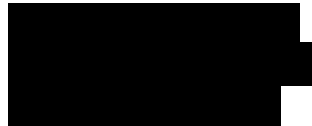


U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143



March 17, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) dated May 12, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (“LMRDA” or “Act”) as made applicable to 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 election of officers conducted by the American Federation of Government Employees, AFL-CIO (AFGE), Local Union 1546 (“Local 1546” or “union”) on December 18, 2019 and subsequent runoff election on January 8, 2020.

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

You alleged that Local 1546 did not provide all candidates with an opportunity to mail campaign literature because the candidates were never properly informed about who was on the election committee. Section 401(c) of the Act requires that the union comply with all reasonable requests of any candidate to have campaign literature distributed by the union, at the candidate’s expense. 29 U.S.C. § 481(c). The investigation found that the process for requesting campaign mailings was discussed in front of all the candidates at the November 20, 2019 nomination meeting. No candidate requested or was denied the opportunity to complete a campaign mailing distributed by the union. Although Local 1546 replaced two of its election committee members during the election period, all candidates, including yourself, were aware that Chavez was the Election Chairperson and could have made campaign mailing requests to him. There was no violation of the Act.

You alleged that the union allowed incumbent President Maggio to use a membership list to campaign which was not given to other candidates. Section 401(c) of the Act requires that the union refrain from discrimination in favor of or against any candidate

with respect to the use of lists of members. 29 U.S.C. § 481(c). The investigation discovered no evidence that Maggio or any other candidate used a membership list to campaign in the 2019 election. The Department found that Maggio campaigned through her personal Facebook page and at worksites, which was permissible for all candidates. There was no violation of the Act.

You alleged that incumbent President Maggio used the local's money to disseminate campaign materials including a tri-fold flyer, a photograph used in campaign material, and a memorandum. Additionally, you alleged that incumbent President Maggio used an employer town hall as an opportunity to campaign. Section 401(g) of the Act prohibits the use of union or employer funds to promote any candidate for union office. 29 U.S.C. § 481(g).

The investigation found that Local 1546 mailed a tri-fold flyer to its members in August 2019, which discussed current events and contained three photographs of incumbent President Maggio. The Department confirmed that Local 1546 routinely mails a tri-fold twice a year to its members. A review of the tri-fold disclosed that it contained no mention of the election, and that it did not include any campaigning by any candidate. The tri-fold did include one photograph which was later used in a campaign flyer by Maggio. When interviewed, a union member stated that he took the photograph used in the tri-fold and campaign flyer with his personal cell phone while on personal time – he then sent the photograph to Maggio.

Local 1546 also distributed a November 6, 2019 three-page memorandum that discussed implementation of presidential executive orders affecting federal unions. This memorandum included a single reference to Maggio's experience but did not mention the election or Maggio's candidacy. Additionally, in early December 2019, the Defense Logistics Agency held a mandatory town hall meeting and invited Maggio to speak on behalf of Local 1546 to all employees, including members of Local 1546 and other employees represented by the union. This speech discussed the effect of recent executive orders on federal unions and answered questions from members. The Department surveyed members who were present at the town hall meeting and received seven responses; none of these members reported that Maggio campaigned during her speech or while answering questions. The local president speaking at employer town halls was also a regular established practice. There was no violation of the Act.

You alleged that Local 1546 failed to provide members an opportunity to nominate and elect candidates. Specifically, you alleged that members did not receive the nomination and election notices because Local 1546 failed to ensure that members' addresses were updated and did not resend notices returned as undeliverable. You also alleged that members were not notified of or given the opportunity to submit an absentee ballot. Section 401(e) of the Act requires that members be given a reasonable opportunity to

nominate candidates. 29 U.S.C. § 481(e). The Act, however, does not prescribe specific procedures for notifying members of the nomination of candidates, and unions may use any method that is reasonably calculated to reach all members in good standing. *See* 29 C.F.R. § 452.56. Section 401(e) further requires unions to mail an election notice to its members' last known home address not less than fifteen days prior to the election and gives every member the right to vote. 29 U.S.C. § 481(e).

The investigation revealed that Local 1546 mailed the nomination notice to its membership on November 6, 2019, and additionally posted both the nomination and election notices on union bulletin boards located at all worksites where members were employed. Local 1546 distributed the nomination notice in a manner that was reasonably calculated to reach all members in good standing. *See* 29 C.F.R. § 452.56. There was no violation regarding the nomination notice.

On December 2, 2019, Local 1546 mailed the election notice to the membership. The election notice included details for both the December 18 primary election and the January 8 runoff. The election notice also included instructions for members to request an absentee ballot. No member requested or was denied an absentee ballot for either the December 2019 election or the January 2020 runoff election. The membership list was frequently updated by the treasurer and members were reminded to provide correct addresses. Out of approximately 800 election notices mailed, 23 were returned as undeliverable. Local 1546 confirmed that it took no steps to obtain better addresses and resend notices to any of its members whose notices were returned as undeliverable.

