U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

April 18, 2014

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint, received by the U.S. Department of Labor on September 27, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the runoff election of officers of Local 2207, American Federation of Government Employees (AFGE), completed on July 26, 2013. The LMRDA was 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.

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

You alleged that new members were denied the right to vote in the July 26, 2013 runoff election because the local established an eligibility cut-off date that prohibited individuals who became members after the June 13, 2013 general election from voting in the runoff election. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote. Unions, however, are permitted to establish reasonable qualifications on the right to vote. *See, e.g.* 29 C.F.R. § 452.85.

An eligibility cut-off date is not in and of itself an unreasonable qualification on the right to vote. Eligibility cut-offs that are properly established; that are clearly, adequately, and timely communicated to members; that are not too far in advance of the election; and that are uniformly applied generally do not offend the reasonableness requirement of the LMRDA. However, reasonableness is assessed based on the specific facts of a given situation.

Here, the Department of Labor investigation revealed that the union's application of an eligibility cut-off date for participation in both elections was not an unreasonable

qualification on the right to vote. It was not unreasonable to use the same eligibility period for both the original and runoff elections as the latter can be viewed as merely a continuation of the first.

Further, the investigation revealed that the cut-off period was established in a manner consistent with the union's governing documents. Moreover, the union provided adequate advance notice to members of the cut-off date. The date appeared in the election notices for the general and runoff elections. The June 13 voter eligibility cutoff date was not so far in advance of the July 26 runoff election as to render it unreasonable, and the notices clearly and specifically provided that "[a]ny member who has paid dues through June 13, 2013 and is in good standing is eligible to vote."

On these facts, the eligibility cut-off date did not impose an unreasonable requirement on the right to vote. Consequently, those joining the union after the June 13 voter eligibility cut-off date and members who were not listed as eligible on the June 13, 2013 voter eligibility list were not eligible to vote in the June 13 general election or the July 26 runoff election.

The investigation revealed that there were five challenged ballots cast during the July 26 runoff election and of those, one challenged voter was a member in good standing and should have been on the June 13 list and allowed to vote. The local's failure to include that ballot in its tally violated that member's right to vote. However, that one vote did not affect the outcome of the runoff election because the lowest margin of victory was three votes. There was no violation that may have affected the outcome of the election.

You alleged that the union failed to provide proper notice of the election in that members added after June 13, 2013 were not sent runoff election notices. As discussed above, June 13, 2013 was the election cut-off date; the election committee was permitted to establish a voter cut-off date and advertised the June 13 date in both election notices.

The election committee chairperson confirmed that she mailed the election notices to the members on the June 13 voter eligibility list for both elections. Anyone who joined after June 13 would not have been eligible to vote in the July 26 runoff election; however, anyone who was not on the list was eligible to vote a challenged ballot. The election notices were posted as well as mailed and voter turnout for the runoff was in the 50% range, knowledge of the runoff election appeared to be widespread.

With respect to the local's not mailing notice of the runoff election to those who became members after the June 13 election but before the July 26 run-off, the LMRDA would require that notice be mailed to all members of the run-off election . *See* 29 C.F.R. 452.103. However, failure to mail the notice to these members would have had no effect on the outcome of the election as these members were not eligible to participate in the

runoff. There was no violation of the LMRDA that would provide a basis for litigation by the Secretary of Labor.

You alleged that one member was confused concerning the deadline for requesting absentee ballots for the runoff election because the election notice provided a July 10, 2013 deadline for requesting such ballots and also indicated that requests received after that date would be honored.

The investigation disclosed that the election notice for the runoff election instructed members wishing to vote by absentee ballot to submit a request for such ballot by July 10, 2013, and indicated that the voted ballot must be received at the designated post office box by noon on July 25, 2013. The notice alerted members that requests submitted after the July 10 deadline would be honored but that there was no guarantee that voters would be able to return their voted absentee ballots in time to be counted. The election notice clearly set forth the date by which requests had to be received by the local in order for members to timely receive, mark and return their voted absentee ballots. There was no violation.

You alleged that the local denied you the right to have an observer present at the collection of the absentee ballots. The adequate safeguards provision in section 401(c) of the LMRDA provides that any candidate has the right to have an observer at the polls and at the counting of the ballots. This right encompasses every phase and level of the election process, including the collection of the voted absentee ballots from the post office for counting and tallying. 29 C.F.R. § 452.107. The investigation disclosed that you never requested to accompany the election committee chairperson to the post office to collect the absentee ballots for counting and tallying. Consequently, there was no denial of your right to observe this phase of the election process. There was no violation.

You alleged that observers were denied the right to view voted ballots. The investigation disclosed that, according to your observer, he was not restricted from viewing either the ballots themselves or any other phase of the tally process, and that he found the tally process to be fair. There was no violation.

You alleged that the ballot design was flawed for the runoff election because the font was not large enough for voters to read and the names of candidates were too close together. Section 401(c) requires a union to provide adequate safeguards to ensure a fair election. 29 C.F.R. § 452.110.

The investigation disclosed that the AFGE Election Manual provides a sample ballot, which served as the basis for the ballot design in the runoff election. The Department's review of the ballot used in the runoff election disclosed that the ballot was not difficult

to read or understand and, in fact, the font on the ballot appeared larger than the font on the sample ballot provided in the Election Manual. There was no violation.
You made several allegations in your administrative complaint to the Department that were known to you at the time you filed your internal protests but which you did not include in your protests to the union. Those allegations include the following: the election committee chair appeared to be an [redacted] campaign team; the election committee chair communicated exclusively with candidate [redacted], and not with other election committee members; the election was rescheduled to allow for a 15 day notice and then cancelled with no explanation; and, candidates did not meet collectively. In order to achieve Congressional intent of maximizing union self-governance, section 402(a) of the LMRDA requires that protests regarding a union election be presented first to the union in order to give the labor organization the first opportunity to correct election deficiencies, prior to filing a complaint with the Department. 29 C.F.R. 452.136(b-1). You failed to present any of the above allegations to the union even though you were well aware of the facts surrounding these allegations at the time you submitted your internal protests. Consequently, those allegations are dismissed.

You also made a number of allegations that do not present any Title IV issues, including: the runoff election was held in a different classroom than the regular election; the national representative participated in the ballot tally without being an election committee member; the former election committee chair was in the room during the counting process; District 5's response to your election protest was untimely; District 5 assumed control over the local's elections without proper reasoning. None of these allegations are covered by any provision of Title IV of the LMRDA. Accordingly, they are dismissed.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: J. David Cox, Sr. National President
Government Employees (AFGE)
80 F. St, NW
Washington, DC 20001

[redacted]
Government Employees (AFGE), Local 2207
700 19th Street South
Room 2506
Birmingham, AL 35233

Christopher Wilkinson, Associate Solicitor for Civil Rights and Labor-Management