



March 30, 2022

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on May 24, 2021. The complaint alleged 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 the Civil Service Reform Act (CSRA) of 1978, 5 U.S.C. § 7120, and 29 C.F.R. § 458.29, occurred in connection with the regular triennial election of officers for the American Federation of Government Employees (AFGE) Local 2142, conducted on January 15, 2021.

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

Use of Union Funds

You alleged that the incumbents used union funds to promote their candidacy by campaigning on official time and using union resources. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate for office. 29 U.S.C. § 481(g). The term "union or employer funds" is broadly construed and can include the use of union or employer resources and facilities as well as union- or employer-paid time. 29 C.F.R. §§ 452.76, 452.78. Campaigning incidental to regular union business or legitimate work assignments is not a violation of Section 401(g). *Id.*

First, you alleged that incumbent officers Cook and Bean campaigned throughout the Corpus Christi Army Depot (CCAD) while working on 100% official time. The Department's investigation found that CCAD employees receive employer-paid morning breaks. Accordingly, campaigning on morning breaks constitutes campaigning on employer-paid time. The investigation affirmed your allegation that Cook and Bean campaigned on employer time during morning breaks. Additionally, the investigation revealed that incumbent officer Villareal campaigned while on employer time. When interviewed, incumbent officers Cook, Bean, and Villareal admitted that they campaigned during morning breaks. The investigation found that

Cook and Villareal campaigned to approximately fourteen total employees and left flyers supporting their slate in the breakroom. The investigation also revealed that Bean campaigned on the work-floor while on break. The candidates' campaigning violated section 401(g) because it occurred on employer time.

Section 402(c)(2) of the LMRDA provides, however, that an election will only be overturned where a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). The investigation revealed that opponent slate candidate Osburn, who was elected as Chief Steward, also campaigned on employer time. Osburn admitted that he campaigned to several members throughout the CCAD while in leave status over the course of three days. Like the incumbent candidates, Osburn campaigned in employee breakrooms. Osburn also placed the opponent slate's campaign flyers at employee workstations during regular work hours. As above, Osburn's breakroom campaigning constitutes campaigning on employer-paid time because, even though Osburn was on leave, the employees to whom he campaigned were on paid employer time. Additionally, distributing the slate's campaign literature violates Section 401(g) because Osburn's presence at the CCAD was not incidental to a legitimate work assignment. Thus, to the extent that either slate violated the LMRDA's prohibition against campaigning on employer time, the evidence indicates that these violations were offsetting, and there is no evidence that this activity affected the outcome of the election.

Second, you alleged that the incumbent candidates used the union's color printer, envelopes, and stamps for campaign mailings. The investigation did not substantiate this allegation. The incumbents denied using union supplies for their campaign, stating that candidates purchased the necessary materials with personal credit cards. The investigation confirmed that the incumbents provided the Election Committee Chair with receipts proving that they purchased their campaign materials. There was no violation.

Third, you alleged that the union's former president Weeks used union resources to promote the incumbent slate. Specifically, you alleged that Weeks improperly asked union members for updated addresses on union time, while using his union email, telephone, and computer. When interviewed, you acknowledged that this would not constitute a violation unless Weeks campaigned during his outreach. The investigation did not yield any evidence that Weeks campaigned while updating member addresses. There was no violation.

Failure to Follow the Union's Constitution and Bylaws

You alleged that the election process did not conform to the union's constitution and bylaws because the union president improperly appointed the Election Committee and

the union purposefully delayed the election. Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitutions and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. 29 U.S.C. § 481(e).

