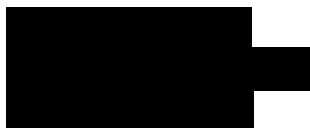




November 22, 2022



Dear [REDACTED]:

This letter revises and supersedes my letter to you dated September 21, 2022.<sup>1</sup>

This Statement of Reasons is in response to your February 1, 2021, complaint filed with the United States Department of Labor (“Department”) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (“LMRDA” or “Act”) occurred in connection with the Caucus election of officers held by District 10 (District 10 or the union) of the American Federation of Government Employees (AFGE), on October 3, 2020. The Department conducted an investigation of your allegations, but found no violations that affected the outcome of the election.

Several of your allegations relate to the time period leading up to the Caucus election. First, you alleged that notice of the election was not mailed out to the candidates 15 days prior to the election with details of the election, including: the positions to be filled in the election; the time, date, place, and manner of election; and that provisions for runoff elections were sent out by the district’s office to the already identified candidates. This allegation implicates Section 401(e), which requires that the notice of election be mailed at least 15 days prior to the election, and Section 401(f) which requires that indirect elections, such as the AFGE District 10 Caucus, be carried out in accordance with a union’s constitution and bylaws as long as they are consistent with the LMRDA. 29 U.S.C. §§ 481(e) and (f). Under Rule 2 of the Amended District Caucus Rules, written notice of the Caucus was required to be mailed to local presidents and treasurers no later than 60 days prior to the Caucus. The investigation revealed that the National Office mailed the District 10 Caucus call notice to local presidents and secretary-treasurers in February 2020 for the Caucus scheduled to be held May 7-9. For in-person Caucuses, the notice must specify: the requirements for election of local delegates; the exact time, date, complete address of the meeting place of the Caucus; the deadline and mail address for registration 30 days prior to the Caucus; and the exact hours of check-in. The investigation determined the notice contained the required

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<sup>1</sup> The only change to the original letter revises the statutory reference in the first paragraph.

information. After the May Caucus was cancelled and then rescheduled for October 1-3, 2020, an amended Caucus call was sent on August 3, 2020, with updated details via email and U.S. postal service. There was no violation.

You also alleged that the list of local officers for mailing campaign literature was not updated causing you to waste money for postage; no contact information for delegates was provided on the list, and there was no information specifying to which agency a local belonged. This allegation implicates Section 401(c), which requires a union to comply with reasonable requests from candidates to distribute campaign literature and to “refrain from discrimination in favor of or against any candidate,” as well as Section 401(f), which requires a union to follow its constitution and bylaws. 29 U.S.C. §§ 481(c) and (f). Under Section 4(b) of Part II of AFGE Rules of Conduct for an Election, Appendix A, AFGE Constitution 2018 (AFGE’s election rules), declared candidates for national offices are entitled to a complete list of the names, business, and home addresses and business telephone numbers of the presidents, treasurers, and delegate(s) of each local participating in the election for which the candidacy has been declared and one set of mailing labels for such individuals.

The Department’s investigation revealed that you received a list of local presidents and treasurers and mailing labels from AFGE’s national secretary-treasurer after you declared your candidacy, but which did not include those delegates who were not delegates by virtue of their office. This list was provided to all candidates. Information regarding to which agency locals belonged was not required, apart from the business address required by Section 4(b), and was not provided to any candidate. The Department’s investigation found that you used the labels to send your campaign literature, but approximately 10 out of approximately 230 envelopes were returned as undeliverable. However, you did not report this problem to the union or attempt to obtain corrected addresses. The investigation revealed that local officers are responsible for updating their information in the AFGE My Local system, which is used to generate the officer list. Thus, you received the most accurate list based on the information that local officers chose to upload to AFGE My Local. During the investigation, the Department reviewed the delegate list and concluded it was reasonably accurate. The investigation further showed that you did not request an updated list. There was no violation.

You alleged that your local, Local 1929, was improperly placed in trusteeship on August 11, 2020, immediately after you declared your candidacy in order to prevent your local from participating in the Caucus, which implicates the right to vote under Section 401(e). 29 U.S.C. § 481(e). However, the AFGE Constitution does not prohibit locals in trusteeship from participating in Caucus elections and Local 1929 chose not to send any delegates to attend the Caucus. Accordingly, there was no violation of Section 401(e). Further, to the extent your allegation relates to the impropriety of the trusteeship, this is not a matter covered by Title IV of the LMRDA.