The Department surveyed the 23 members whose election notices were returned and 15 members responded, confirming that they knew about the election. Of the remaining 8 members who did not respond to the Department's survey, three voted in both elections and one voted only in the January 2020 runoff election. Thus, only four members whose election notices were returned may not have known about the election. To the extent that Local 1546 violated the LMRDA regarding the mailing of the election notice, the maximum effect was four votes. In the December 18 election, there was a 52-vote margin between the candidates with the second- and third-highest number of votes for president, the only contested race. Therefore, four votes could not have altered which candidates entered the runoff election. The January 2020 runoff election was won by a vote margin of six votes. Therefore, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that challenged ballots were not resolved before the tally and that non-members were allowed to vote. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Section 401(e) of the Act states that each member in good standing is entitled to one vote. 29 U.S.C. § 481(e). The investigation found that three challenged ballots for the December 2019 election were cast by eligible voters and should have been counted. Even when

combined with the four votes discussed above in connection with the election notice, seven votes could not have affected which candidates entered the January runoff election, because there was a 52-vote margin in the December primary election. During the January 2020 runoff election, nine voters were added to the eligibility list by hand and allowed to vote. A review of the records confirmed eight of the nine voters had completed Form 1187 to join the union and thus were eligible. One voter was not a member and was thus ineligible to vote. Even when combined with the four votes discussed above in connection with the election notice, five votes could not have affected the outcome of the January 2020 election, which was decided by six votes. Therefore, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that incumbent President Maggio interfered with voting by blocking the entranceway to the Lathrop polling site and enticing new members to sign up with bonuses. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Section 401(e) of the Act states that every member in good standing is entitled to vote. 29 U.S.C. § 481(e). Section 401(g) prohibits the use of union or employer funds to promote any candidate for union office. 29 U.S.C. § 481(g). The Department of Labor regulation at 29 C.F.R. § 452.111 prohibits campaigning within a polling place and allows unions to forbid campaigning within a specified distance of a polling place. In addition, the *AFGE Election Manual* disallows campaigning within fifty feet of the polling location. *See AFGE Election Manual, Step 22.*

The investigation revealed that Maggio campaigned at least fifty feet from the polls. During the investigation, you admitted that Maggio was actually beyond the fifty-foot requirement and did not block the entranceway to the polling site. A local steward signed up a few new members on the day of the election and, as the incumbent president, Maggio signed the 1187 forms allowing the new members to join the union. However, there was no evidence that anyone was promised a bonus for signing up and voting for a particular candidate. There was no violation of the Act.

You alleged that because there were two voting sites with the same membership list, members could have voted twice. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Section 401(e) of the Act provides that every member in good standing is entitled to one vote and that those votes be counted. The investigation found that while there were two voting sites with the same membership list, the election committee members regularly called each other during the day to ensure no one voted at both locations. The union's records revealed that there were three voters checked off as having voted on both lists for the December 2019 election. However, the records also confirmed that each of the three members only voted once. No member voted at two locations for either election. There was no violation of the Act.

You alleged, regarding the integrity of election processes, that: there was no sign-in register for observers or election officials; voters were not required to sign the voter eligibility list; and the ballot was flawed. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election, 29 U.S.C. § 481(c), which has been interpreted to mean that the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. Section 401(e) of the Act mandates that every member in good standing is entitled to one vote. 29 U.S.C. § 481(e).

The investigation revealed that Local 1546 did not provide observer sign-in registers or badges for election officials and observers, but there was no evidence that such measures were required to ensure a fair election in this case. The absence of these measures did not cause voter confusion or other procedural problems and there was no evidence of ballot tampering. Regarding the voter eligibility list, members at the Lathrop polling site initialed next to their names on the list, while at the Tracy polling site the election committee highlighted members' names after verifying their identification, but members were not required to sign or initial.

The Department found no anomalies on the voter eligibility lists, and the number of voted ballots matched the number of members checked off the lists. Regarding the ballot design, the Department discovered that the ballot for the December 2019 election instructed the voter to mark a box next to the name of the candidate; however, there were no boxes next to any candidate's name on the ballot. Nevertheless, the investigation found no evidence that any voter was confused by this error, and a review of the ballots showed that all voters successfully indicated their preferred candidate by making an "x" next to or circling the name of their choice. Accordingly, there was no violation of the Act.