First, you alleged that the union's Executive Board never met to appoint the Election Committee by majority vote, as required by the AFGE Local 2142 Bylaws. Moreover, you asserted that the Board fabricated the September 3, 2020 meeting minutes documenting the Election Committee vote. Article V, Section 2 of the AFGE Local 2142 Constitution and Bylaws provides that Election Committee members "shall be selected at the local's discretion, either: (1) By majority vote of the membership of the local in attendance at a membership meeting at least fifteen (15) days preceding the commencement of nomination procedure or; (2) Appointed by the President with the approval by majority vote of the Executive Board at the meeting at least fifteen (15) days preceding the commencement of the nomination procedure." The Department's investigation established that the Executive Board approved then-President Weeks' Election Committee appointments by majority vote on September 3, 2020. A recording of the September 3, 2020 Executive Board meeting memorialized the Election Committee majority vote. This recording corresponded with the typed meeting minutes. There was no evidence that the meeting minutes were fabricated or manipulated. Both the recording and minutes confirm that the Executive Board approved the Election Committee in accordance with Local 2142's Constitution and Bylaws. There was no violation.

Second, you alleged that the union failed to follow its constitution and bylaws when it purposefully delayed the regularly scheduled officer election to January 15, 2021. Specifically, you claim that the union's decision to schedule the election during the holidays, when mail was backlogged and members took leave, made it difficult to campaign, thereby disadvantaging the opponent slate. Article V, Section 7 of the Constitution and Bylaws states that the "[n]omination of officers shall be held in August, and elections and installation shall be held in September triennially-once every three (3) years beginning in 1999." The Department's investigation determined that although the union purposefully delayed the election, the delay impacted all candidates equally. The union delayed the nomination and election of officers due to the Covid-19 pandemic. Members of the opponent slate contacted the AFGE 10th District National Vice President, who instructed AFGE Local 2142 to move forward with the election. The election process began in September 2020. And while campaigning for the January 15, 2021 election occurred throughout the holiday season, when the United States Postal Service was experiencing mail delays and some union members were traveling, these external circumstances disadvantaged all candidates equally. You claim that the incumbent slate was uniquely able to overcome this by campaigning on employer time, but, as discussed above, the Department established that both slates participated in campaigning on employer time. While the union's decision to delay the election until

January 15, 2021 constitutes a technical violation of the local's bylaws and Section 401(e) of the LMRDA, there is no evidence that this violation affected the election outcome.

Disparate Candidate Treatment

You alleged that the incumbent and opponent slates were treated differently throughout the election process. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for office. 29 U.S.C. § 481(c).

First, you alleged that the Election Committee Chair did not charge the incumbent slate the \$100 fee for campaign literature mailing labels but did charge other candidates. The investigation did not substantiate this allegation. The Election Committee Chair stated that he charged each slate \$100 for preparing campaign mailings. The fee included reimbursement for mailing labels taken from the Chair's personal supply. The investigation found no evidence that the Chair used union-purchased mailing labels. The investigation confirmed that the Chair issued a receipt to each slate for payment of the \$100 fee. There was no violation.

Second, you alleged that only incumbent candidates were provided the opportunity to attend New Employee Orientation and sign up union members and that this provided them an opportunity to campaign that was not available to the opponent slate. The investigation found that the incumbents' attendance at New Employee Orientation did not constitute disparate treatment. The investigation confirmed that incumbent slate candidates attended New Employee Orientation, where they recruited and provided a cash bonus to new union members. The New Employee Orientations are usually open to any member but the union made efforts to limit attendance during the Covid-19 pandemic. The opponent slate did not seek permission to attend an orientation. All candidates were provided with newly recruited member information in order to mail campaign literature. Notably, interviews with New Employee Orientation attendees disclosed that the incumbents who presented did not engage in campaigning, either during their presentation or during the subsequent union-catered luncheon. Therefore, there was no violation.

Third, you alleged that the Election Committee allowed the incumbents to mail campaign literature featuring the AFGE logo after candidates had been warned not to use the logo in campaign materials. Specifically, you alleged that the incumbents' brochures contained photographs of candidates wearing AFGE merchandise featuring the AFGE logo. The Department's investigation confirmed that the Election Committee Chair advised candidates not to use the logo. The investigation established that the incumbents' campaign materials featured a photograph of six incumbent candidates wearing AFGE apparel, including three items with the AFGE logo. The investigation also established that the opponent slate used the AFGE logo on its Facebook page. The

investigation found that the opponents had copied the logo from the AFGE official website, and displayed it from May 2020 until December 16, 2020, when the Election Chair asked the opponent slate to remove the logo.