You also made allegations related to the conduct of the Caucus. You alleged that the District 10 Election Chair improperly disqualified you as a candidate because you were not a delegate and ruled that your eligibility would need to be confirmed, which you alleged had a chilling effect on your candidacy and caused you to lose votes. This allegation implicates Section 401(e) of the LMRDA, which provides that “every member in good standing shall be eligible to be a candidate and hold office” “subject . . . to reasonable qualifications uniformly imposed” and Section 401(f), which requires a union to follow its constitution and bylaws. 29 U.S.C. §§ 481(e) and (f). The investigation revealed that under Section 3(b), Part II, of AFGE’s Election Rules and the District Caucus Manual, Attachment 9, Item 5, only delegates were permitted to nominate candidates. Because you were not a delegate, you were not able to nominate yourself as a candidate. That you had declared your candidacy for the District 10 Caucus and received an acknowledgement did not satisfy this nomination requirement; as a non-delegate you did not have the authority to make a valid nomination. Nonetheless, you were nominated by a delegate. There was no violation.

In addition, you alleged that District 10 failed to follow Part I, Section 5(b) of AFGE’s Election Rules because the District 10 Treasurer or Secretary Treasurer did not furnish the Election Committee with the names and addresses of all candidates and an indication as to whether or not they were members in good standing, which required you to gather the relevant information to qualify as a candidate at the last minute. The investigation revealed that Part I, Section 5(b), of the Appendix to the AFGE Constitution applies to direct elections of local officers, not indirect Caucus elections. Rather, Rule 10(h) of the 2020 Amended District Caucus Rules states that the Election Committee must certify the eligibility of all candidates. Accordingly, the Election Chair’s actions were consistent with AFGE’s constitution and bylaws. There was no violation.

You made four additional allegations alleging only that the union failed to follow its own constitution and bylaws in violation of Section 401(f). You alleged that the Election Committee failed to follow Rule 10 of the 2020 Amended District Caucus Rules, which provides that an Election Committee must consist of no less than three members and must contain an odd number of members. The investigation revealed that the Election Committee consisted of five members: Chair [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. There was no violation.

You also alleged that candidates were denied the opportunity to appoint someone to the Election Committee because all members were selected by majority vote of the Caucus in violation of Rule 10 of the 2020 Amended District Caucus Rules. Rule 10 provides that the Caucus assembly elects the Election Chair by majority vote and that each candidate may select one person to serve on the Election Committee. Further, any additional members of the Election Committee shall be elected by majority vote of the

Caucus delegates. The investigation revealed that Election Chair [REDACTED] opened the floor for nominations of the Election Committee members, accepted nominations from the floor, and the body approved the five committee members. At least six people, who were interviewed, stated that every delegate had an opportunity to nominate a member to the election committee, even candidates who were delegates. You were not a delegate and therefore were not eligible to nominate anyone to the Election Committee. The investigation established that the Election Chair properly handled the nominations to the committee in accordance with the rules by affording every delegate an opportunity to select a qualified member to the committee. There was no violation.

You also alleged that District 10 failed to follow its bylaws when Daphne Jackson served as an observer without fulfilling the requirement that she be a registered delegate. According to the investigation, you asked Daphne Jackson to be your observer, but later alleged that she was not qualified to serve as an observer because she was not a registered delegate. The investigation showed that Jackson, elected as Executive Vice President of Local 1633 was a delegate ex officio, and had pre-registered as a delegate. Due to the COVID-19 pandemic, Local 1633 held a special election to allow the President to carry all votes to the Caucus. Even though he carried the local's votes, Jackson was still a delegate by virtue of her position and therefore entitled to serve as an observer. The union's actions with regard to Jackson were consistent with the union's by-laws. There was no violation.

You alleged that five minutes was not enough time for candidates to speak and that you were not able to second a motion that ten minutes be the limit because of the rule that only delegates were allowed to vote on motions. The investigation indicated that there is no constitutional provision that requires a minimum amount of time for candidate speeches. According to the Election Chair, the delegates approved the five-minute limit during the Caucus plenary. As a non-delegate, you had no right to vote on or second motions at the Caucus. Further, the investigation did not show that any candidate received more time to address the plenary than any other. There was no violation.

