



November 7, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint, received by the U.S. Department of Labor (Department) on March 14, 2021. The complaint alleged that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (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, was violated in connection with the regularly scheduled mail ballot election of officers conducted by the American Federation of Government Employees (AFGE), Local 1616, on November 20, 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. Following is an explanation of this conclusion.

You alleged that the Local 1616 election committee (LEC) was appointed by an AFGE representative and was not elected by a majority vote of the membership, as directed by the AFGE Constitution. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws insofar as those governing documents are not inconsistent with the LMRDA. 29 U.S.C. § 481(e); 29 C.F.R. § 452.2.

Appendix A, Section 2(a) of the AFGE Constitution and Section 21 of the Local 1616 Bylaws govern the manner in which the election committee must be constituted. Appendix A, Section 2(a) states in relevant part, "an Election Committee shall be constituted to conduct each election . . . Its members shall be "selected," and it shall meet a reasonable time before the commencement of the nomination procedure." (Emphasis added). Section 21 of the Local 1616 Bylaws states, "the Election Committee shall be constituted at a meeting preceding the start of the nomination procedure." Neither the AFGE Constitution nor the Local 1616 Bylaws require an election of the LEC by a majority vote of the membership. The LMRDA was not violated.

Next you alleged that the LEC members were unfair and biased. Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Thus, a union's wide range of discretion regarding the conduct of its elections must be circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The investigation disclosed that the 2020 regular election of Local 1616 officers was held for the purpose of terminating a trusteeship. An AFGE representative who served as the trustee also served as the LEC chair due to the local being in a trusteeship. You stated during the investigation that you believe the LEC members were unfair and biased because the LEC chair dismissed you as shop steward during the trusteeship. However, you, as well as other union officials, were relieved of their duties as part of the trusteeship.

Also, you alleged that the LEC was biased because, during the election, the LEC chair would not take your telephone calls to him, and a LEC member may have been upset with you for assuming his duties as secretary-treasurer of Local 1616 after he was removed from that office. The LEC chair stated during the investigation that he promptly returned all of your telephone calls and emails to him. Moreover, all of the LEC members denied having any bias against you or treating you any differently from other candidates. Further, you acknowledged during the investigation that none of the LEC members treated you unfairly in carrying out their duties on the LEC. There is no evidence to substantiate your claims of bias. Accordingly, the LMRDA was not violated.

In addition, you alleged that the LEC chair promptly notified candidates of the election results but did not inform the membership for weeks of such results. You asserted that because the election results were announced so late, it changed the deadline prescribed in the union's governing documents for protesting the election. As previously stated, Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws insofar as those governing documents are not inconsistent with the LMRDA. 29 U.S.C. § 481(e). Appendix A, Section 5(g) of the AFGE Constitution governs the manner in which the election results are to be published. This provision provides, "[a]t the conclusion of the balloting... [t]he Election Committee shall prepare a written report and inform the members of the [election] results as soon as possible." Appendix A, Part III of the AFGE Constitution further provides that any member may challenge a local union officer election by filing a protest in writing with the election committee prior to, during, or within 10 days after the election results are announced or posted.

The investigation disclosed no credible evidence that the LEC prepared a written report on the election results, announced those results to the membership, and posted them, as

required by the AFGE Constitution. However, this violation did not affect the outcome of the election. The LEC's failure to publish the election results did not prevent any member from filing an election protest with the union. In fact, you filed a protest with the union, and the election committee treated your protest as timely and provided a decision on the merits of your protest. Further, the union did not dismiss any election protest as untimely. There was no violation of the LMRDA that may have affected the outcome of the election.

Also, you alleged that the LEC failed to take steps to review and update the membership mailing list in the months leading up to the 2020 mail ballot election. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e). In a mail ballot election, the right of every eligible member to vote must require at a minimum that a union take reasonable steps to maintain current mailing addresses for its members and to distribute election ballots to all those entitled to vote.

The investigation found that the election committee took reasonable steps to maintain current mailing addresses for the members and afforded eligible members a reasonable opportunity to vote. The investigation disclosed that, in preparation for the election, the LEC chair printed an updated mailing list of Local 1616 members' home addresses from the AFGE National database. The mailing list contained the names of ten members with no home addresses or telephone numbers. In an attempt to obtain this missing information, the LEC chair forwarded the members' names to the shop stewards at the members' work locations. The stewards attempted to contact the members by email and by locating them at their work sites to obtain the required information. Despite the stewards' efforts, they were not able to reach any of these members.

The investigation disclosed that on or around October 27, 2020, the LEC mailed ballots to 200 members. Of these ballots, eight were returned undeliverable. In an attempt to obtain correct addresses for these members, the shop stewards again went to members' work facilities and sent members emails requesting their updated home addresses. The shop stewards were not successful in reaching these members. Based on these facts, the Department determined that the union made reasonable efforts to obtain correct mailing addresses for its members and afforded members a reasonable opportunity to vote. The LMRDA was not violated.

You alleged that you were denied the right to adequately review the membership mailing list during the Zoom video call because the LEC chair quickly paged through the list as he was displaying it on the Zoom camera. You also asserted that you could not read the list because it was blurry.