The investigation did not reveal that the slates' campaigns were treated unequally in regard to their use of the union logo. The AFGE Election Manual, dated December 15, 2016, states that "AFGE does not have a policy prohibiting candidates from using the AFGE shield or logo on clearly identified campaign material (such as posters, buttons, and flyers) where it is obvious that the logo does not imply a union endorsement of the candidate." Here, the incumbents' clearly marked campaign materials featured the logo on publicly available union merchandise, and did not create an inference that the union had endorsed the candidates. In contrast, the opponents' use of the official AFGE logo, copied from the AFGE website, risked confusion that the Facebook page was an official union publication or announcement. Accordingly, it was reasonable for the Election Committee Chair to ask the opponents to remove the logo from the Facebook page because, unlike the incumbents' campaign photograph, it was not "obvious that the logo d[id] not imply a union endorsement." There was no violation.

Finally, you alleged that the union discriminated because the opponent candidates were only permitted to inspect the membership list once, before it was updated, while the incumbents had continuous access. The investigation did not find that the Election Committee provided candidates with unequal access to the membership list. The investigation found that both slates were permitted to inspect the membership list at the December 14, 2020 candidates' meeting. There was no evidence that incumbent candidates were provided additional list access, aside from the incumbent treasurer, who was responsible for updating the list as part of his union duties. As the election progressed, both slates continuously received updated member information. There was no violation of LMRDA because each slate received equitable access to the list and regular updates.

Failure to Provide Adequate Safeguards

Your complaint alleged several instances where you claim the union failed to provide adequate safeguards to ensure a fair election, which are required under Section 401(c) of the LMRDA. 29 U.S.C. § 481(c).

First, you alleged that, when the candidates checked for ballots returned as undeliverable, the incumbents possessed updated addresses for twelve union members but only three of those members' ballot packages had been returned. You alleged that the opponents did not receive an explanation for how the incumbents possessed this information. The investigation did not reveal that the incumbents' possession of twelve members' updated addresses resulted from a lack of adequate safeguards. The

investigation found that member addresses were updated throughout the election. Here, the members in question had contacted the union and provided updated addresses after they did not receive election mailings. Incumbent officer Cook prepared two sets of updated address labels and provided them to each slate to ensure equitable campaign outreach. There was no violation.

Second, you alleged that the former union president, and possibly one incumbent, tampered with ballots the morning before the election tally. Specifically, you asserted that the former president's car was at the union hall an hour before his shift began, and that the former president was later seen at the post office. You were not certain whether incumbent officer Bean was also at the union hall at this time. The investigation did not uncover any evidence of ballot tampering. Individuals interviewed attested that the former president was often early for his shift and that he was preparing, and likely mailing, papers for his retirement. The investigation found that all election records, including blank and returned ballots, were secured at the Election Committee Chair's home. Each ballot was outfitted with a security marker that would identify copied ballots. The Department conducted a ballot reconciliation of the ballots printed and ballots mailed and verified that all the ballots were accounted for and fully reconciled. There was no violation.

Third, you alleged that the Election Committee did not secure the ballot box when transporting ballots from the post office to the tally location, leading to a discrepancy between the total ballots received and the total ballots tallied. The investigation confirmed that there was a discrepancy between the total ballots counted at the post office and the tally location, but found no evidence of ballot box tampering. At the post office, the Election Committee manually counted the ballots at least three times, yielding different results. The Committee ultimately agreed that 228 ballots were returned. At the tally location, the Election Committee counted 218 ballots. The Committee had transported the ballots in a sealed and signed paper copy box. There was no indication that the signed tape had been removed during transport. At the tally location, all candidates agreed that human error caused the discrepancy. The investigation did not find contrary evidence. There was no violation.