You alleged that the Election Committee failed to make sufficient arrangements to ensure that each member voted a secret ballot, in violation of LMRDA Sections 401(b). 29 U.S.C. §§ 481(b). Specifically, you alleged that the incumbent was accompanying delegates within the area measuring fifty feet from the polls in an attempt to persuade them to vote in her favor. According to Section 1(c) of AGFE's Constitution, NVPs must "be elected by secret ballot, by majority votes cast within each respective district, and will be installed at the Caucus after their election." The investigation revealed that there was a general area for people to campaign and the Election Committee members stated that signs were posted to indicate where campaigning was prohibited. Further, eleven witnesses who were present during the election were interviewed; none observed the incumbent improperly campaigning or walking through the off-limits

area. There was no evidence of the incumbent's alleged unlawful campaigning or any breach of secret ballot voting. Accordingly, there was no violation.

You alleged that the Election Committee should have had clearer and easier to read ballots instead of confusing ballots that caused ballots to be disqualified – there was a lack of preparation that caused confusion at the time ballots were cast. Further, you alleged that the union failed to adequately control the ballot process and there were extra ballots turned in. This allegation implicates Section 401(c), which requires that adequate safeguards be provided to ensure a fair election. 29 U.S.C. § 481(c). The investigation did not reveal any witnesses who reported that the ballots were confusing, nor were you able to identify any delegates who were confused by the ballot. A review of the ballot revealed nothing confusing about the ballot itself and thus there was no violation. At the tally, the election committee counted 400 more votes than the number of votes of the credentialed delegates, but was unable to reconcile the numbers or account for the discrepancy. To the extent that this constituted a violation, the discrepancy could not have affected the outcome of any race.

You alleged an additional safeguards violation; specifically, that incumbent NVP Eliano interfered with the election process by asking the Election Committee to step out of the Caucus room to speak to them after the candidates were announced, presenting a conflict of interest. The investigation did not find any evidence to support this claim. The Election Committee members, including the Election Chair, stated that they did not meet with Eliano separately, nor did they leave the Caucus with Eliano. The evidence indicates that the Election Committee left the Caucus plenary once to call an AFGE attorney and Eliano allowed the election committee to use her cell phone. There was no violation.

You also alleged that you were denied your right to have an observer present during the election procedures. Specifically, you alleged that, as a result of the imposition of a trusteeship over your local, Local 1929, you were denied the opportunity to have a reasonable number of trusted observers who were delegates present throughout the election, including at the tally. You allege that only unknown persons were available to you to select as an observer and that you discovered that the person that you chose was campaigning with the incumbent. This allegation implicates Section 401(c), which provides that candidates have the right to have an observer at the polls and the counting of ballots. 29 U.S.C. § 481(c). The investigation revealed that Local 1929 was placed under trusteeship, but was not precluded from participating in the Caucus election as long as it followed the proper rules for election of delegates. You were provided the opportunity to select, and you did have, an observer during the course of the Caucus election. There was no violation.

Last, you alleged that delegates arrived late due to the pandemic, but before voting occurred and were not seated by the credentials committee. Further, you alleged that

the district must have had the roster with the locals who had registered and should have contacted the missing delegates so that they would not be disqualified from voting. This allegation implicates Section 401(e)'s requirement that members in good standing be afforded a reasonable opportunity to vote. 29 U.S.C. § 481(e). The investigation did not reveal any provision requiring that the union contact pre-registered delegates who have not yet arrived prior to the close of registration. Although you were unable to identify any delegates who were denied seating because they arrived late, the investigation revealed that Local 2437 vice-president [REDACTED] [REDACTED] was denied the right to vote because he arrived late on Friday after registration had closed, but still before the Caucus Election the following day. [REDACTED] did not state that he was late because of the pandemic, rather he stated that he believed that he could check-in on Saturday morning based on past practice. Accordingly, your allegation did not establish a violation.

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. Accordingly, the office has closed the file regarding this matter.

Sincerely,

[REDACTED]

Tracy L. Shanker, Chief  
Division of Enforcement

cc: Everett Kelley, National President  
American Federation of Government Employees, AFL-CIO  
80 F Street, NW  
Washington, DC 20001

[REDACTED]

Associate Solicitor for Civil Rights and Labor-Management