



November 9, 2020



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on May 6, 2020. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), occurred in connection with the election of officers of the American Federation of State, County, and Municipal Employees (AFSCME), Council 93, which was first run on November 9, 2019, and rerun on January 19, 2020. You previously filed a complaint relating to the November 9, 2019 election, which was investigated and closed with the issuance of the Department's May 22, 2020 Statement of Reasons. The present complaint relates to the January 19, 2020 rerun election.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that, with respect to each of your allegations, no violation occurred which may have affected the outcome of the election.

You alleged that you never protested the first, second, and third place Executive Board seats for the DDS Region in the November 9, 2019 election, and therefore you do not believe that there should have been a rerun election for those seats. You also stated that you objected to the rerun "because that would have resulted in [REDACTED] being ineligible to hold office." Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Under Section 402(c) of the Act, the sole remedy when a violation may have affected the outcome of an election is for the previous election to be declared void and a new election to be run under the supervision of the Secretary. 29 U.S.C. § 482(c). A union's internal decision to rerun an election when potential violations have been raised through the Union's grievance process may be one way for the Union to ensure a fair election.

You filed a protest with the Union and a complaint with the Department alleging multiple violations during the November 9, 2019 election. Department investigators, investigating your present complaint, spoke with Council 93 President Charles Owen who stated that your previous complaint raised a number of concerns regarding the

accuracy of the ballot tally and the ability of observers to view both recounts. Both AFSCME Counsel [REDACTED] and Council 93 Attorney [REDACTED] advised Council 93 that the best way to eliminate any doubt about the fairness of the election was to order a rerun. Consistent with the purposes of the LMRDA, OLMS allows a union significant discretion in conducting their internal affairs, including the decision to rerun an election when a protest is filed. Here, Council 93 had valid reasons, based on your protest, to conclude that a rerun of the election for the DDS Executive Board seats was the appropriate course of action. Both the observer issue and the discrepancies with the multiple recounts would have affected all four Executive Board seats, not just the fourth place seat. Given the degree of deference afforded unions when conducting their own internal affairs and the reasonableness of Council 93's decision based on the facts of this case, there was no violation.

You also alleged that paid staff of Council 93 advocated against your candidacy and for the candidacy of others during the rerun election. You stated that you saw President Owen ask delegates if they were going to vote while seated at a table during a training. Section 401(g) of the LMRDA prohibits any money received by a labor organization from being used to promote the candidacy of any person in an election covered by Title IV. 29 U.S.C. § 481(g). Section 401(c) of the LMRDA requires the union to provide adequate safeguards to ensure a fair election. During its investigation, the Department interviewed several witnesses, including President Owen. Owen denied campaigning against anyone during the rerun and no other witness provided evidence of any Council 93 officer or staff member campaigning for or against any candidate on union time. There was no violation.

Additionally, you alleged that the allotment of district representatives on the Executive Board of Council 93 is grossly disproportionate to the number of dues paying members in each district, in violation of the AFSCME Constitution. You raised the same allegation with regard to the November 9, 2019 election; the allotment of representatives was unchanged for the rerun election on January 19, 2020. OLMS fully investigated this allegation during the course of resolving your first complaint and found no violation, as stated in the May 22, 2020 Statement of Reasons. That finding remains unchanged.

Finally, you alleged that Council 93 staff were permitted to be in the room during the ballot tally of the November 9, 2019 election. As stated above, no violation was found with regard to this allegation in the May 22, 2020 Statement of Reasons, which addressed your allegations with regard to that election. That finding remains unchanged.

Your remaining allegation was determined to be not within the scope of Title IV of the LMRDA. Accordingly, the allegation was not include in the Department's investigation.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,



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