



May 24, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your January 21, 2016 complaint filed with the U.S. Department of Labor alleging that the American Federation of Government Employees (AFGE), Local 2052, violated Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), as incorporated for federal government employers by the Civil Service Reform Act of 1978, by overturning the results of the election of officers held on November 4, 2015, and deciding to conduct a rerun of the election.

Upon receipt of your complaint, the Department investigated whether you had properly exhausted internal union remedies prior to filing with the Department. The AFGE election manual states that protests to union officer elections are initially to be filed with the election committee. Once the election committee makes its decision denying the election protest, the protester may file an election appeal with the National Vice President (NVP) for his district within 15 days of the decision. After the election committee's November 18, 2015 decision denying your protest, you filed your appeal **via email** on November 19, 2015, to your district's NVP, Joseph Flynn. However you referenced Flynn as "AFGE General Council Representative." AFGE's national office challenged your appeal stating that an appeal sent via email is invalid and that an appeal sent to the correct person, but misstating that person's title, is likewise invalid. OLMS' review of the relevant documents disclosed no prohibition of appeals sent via email. Further, long-standing case precedent does not permit a union to reject a protest based on requirements amounting to "procedural niceties," such as a requirement that an officer's title be properly stated. Accordingly, OLMS finds that you properly exhausted your internal remedies prior to filing your complaint with the Department.

With respect to the substance of your complaint, the Department's investigation found [REDACTED] the winning candidate for the office of executive vice-president in the November 4 election, having defeated the incumbent by a margin of nine votes. The margins in the election races ranged from nine to eighty-seven votes. You alleged that the election committee acted beyond its scope of jurisdiction in ordering a rerun of the election. Specifically, you alleged that the election committee should not have

investigated whether the membership list was used to generate mailing labels for a letter sent anonymously to members. You base your assertion on the fact that the election committee itself had violated the LMRDA and the AFGE election manual by providing mailing labels to some candidates over others. You further allege that the election committee's investigation and subsequent decision to conduct a rerun election based on the use of the membership list was a pretext, and that they were actually motivated to conduct a rerun by dissatisfaction with the outcome of the election. The Department conducted an investigation of your allegations and has concluded that the decision of Local 2052's election committee to order a rerun of the election did not violate the LMRDA.

The requirement set out in section 402(a) of the LMRDA, i.e., that a member exhaust internal union remedies before filing a Title IV complaint with the Department, was included to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible union self-government. In furtherance of this legislative objective, the Department accords a degree of deference to a union's decision to conduct a rerun election. The Department 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 Department 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 LMRDA and holding a new election is unreasonable.

The investigation revealed that the election committee received a timely election protest from the unsuccessful incumbent-candidate for executive vice-president. The protester alleged that an anonymous letter, critical of him and five other candidates, was sent just prior to the election and that the membership mailing or address list had been used in sending the letter. The investigation disclosed that members had brought the letter to the attention of the election committee prior to the election. The election committee questioned voters about the letter as they exited the polls (193 members voted) and estimated that ninety percent of the voters had received the letter. The election committee also found what it thought was an indication that the letter may have affected voter turnout, as the union experienced a drop in membership following the election. On November 18, 2015, the chair of the election committee informed the candidates that the committee had decided to rerun the election, because the membership list appeared to have been used to further the candidacies of some candidates over others.

The Department of Labor investigation determined that the election committee's decision to conduct a rerun election did not violate the LMRDA. The AFGE election

manual specifically authorizes an election committee that receives an election protest to determine, should it discover a violation that may have affected the outcome of an election, the appropriate remedy, including a rerun of the election for all or some of the offices, as appropriate. Here the election committee's investigation discovered that the union membership list had been used to further the candidacies of some candidates over others. The Department of Labor investigation revealed evidence supporting the union's decision. OLMS interviewed members who related that the union was the only entity that had received their addresses. One member relayed that she had been at her new address for only two months. OLMS also examined the letters received by members and noted that the addresses were in a similar type and font size as the membership list. Use of this list implicates the LMRDA's prohibition of discrimination in favor of or against any candidate with respect to the list of members and its prohibition against use of union funds or assets to promote the candidacy of any candidate. Use of the membership list in this manner also is contrary to the union's constitutional requirements.

After finding a violation, the election committee also concluded that the violation had affected the outcome of the election. However, the union, in deciding to conduct a rerun election is not held to the effect on outcome standard applicable to the Department when it seeks to overturn a union election.

Based on the Department's investigation and the general deference given to remedial actions taken by the union, the Department has determined that the election committee's decision to conduct a rerun election was not based on the application of a rule that violates the LMRDA; made in bad faith, such as to afford losing candidates a second opportunity to win; or otherwise contrary to the principles of union democracy embodied in the LMRDA.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA. Accordingly, we have closed the file on this matter.

Sincerely,

Sharon Hanley  
Chief, Division of Enforcement

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