



**CHIEF, DIVISION OF ENFORCEMENT,  
OFFICE OF LABOR-MANAGEMENT  
STANDARDS, UNITED STATES  
DEPARTMENT OF LABOR,**

**ARB CASE NO. 13-037**

**ALJ CASE NO. 2012-SOC-002**

**DATE: March 20, 2013**

**COMPLAINANT,**

v.

**LOCAL 2419, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

***Paul M. Igasaki, Chief Administrative Appeals Judge; Joanne Royce, Administrative Appeals Judge; and Luis A. Corchado, Administrative Appeals Judge;***

### **FINAL DECISION AND ORDER**

This case arises under Title VII of the Civil Service Reform Act of 1978,<sup>1</sup> the Labor-Management Reporting and Disclosure Act,<sup>2</sup> and the Standards of Conduct Regulations.<sup>3</sup> On April 30, 2012, the Complainant filed a complaint with the Department

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<sup>1</sup> 5 U.S.C.A. §§ 7101-7135 (West 1996) (CSRA).

<sup>2</sup> 29 U.S.C.A. §§ 401-531 (West 1998) (LMRDA). As applicable to this case, 29 C.F.R. § 458.3 incorporates the LMRDA labor organization reporting requirements of 29 C.F.R. Part 403 (among others) to labor organizations subject to the requirements of CSRA.

<sup>3</sup> 29 C.F.R. Parts 457-459. On February 5, 2013, the Department of Labor issued a Final Rule amending 29 C.F.R. Part 458 (among others). 76 Fed Reg. 8022. The Standards of Conduct Regulations found at 29 C.F.R. §§ 458.66(b) – 458.93 establish the enforcement procedures applicable to complaints, such as the one filed in this case, involving an alleged violation of 29 C.F.R. § 458.3. Particularly relevant to this appeal, the Department amended 29 C.F.R. §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, 458.92, and 458.93 to substitute the Administrative Review Board for the Assistant Secretary of the Employment Standards Administration for purposes of reviewing decisions issued by

of Labor's Chief Administrative Law Judge (ALJ), for a judgment declaring that American Federation of Government Employees, Local 2419, has violated the LMRDA's financial reporting requirements, which are made applicable to federal-sector labor organizations covered by the CSRA through 29 C.F.R. §458.3 and directing the Respondent to file such delinquent financial reports and cease and desist from violating these reporting requirements.<sup>4</sup> On May 3, 2012, the Chief ALJ issued a Notice of Docketing stating that in accordance with 29 C.F.R. § 458.68, the Respondent shall file an Answer within twenty days after service of the Complaint.<sup>5</sup>

The Respondent did not file an answer to the Complaint as the regulation requires.<sup>6</sup> Accordingly, on August 3, 2012, the Chief ALJ issued an Order to Show Cause why a default judgment should not be entered in the matter and the material facts alleged in the Complaint should not be adopted as his findings of fact.<sup>7</sup> The Respondent did not file a response to the Order to Show Cause.<sup>8</sup>

The Complaint in this case alleges, in relevant part:

That Respondent has violated its financial reporting requirements under Title II of the LMRDA which requires that labor organizations annually file with the Department financial reports detailing their receipts, assets, liabilities,

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Department Administrative Law Judges on complaints initiated under 29 C.F.R. § 458.66(b), (c), such as the complaint in this case *See also* Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378-69380 (Nov. 16, 2012).

<sup>4</sup> Complaint at 1, 4.

<sup>5</sup> Notice of Docketing at 1.

<sup>6</sup> Order to Show Cause at 1.

<sup>7</sup> *Id.* In support of this Order, the Chief ALJ cited to 29 C.F.R. § 6.16(c). Because these regulations were enacted to implement the Service Contract Act, 41 U.S.C.A. §§ 6701-6707 (Thomson Reuters 2011), it is unclear why the Chief ALJ cited to them. Nevertheless the Standards of Conduct Regulations similarly provide, "Failure to file an answer to or plead specifically to any allegation in the complaint shall constitute an admission of such allegation." 29 C.F.R. § 458.68(b) and "The admission of all the material allegations of fact in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge without further hearing shall prepare his recommended decision and order in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint." 29 C.F.R. § 458.71. The Chief ALJ properly cited to the relevant regulations in his Recommended Decision and Order.

<sup>8</sup> Recommended Decision and Order at 1 (R. D. & O.).

salaries, loans, and other disbursements “in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year.” 29 U.S.C. § 431(b). . . .

Respondent is, and has been at all times relevant to this matter; a federal sector local labor organization within the meaning of section 701 of the CSRA; it is required under section 201(b) of the LMRDA to file financial reports (Form LM-3) annually; and it failed to file such report for the fiscal years ending December 31, 2009 and December 31, 2010.<sup>[9]</sup>

Citing 29 C.F.R. §§ 458.68(b) and 458.71, the Chief ALJ found that the Respondent admitted each allegation in the Complaint when it failed to file an answer and that it waived its right to a hearing. Given the Respondent’s admissions, the Chief ALJ adopted as his proposed findings of fact the material facts alleged in the Complaint.<sup>10</sup>

The Chief ALJ then found that the Complainant was entitled to the relief sought, with one exception. Because the Complainant cited to no authority in support of the request that the Chief ALJ order the Respondent to pay the costs of the action, he declined to do so.<sup>11</sup> With that one exception, the Chief ALJ entered an order granting the relief sought in the complaint, which recommends that:

- A. The factual allegations set forth in Complainant’s Complaint be adopted and incorporated by reference in any Order of the [Administrative Review Board];
- B. Respondent be ordered to file an LM-3 report for the fiscal year ending December 31, 2009;
- C. Respondent be ordered to file an LM-3 report for the fiscal year ending December 31, 2010;
- D. Respondent be ordered to cease and desist from violating LMRDA , 29 U.S.C. § 431(b) [Section 201(b)];

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<sup>9</sup> R. D. & O. at 1-2.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

- E. Respondent be ordered to inform its members of the course and outcome of this litigation by all means possible, including posting copies of all documents filed in this matter in a prominent position on all bulletin boards used to display information about the Union, and mailing a letter to all Union members informing them of the filing of the complaint and all orders issued in this matter.<sup>[12]</sup>

Pursuant to the LMRDA's implementing regulations, the Chief ALJ transferred the R. D. & O. and the case record to the Administrative Review Board to issue a final order.<sup>13</sup> The parties were permitted to file exceptions to the R. D. & O. with the Board within fifteen days of service of the decision upon them.<sup>14</sup> Neither party filed exceptions with Board.

The Standards of Conduct Regulations provide that in the absence of the timely filing of exceptions, the Board may, at its discretion, adopt, without discussion, an Administrative Law Judge's Recommended Decision and Order; in which case the ALJ's Recommended Decision and Order, upon notice to the parties, becomes the decision of the Board.<sup>15</sup> Accordingly, we give notice to the parties that we have exercised our discretion in this case to adopt the Chief ALJ's R. D. & O. with one minor modification. We will permit the Respondent to e-mail notification to Union members informing them of the filing of complaint and orders in this matter, rather than notifying them by mail as provided in the R. D. & O. Other than this one modification, the R. D. & O. is our final decision in this matter.

**SO ORDERED.**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> *See* 29 C.F.R. § 458.88(b).

<sup>14</sup> 29 C.F.R. § 458.88(c).

<sup>15</sup> 29 C.F.R. § 458.91(a).