local 10, I.L.G.W.U., 609 F.2d 1228, 1243 (2d Cir. 1979); Kuebler v. Cleveland Lithographers & Photo Union Local 24-P, 473 F.2d 359, 364 (6th Cir. 1973)(To ensure reinstatement remained effective, the Court permanently enjoined the union from taking any further action to punish or retaliate against the union member for the activity that formed the basis for the expulsion).

Based on the instant record, I am persuaded and find that reinstatement rather than re-trial is the appropriate remedy. Given the pervasiveness of the violations in this matter, re-trial of alleged events from 2002 would only serve to further divide the parties, continue the ongoing litigation and provide no assurance that safeguards would be adhered to in another hearing proceeding. Accordingly, I find the appropriate remedy is the reinstatement of Johnny Friday as a member of Local Union 1920 with all rights and privileges thereof as of December 8, 2003, when his membership was cancelled.

To insure reinstatement remains effective, Local 1920 and President Wilson may not take any further disciplinary action against Johnny Friday based on the charges filed by President Wilson or the additional charges lodged by the Investigative Committee. Local 1920 may not assess any back union dues against Johnny Friday. Johnny Friday will only owe dues from the effective date of this recommended decision.

Due to the publicity and notoriety given to this case, a public announcement of the outcome of Johnny Friday's appeal to Department of Labor is warranted. Within twenty days after the effective date of the decision of the Assistant Secretary of Labor, Local 1920 will post a notice to its members, for a period of thirty days, on its bulletin board and website, if any, stating that the Assistant Secretary of Labor has determined that during the proceedings of the Investigative Committee, the October 17, 2003 trial and the November 6, 2003 general membership meeting, Johnny Friday was not afforded an

opportunity to a full and fair hearing, in violation of Title 29 Code of Federal Regulations, Section 458.2(a)(5)(iii), Safeguards against improper disciplinary actions, and that Johnny Friday will be reinstated to membership in the union effective December 8, 2003.

Regarding Complainant's request for damages in lost wages, travel expenses, loss of a job opportunity, emotional stress and embarrassment in the amount of $50,000.00, I find the record fails to establish that Complainant suffered damages as requested. Complainant has not shown that he lost wages as a result of his expulsion from the union.[2]

Complainant testified that he incurred mileage expenses while driving 440 miles to and from the DOL investigation in Dallas, Texas and the formal hearing in Austin. Texas. (Tr. 122).

His claim for loss of a job opportunity is speculative at best since he was one applicant among others and was never promised or offered a job as a national representative. (Tr. 78-81, 111).

His request for punitive or exemplary damages in the form of emotional stress and embarrassment is not supported by any record evidence upon which a determination of the existence or value of those alleged losses could be calculated and, furthermore, there has been no showing that Respondents' decision to expel Complainant was motivated either by malice or bad faith.

In Hall v. Cole, 412 U.S. 1, 4, 93 S.Ct. 1943, 1946 (1973), the Supreme Court observed in a LMRDA case that although the traditional American rule ordinarily disfavors the allowance of attorneys' fees in the absence of statutory or contractual authorization, federal courts, in the exercise of their equitable powers, may award attorneys' fees when the interest of justice so require. The Court concluded that an award of attorneys' fees to a successful litigant in an action under the LMRDA falls squarely within the traditional equitable power of federal courts to award such fees whenever "overriding considerations indicate the need for such a recovery." Id. at 9. The Court noted "it is simply untenable to assert that in

[2] The regulations at 29 C.F.R. § 458.72(c) provide for official time for witnesses participating in a formal hearing before this agency. Complainant testified that he scheduled official time off for his investigation before DOL as well as his preparation time for the instant hearing. (Tr. 123).

establishing the bill of rights under the Act Congress intended to have those rights diminished by the unescapable fact that an aggrieved union member would be unable to finance litigation." Id. at 13-14.

I find, consistent with Hall v. Cole, that a reasonable attorneys' fee should be awarded in favor of Counsel for Complainant. Respondents' reliance on Riordan v. District #2, American Federation of Government Employees, Case No. 1993-SOC-2 (ALJ August 19, 1993), for a discussion of "the issues of fees and sanctions which are applicable to the instant procedure," is misplaced. The complaint in Riordan was dismissed and there was no discussion regarding fees and sanctions.

Recommended Order

1. Local Union 1920, American Federation of Government Employees and Jeanette Wilson, President of AFGE Local Union 1920, shall reinstate Johnny Friday to membership with all rights and privileges in Local Union 1920, effective December 8, 2003, without back dues penalty. Local Union 1920, its officers and agents are enjoined from taking further disciplinary action against Johnny Friday on the basis of the charges on which Johnny Friday was tried on October 17, 2003.

2. Within twenty (20) days of the decision of the Assistant Secretary of Labor, Local Union 1920 shall post on its bulletin board and website, if any, in a conspicuous manner, a notice addressed to its members announcing that the Assistant Secretary of Labor has determined that during the proceedings of the Investigative Committee, the October 17, 2003 trial and the November 6, 2003 general membership meeting, Johnny Friday was not afforded an opportunity to a full and fair hearing, in violation of Title 29 Code of Federal Regulations, Section 458.2(a)(5)(iii), Safeguards against improper disciplinary actions, and that Johnny Friday will be reinstated to membership with all rights and privileges in the union effective December 8, 2003. Such notice will remain posted for a period of thirty (30) days.

3. Local Union 1920, AFGE shall pay Complainant's claim of mileage for 280 miles in 2004 and 160 miles in 2006 at the prevailing federal witness mileage rate as established at 28 U.S.C. § 1821 for automobile expense at a rate of $.375 cents and $.445 per mile, respectively.

4. Counsel for Complainant is hereby allowed twenty (20) days from the date of service of this Recommended Decision and Order to submit an application for attorneys' fees with a complete statement of the extent and character of the necessary services performed, the normal billing rate charged for such services and the hours of work devoted to each category of work. A service sheet showing that service has been made on all parties, including the Complainant, must accompany the application. Parties have twenty (20) days following receipt of such application within which to file any objections thereto.

5. Within sixty (60) days of the Decision of the Assistant Secretary of Labor, Local 1920 shall report to the Assistant Secretary that the above remedial action has been accomplished.

ORDERED this 19th day of December, 2006, at Covington, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge

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, exhibits, and transcript to the Assistant Secretary of Labor, who will either affirm or reverse the Recommended Decision and Order. 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 Assistant Secretary of Labor at the following address:

Assistant Secretary for Employment Standards
U.S. Department of Labor
Room S-2321
200 Constitution Avenue, NW
Washington, D.C. 20210

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 Assistant Secretary of Labor may, at his or her discretion, without comment, adopt the Recommended Decision and Order, in which event the findings, conclusions and recommendations in the Recommended Decision and Order automatically become the decision of the Assistant Secretary of Labor, after appropriate notice of the Assistant Secretary of Labor's action to the parties.