Failure to Provide Notice of Nominations and Election

You alleged that the union did not adequately notify members of the nominations meeting and election because it did not post hard copies of the meeting or election notices on local bulletin boards. Under Section 401(e), a reasonable opportunity shall be given for the nomination of candidates. 29 U.S.C. § 481(e). Notice of nominations may be given in any manner reasonably calculated to reach all members in good standing. Mailing such notice to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy this requirement. 29 C.F.R. §

452.56. Additionally, Section 401(e) states that an election notice is required to be mailed to each union member at his or her last known home address. The investigation showed that the Election Committee mailed 1,156 nominations notices to union members' last known home address on November 6, 2020. The Election Committee also mailed 1,156 election notices and ballot packages to members' last known home address on December 21, 2020. This alone was sufficient to meet the requirements under Section 401(e). Nevertheless, the investigation showed that the union also posted election and nominations notices on the union's official website, in breakrooms and shops, and on the entry door of the union hall. There was no violation.

Members Denied the Right to Vote and Ineligible Members Permitted to Vote

Additionally, you alleged that the union did not maintain an accurate membership list because the list was not updated before the nominations meeting or compared to remittance reports. Section 401(e) of the LMRDA requires that every member have the opportunity to vote in an election. 29 U.S.C. § 481(e). In furtherance of that goal, unions are required to make reasonable efforts to update members' mailing addresses for the purpose of mailing ballots. The Department's investigation found that the union made reasonable efforts to update the membership list. The investigation did not substantiate your allegation that the union did not consult the remittance list when updating membership information. Rather, the investigation demonstrated that the membership list was regularly updated using the remittance list and union roster. Further, the investigation found that the Election Committee continuously provided candidates with updated member information. The Election Committee received an updated membership list prior to each election meeting, maintained a duplicate ballot request log, and re-mailed forty-five (45) ballots. After the election notices and ballot package were mailed on December 21, 2020, the Election Committee provided each slate with updated member information on at least seven occasions. These constitute reasonable efforts to maintain a current membership list. There was no violation.

You asserted that the union's alleged failure to update the list resulted in members being unaware of the nominations, ballots not being received, and eligible members being denied the right to vote. Specifically, you alleged that the Election Committee did not provide Ignacio Valdez with a ballot upon his request, and that seven other individuals were mailed ballots that were not counted. The investigation did not find that union members were disenfranchised. As explained above, the Election Committee engaged in reasonable efforts to notify union members of the election and continuously updated membership information. The election notice instructed union members on how to request a new ballot and the Election Committee regularly re-mailed ballot packages. The Election Committee acted reasonably when it declined to re-mail a ballot package to Valdez. The investigation confirmed that Valdez requested his ballot the day before the election closed, which did not leave sufficient time for Valdez to receive

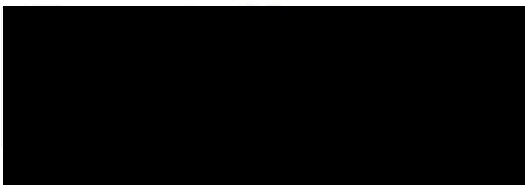
and return the ballot by mail. The investigation also indicated that Valdez had been aware of the union election before his January 14, 2020 request but that he had delayed contacting election representatives. There was no violation.

The investigation also did not identify specific union members who were denied the opportunity to vote. You named seven individuals who were allegedly mailed ballots that were not counted. The Department's investigation confirmed that three of the individuals you identified had ballots counted in the election tally. Additionally, one union member who did not vote in the election could not confirm whether he had mailed his ballot, and two affirmed that they did not mail ballots. The investigation did not uncover any evidence that the other union members named were denied an opportunity to vote. There was no violation.

Finally, you alleged that ineligible union members were permitted to vote. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote in a union election. 29 U.S.C. § 481(e). The investigation did not substantiate this allegation. The investigation confirmed that a deceased union member's ballot was returned and that a former member submitted a ballot, but that neither of these ballots were counted. The investigation did not uncover any evidence that ineligible union members voted. There was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have 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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