



July 26, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on August 21, 2015, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), as made applicable to elections of federal sector unions by the Civil Service Reform Act of 1978, occurred in connection with the election of officers conducted by Local 1793 of the American Federation of Government Employees (AFGE) on April 29, 2015.

The Department of Labor conducted an investigation of your allegations. As a result of its investigation, the Department has concluded with respect to certain allegations, identified below, that there was no violation of the LMRDA that may have affected the outcome of the election. The other allegations contained in your complaint to the Department may not be considered because your complaint was not timely filed as to those allegations. The following is an explanation of these conclusions.

In your complaint, you alleged that the bargaining unit employees at the Community Based Outreach Clinic (CBOC) were not provided notice of the election. Specifically, you alleged that CBOC employees were not made aware of election postings and that they were therefore not afforded the opportunity to vote.

Section 401(e) of the LMRDA provides that not less than fifteen days prior to the election, notice of the election shall be mailed to each member at his or her last known home address. To the extent that your allegation is based on a lack of election notices posted at worksites, there was no violation. The LMRDA requires the union to provide notice of the election by mail. Local 1793 had no additional obligation to post election notices at worksites.

However, the Department's investigation revealed that Local 1793 failed to mail notice of the election to every member's last known home address. Specifically, Local 1793

failed to mail notice of the election to new members who had not yet appeared on the list from the national but for whom Local 1793 had addresses at the time of the mailing. The Department's investigation revealed, however, that there were only two new CBOC members who did not receive notice and might have voted if they had received notice. Because every race was decided by a margin of more than two votes, this violation could not have affected the outcome of the election.

You also alleged that members were not given a reasonable opportunity to vote. Specifically, you complained that the lack of a polling site at the Community Living Center (CLC) made it difficult for CLC bargaining unit members to vote.

Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote in officer elections. The LMRDA does not require that members be provided with polling sites at their workplaces. Furthermore, the Department's investigation confirmed that CLC members had the opportunity to vote at a nearby polling site. There was no violation.

You raised other allegations, based on the conduct of the election by Elections USA, that may not be considered as part of your complaint to the Department because you did not timely file your complaint to the Department with regard to those allegations.

Before a member of a labor organization may file an administrative complaint with the Department of Labor, the Department's regulations require the member to utilize "the remedies available under the constitution and bylaws of the labor organization and of any parent body." 29 C.F.R. § 458.63. A member who has exhausted those internal union remedies and has received a final decision from the union then has one calendar month within which to file an administrative complaint with the Department.

Part III of Appendix A to the AFGE National Constitution sets forth the internal exhaustion provisions for protesting and appealing elections. Those provisions include the following steps for local officer and delegate elections: A written protest must be made to the local election committee prior to, during, or within ten days after the election. The election committee must attempt to resolve the protest or render a decision within 15 days after receipt of the complaint. The complainant may elevate the complaint by appeal, within 15 days of the due date of the election committee's decision, to the National Vice President (NVP). The NVP must issue a decision on the appeal within 30 days after receipt of the appeal. The NVP's decision "shall be the final determination." However, the National President has discretionary authority to review the NVP's decision if the complainant files an appeal within 15 days of receipt or the due date of the NVP's decision. AFGE National Constitution, Appendix A, part III, sections 2-5 (pp. 46-47).

The election committee issued its decision on your and other members' election protests on May 22, 2015. President Karen Ford-Styer timely appealed the election committee's decision to the NVP. On June 9, 2015, the NVP issued a decision overturning the portions of the election committee's decision that disqualified any Local 1793 members or officers as candidates and the portions of the election committee's decision that were based on the conduct of the election by Elections USA. The NVP stated that he would exercise his authority to oversee the runoff election scheduled for June 18, 2015.

You received the NVP's decision by email on June 17, 2015. You had 15 days from June 17, 2015, to take the final possible step of appeal to the National President. You did not do so by July 2, 2015. As explained above, the NVP's decision was a final decision under the AFGE National Constitution.

Under the Department's regulations, you were required to file your complaint concerning these issues with the Department within one calendar month after exhausting the internal union remedies. The date of exhaustion of internal remedies was June 17, 2015, when you received the NVP's decision overturning the relevant portions of the election committee's decision. You did not file an administrative complaint with the Department by July 17, 2015. Consequently, the Secretary does not have the authority to consider the allegations in your complaint that addressed the conduct of the election by Elections USA.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred with regard to the allegations you timely raised with the Department, and the other allegations contained in your complaint to the Department may not be considered because your complaint was not timely filed as to those allegations. Accordingly, the office has closed the file on this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: J. David Cox, Sr., National President
American Federation of Government Employees
80 F Street NW
Washington, DC 20001

Karen Ford-Styer, President
AFGE Local 1793
3900 Woodland Avenue
Philadelphia, PA 19104

Beverly Dankowitz, Associate Solicitor
Civil Rights and Labor-Management