U.S. Department of Labor

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

October 27, 2014

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint dated May 23, 2014 to the U.S. Department of Labor. In your complaint, you alleged that Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) 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, was violated when American Federation of Government Employees District 12 ordered its subordinate, Local 1122 to re-run its election based on a protest challenging the November 2013 nominations.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred. You alleged that there was an insufficient basis for District 12 to order a rerun in an election in which you were unopposed for Executive Vice President, winning that position by acclamation, as did other candidates who were unopposed.

The investigation revealed that District 12 ordered the rerun election, including new nominations, in response to local member [redacted] protest concerning nominations. The basis for District 12's decision was deficiencies in the nominations process, specifically the information contained in the local's combined nominations and election notice. You believe that no such deficiencies were contained in the notice of nominations and election.

The requirement set out in section 402(a) of the LMRDA that a member exhaust internal union remedies before complaining to the Secretary of a violation of the LMRDA was included in the LMRDA to give unions a chance to correct election problems and deficiencies without government intervention, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a degree of deference to union decisions on internal union election protests providing for the conduct of a new election: the Secretary will not seek to reverse a union's remedial decision to hold a new election,

even if the evidence could be viewed as insufficient to support a decision by the Secretary to sue to overturn the original election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable.

District 12's decision was based on the recommendation of its National Representative, Nicole Ferree, who conducted an investigation of [redacted] appeal. Ferree found defects in the combined notice of nominations and election, dated November 6, 2013, which provided the following nominations procedure:

> Members of AFGE Local 1122 may submit nominations for officers to the Election Committee in writing at any time before the November 21, 2013 membership meeting. Nominations will be taken from the floor of the [sic] November 21, 2013. Candidates accepting nominations must do so orally at the November 21, 2013 meeting or in writing by close of business (COB) November 25, 2013.

Ferree found several deficiencies in the above nominations procedure. First, the National's policy is that nominations acceptances, both oral and written, must be received at the nominations meeting or by the close of that meeting. The local's four-day extension past the nominations meeting contravened the national's policy. Ferree pointed to page 44 of the AFGE Manual, as evidence of the National's nominations acceptance policy. Second, the nominations procedure was confusing in that members did not know when nominations were due, either November 21st or November 25. And third, since the local provided an extension for written nomination acceptances until four days after the November 21 meeting, Local 1122 should have accepted [redacted] November 25th self-nomination as her nomination and her acceptance.

District 12's decision was not based on the application of a rule that violates the LMRDA; District 12's decision was not made in bad faith, such as to afford losing candidates a second opportunity to win in the rerun election; and finally, District 12's decision is not contrary to the principles of union democracy embodied in the statute, and holding a new election in the instant case would not be unreasonable.

Consequently, the Secretary will not seek to reverse the union's remedial decision to hold a new election. There was no violation. For the reasons set forth above, it is

concluded that no violation of the LMRDA occurred. Accordingly, I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. J. David Cox, Sr.
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