



May 14, 2021

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on September 28, 2020, alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA). You alleged that violations occurred in connection with the regularly scheduled election of union officers conducted by the American Federation of State, County and Municipal Employees (AFSCME) on August 28, 2020.

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

You first alleged that Local 121 delegate [REDACTED] submitted a delegate credential form that contained errors but that he was nevertheless permitted to vote. You alleged that other delegates were not given an opportunity to fix their credentials and vote. You also alleged that [REDACTED] failed to submit proof that he was the local's automatic delegate and that he did not follow the proper procedure, including submitting a block voting form, to allow him to carry all of the votes for his local.

Section 401(c) of the LMRDA requires, in pertinent part, that a union provide adequate safeguards to ensure a fair election, and section 401(f) requires a union to conduct convention elections of officers in accordance with the union's constitution and bylaws. 29 U.S.C. §§ 481(c), (f). The Department's interpretive regulation at 29 C.F.R. § 452.128 provides as follows:

A local union may elect fewer delegates than it is permitted under the union constitution as long as the local is allowed to determine for itself whether or not it will send its full quota of delegates to the union convention. The delegates

present from a local may cast the entire vote allotted to that local if this is permitted by the constitution and bylaws.

The Department's investigation established that [REDACTED] was the elected president of Local 121 and thus was an automatic delegate to the convention pursuant to that local's bylaws. Although the local's vice president, recording secretary, and secretary-treasurer were also automatic delegates, the local's executive board, of which those four officers are members, voted to send only [REDACTED] to the convention to carry all of Local 121's votes. The investigation disclosed that the union's constitution and bylaws do not prohibit that practice, and thus it was permissible under the LMRDA for the local to decide that [REDACTED] would cast all the votes allotted to it. Further, no block voting form was necessary because the union's convention rules required such a form only if a local had two or more delegates seated at the convention and wished to designate one delegate to cast the local's votes. The investigation further established that, like Local 121, other local unions whose delegate credential forms contained errors were given the opportunity to update their information, resubmit their credentials, and vote. There was no violation.

You also raised several allegations that other locals' delegates should not have been seated because they were not properly elected. First, you alleged that [REDACTED], a Council 79 staff member and a member of Local 850, was not properly elected as Local 850's delegate. Among other deficiencies, you alleged that Local 850 failed to provide members with the requisite notice of the delegate election. Second, you alleged that [REDACTED], the president of Local 871, should not have been seated as that local's delegate because, you alleged, his term of office had expired before the convention and he had not been elected as a delegate. Third, you alleged that [REDACTED], a member of Local 2862 who served as a delegate for her own local as well as for Local 2009, was not properly elected by the membership of Local 2009 to serve as its delegate. Finally, you alleged that other locals' delegates may also have been improperly selected and therefore should not have been permitted to cast the votes allotted to those locals.

The LMRDA requires that where, as here, delegates are to nominate and elect officers, those delegates must be elected by secret ballot among the members. 29 U.S.C. § 481(a). Elections required to be held by secret ballot must be preceded by a notice of election mailed to members at their last known home address not less than fifteen days prior to the election. 29 U.S.C. § 481(e). Article IV, section 12 of the AFSCME Constitution permits proxy voting by a delegate who is not a member of the local union but requires that "the membership of the local shall first vote on the question 'shall this local elect as a convention delegate a person who is not a member of the local union.'"

The Department's investigation disclosed that [REDACTED] was properly elected as a delegate by the Local 871 membership on June 22, 2020, and therefore was properly

seated at the convention. However, the investigation could not establish that [REDACTED] was properly elected to serve as the delegate for Local 850 (167 votes). There was conflicting testimony as to whether [REDACTED] selection in August 2020 as Local 850's delegate was by election or appointment, and the union failed to provide any documentation that Local 850 had held a delegate election, such as an election notice mailed to the members or minutes from a membership meeting at which a delegate election had occurred. The Department also reviewed similar situations with regard to other locals for which the credentials report indicated delegates were elected by the executive board. The investigation could not establish that [REDACTED], selected in August 2020 to be Local 3879's delegate (49 votes), and [REDACTED] selected in May 2020 to be Local 167's delegate (263 votes), were properly elected by the members of their respective locals. In both cases, as with Local 850, there was conflicting testimony regarding whether a delegate election had been held, and the union was unable to supply any documentation that these two locals had held delegate elections.

With regard to Local 2009, the Department's investigation established that [REDACTED] was appointed by the local president to carry the local's votes, and therefore [REDACTED] was not properly elected by the membership of Local 2009 to serve as its delegate (115 votes). The Department also reviewed similar situations with regard to other locals for which proxy votes were cast. The Department's investigation established that Local 1695 member [REDACTED] cast proxy votes for both Local 2400 and Local 2832. [REDACTED] was properly chosen by the membership of Local 2400 to cast the proxy votes for that local. However, the president of Local 2832 assigned that local's votes to [REDACTED] during a meeting, and therefore [REDACTED] was not properly chosen by the membership of Local 2832 to cast proxy votes for that local (59 votes).

The investigation disclosed, however, that the delegates from all of these locals carried a total of 653 votes. The smallest vote margin, in the race for Southeastern Legislative District International Vice President, was 1,794 votes. Therefore, even if violations did occur in Locals 167, 850, and 3879, in addition to the proxy voting violations in Locals 2009 and 2832, the violations could not have affected the outcome of any race.

Finally, you raised allegations in your complaint that had not been timely and properly raised in your protest to the union. Section 402(a) of the LMRDA requires that a member exhaust the remedies available under the union's constitution and bylaws before filing a complaint with the Secretary of Labor. 29 U.S.C. § 481(a). These allegations were not properly exhausted and were not investigated by the Department.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its file in this matter.

Sincerely,



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Chief, Division of Enforcement

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