You alleged that members who had just signed a Form 1187 to join the union but had not yet paid dues were improperly allowed to vote. Section 401(e) of the Act states that each member in good standing is entitled to one vote. 29 U.S.C. § 481(e). The investigation found that AFGE's long-standing policy is that membership in good standing takes effect when a responsible officer of the local accepts an employee's signed dues withholding form (SF-1187). Thus, an eligible employee may become a member only minutes before being permitted to vote. *AFGE Election Manual*, Step 9. Neither the AFGE nor Local 1546 constitutions conflict with this policy. There was no violation of the Act.

You alleged that Local 1546 opened the polls late and should have kept the polls open an equal amount of time past the scheduled closing time. Section 401(e) of the Act provides that every member has the right to vote. 29 U.S.C. § 481(e). The investigation confirmed that the polls opened later than 6:00 a.m., the opening time listed in the election notice. The election committee reported they were unable to transport the ballots in time for the scheduled opening, which caused

the Tracy polling site to open at 6:30 a.m. and the Lathrop polling site to open at 7:00 a.m. At both sites, polling hours were extended to compensate for the time lost due to delay. The polls were open at both worksites either before or after every shift members worked on election day, with sufficient time for members to vote. The investigation found no evidence that any members were prevented from voting due to the delayed opening. There was no violation of the Act.

You further alleged that the union failed to protect members' right to cast a secret ballot by failing to provide dividers to prevent members' votes from being seen by others. Section 401(b) of the Act provides that every local labor organization elect its officers by secret ballot. 29 U.S.C. § 481(b). Section 401(c) of the Act requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation found that, at the Lathrop polling site, members voted in a large room with two tables for voting on opposite sides of the room. The election committee's table was set up just inside the doorway to the room. After receiving a ballot, the voter continued into the room, voted, and then deposited their ballot in a ballot box as they exited through another door. Only two voters were allowed in the room at a time. At the Tracy polling site, there were two rooms where members could cast their ballot. The first room had no dividers but only one member at a time was allowed in to vote. The other room had two cubicles at which members could vote, and only two members were allowed in at a time. There was no violation of the Act.

You also alleged that incumbent President Maggio and her observer intimidated other candidates and their observers to prevent them from adequately viewing the tally. Section 401(c) of the Act ensures that adequate safeguards to ensure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). Additionally, observers should be placed such that they do not compromise, or give the appearance of compromising, the secrecy of the ballot; candidates can serve as their own observers. *See* 29 C.F.R. § 452.107(a). Section 401(e) provides that members have the right to vote for or otherwise support the candidates of their choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the union or any member thereof. 29 U.S.C. § 481(e). The investigation found that Maggio did not instruct observers where to stand during the tally, though the election committee did tell observers that they could not get too close to the table. The election committee was responsible for advising the observers where they could stand. At the tally, multiple candidates were too close to the table and Maggio's observer, [REDACTED], asked them to step back so he could see. Candidates were also allowed to inspect the ballots after the tally to confirm they were properly stacked. There was no evidence that Maggio or her observer intimidated other candidates or observers. There was no violation of the Act.

You alleged that the election committee failed to account for all the ballots and failed to properly publish the election results pursuant to the AFGE and Local 1546

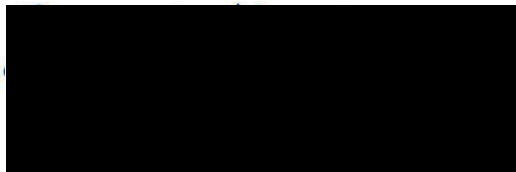
constitutions. Section 401(e) of the Act requires that the votes cast by members of each local labor organization shall be counted, and the results published, separately; that the election officials preserve for one year the ballots and all other records pertaining to the election; and that the election shall be conducted in accordance with the constitution and bylaws of the organization. 29 U.S.C. § 481(e).

The AFGE and Local 1546 constitutions require that the election committee total the ballots, including all challenged, voided, and validly cast ballots. Local 1546's ballot tally certifications for both elections included all the required totals. The Department's investigation confirmed the tally results were accurate; however, the union did not maintain records of the total number of ballots printed. In addition, three unresolved challenged ballots from the December 2019 election were included in the union's reconciliation but were not in the records. Local 1546's failure to maintain a record of the total number of ballots printed and to retain all unresolved challenged ballots was a violation of the Act but the Department found no evidence that it could have affected the outcome of the election.

You made several other allegations that, even if true, would not constitute violations of Title IV of the LMRDA or that were not properly exhausted. 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. § 482(a). As a result, these allegations are not properly before the Secretary and are dismissed.

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 closed the file on this matter. You may obtain a review of this dismissal by filing a request for review with the Director of OLMS within 15 days of service of this notice of dismissal. The request for review must contain a complete statement of facts and the reasons upon which your request is based. See 29 C.F.R. § 458.64(c).

Sincerely,

A large black rectangular redaction box covering the signature of the sender.

Chief, Division of Enforcement

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