Section 401(c) of the LMRDA provides that each bona fide candidate for office has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment. 29 U.S.C. § 481(c). The investigation showed that Local 1616 members are not subject to any such agreement. Therefore, these members are not entitled to any rights under Section 401(c) regarding the inspection of membership lists. As a related matter, the AFGE Election Manual (AFGE Guidelines) advises that candidates have a right to inspect the names and addresses of all members once within 30 days before the election.

The investigation found that the LEC chair notified all candidates, including you, that candidates could review the membership list by a Zoom video call. The investigation disclosed that during the Zoom call you never stated that you could not see that list. Also, you did not tell the LEC that the list was blurry, or that the LEC chair was flipping through the pages of list too quickly. Further, the LEC chair invited all candidates to view the membership list in person. The LMRDA was not violated.

You also alleged that the LEC was required to meet with the local's secretary treasurer two months prior to the election date to obtain members' contact information and the election committee failed to comply with that requirement. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws insofar as those governing documents are not inconsistent with the LMRDA. 29 U.S.C. § 481(e).

The AFGE Guidelines advise that the LEC should meet with the local's secretary treasurer two months before the election to obtain members' contact information. The investigation found that this meeting was never held. It appears that you believe these guidelines required the meeting to be held before the election notice is mailed to members. However, the AFGE Constitution does not require any such meeting, or mandate that the election notice be mailed to members only after this meeting is held. Consistent with the election notice requirement in Section 401(e) of the LMRDA, the AFGE Constitution requires a union to mail notice of the election to the last known home address of each member not less than 15 days prior to the election and, in the case of election by mail ballot, requires that such notice be mailed 15 days prior to the date on which the ballots must be received to be counted. 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.99.

The investigation found that a nomination notice and an election notice were mailed in the same envelope to all members on September 30, 2020, or 51 days prior to the November 20, 2020 ballot tally. The LMRDA was not violated.

In addition, you alleged that the LEC failed to mail sample ballots to members, as required by the AFGE Constitution. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws insofar as those governing documents are not inconsistent with the LMRDA. 29 U.S.C. § 481(e). The investigation found that the AFGE and Local 1616 governing documents are silent concerning mailing sample ballots to members. Further, union officials stated during the investigation that the local has never mailed sample ballots to members in past elections and, thus, no such ballots were provided to members in the challenged election. The LMRDA was not violated.

You also alleged that the successful presidential candidate had access to the membership list and may have used it to campaign. Section 401(c) of the LMRDA provides that a union must 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). Also, section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); *see also* 29 C.F.R. §§ 452.73-76.

The investigation found that, consistent with the election and campaign rules, the candidate provided campaign literature to the LEC chair in sealed, stamped, self-addressed envelopes and the LEC chair and a LEC member labeled and mailed the candidate's campaign mailers to members. The investigation disclosed no evidence that any candidate used a union membership list for unlawful campaigning. Further, during the investigation you admitted that you did not know how the candidate conducted his campaign and disavowed any knowledge that the candidate used a membership list to campaign. The LMRDA was not violated.

Also, you alleged that the ballots were mailed late. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws insofar as those governing documents are not inconsistent with the LMRDA. The union's governing documents are silent concerning the number of days ballots must be mailed before the election. AFGE Guidelines strongly recommend that the LEC give members three to four weeks to mark and return their ballots. The investigation found that the LEC mailed the ballots on or around October 27, 2020, or 24 days prior to the November 20 ballot tally. The LMRDA was not violated.

You further alleged that you were unable to observe the ballot tally and to verify its accuracy because the Zoom video camera was too far from the table where the LEC was tallying the ballots. Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election must 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); *see also* 29 C.F.R. § 452.110. Thus, when viewing the tallying process, observers should be positioned in such a way that they may note the names of those voting so that

candidates may be able to ascertain whether unauthorized persons voted in the election. 29 C.F.R. § 452.107.

The investigation found that during the vote tally one LEC member read off the votes on the ballots, and the other two LEC members recorded the votes on the tally sheets. The LEC members tallied the votes twice to verify the accuracy of the count. The LEC members held the ballots up to the Zoom video camera as they were being tallied. The LEC asked you during the Zoom call if you had any problem seeing the tally and you responded that you could see the tally process. In fact, during the tally you asked questions about a few of the ballots and the LEC answered those questions. Further, the Department recounted the votes and verified the accuracy of the tally. The union's and the Department's vote tallies were consistent for all races. The LMRDA was not violated.

Finally, you alleged that the LEC chair mailed your rebuttal campaign letter to members late, or four days prior to the election. Section 401(c) of the LMRDA imposes the duty on the union and its officers to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. 29 U.S.C. § 481(c); 29 C.F.R. §§ 452.67-69.

The investigation found that on November 10, 2020, you shipped your campaign letters to the LEC chair for distribution by mail to the membership. The USPS tracking number for this shipment, EJ418470059US, shows that the LEC chair received that package on November 13, 2020. The investigation found that he conducted a mass mailing of your campaign letter to the membership that same day. The LMRDA was not violated.

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, this office has dismissed your complaint and closed its file in 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 solid black rectangular box redacting the signature of Tracy L. Shanker.

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Chief, Division of Enforcement

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