



August 4, 2017



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on January 11, 2017, 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 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 7120, occurred in connection with the run-off election of union officers conducted by Local 1633, American Federation of Government Employees (AFGE) on September 30, 2016.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific 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 incumbent candidates used various union-sponsored events to further their campaign efforts. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. Accordingly, union officers and employees may not campaign on time that is paid for by the union or use union funds, facilities, equipment, etc., to assist them in such campaigning. 29 C.F.R. § 452.76.

Initially, you alleged that incumbent slate candidates campaigned at "Lunch and Learn" events held on September 12-16, 2016. The investigation disclosed that four of the five members whom you identified as witnessing such campaigning stated that they did not attend any of these events. The fifth member failed to respond to the Department's telephone calls. In addition, a member of your slate stated during the investigation that he did not see any campaigning at the Lunch and Learn events he attended. The LMRDA was not violated.

Next, you alleged that the president of Local 1633 issued union checks to members to reimburse them for the annual leave they used to campaign for the incumbent slate. This allegation was not corroborated by the investigation. You were unable to provide

the Department's investigator the name of any person who allegedly received such reimbursements. None of the officers interviewed by the Department were aware of any union officers or members who received reimbursement checks. Further, the president of Local 1633 denied that any such checks were issued. The LMRDA was not violated.

In addition, you alleged that a member stated that he saw the chief steward distributing the incumbents' campaign literature at the union's annual picnic and that such literature was placed on tables at the picnic. During the investigation, a member stated that he saw the incumbent president campaign to 10 to 15 members at the picnic; however, the incumbent president denied that he campaigned at the picnic. The investigation found that another member stated that he saw the incumbent slate's campaign materials on the picnic tables and that he observed the chief steward distributing such materials to members at the picnic. The chief steward, however, told the Department's investigator that he did not distribute campaign materials at the picnic, did not see any such materials on the picnic tables, and did not see any campaigning. Thus, there is conflicting evidence regarding campaigning and the distribution of campaign literature at the union's annual picnic. Therefore, the evidence does not provide an adequate basis for finding probable cause to believe that the LMRDA was violated.

You also alleged that the union's distribution of the official union newsletter to members during the election period gave the union's president an unfair advantage because it contained his photograph and the title of his union office. Section 401(g) of the LMRDA prohibits any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members. 29 C.F.R. § 452.75.

In determining whether a union publication contravenes section 401(g)'s prohibition against union-financed campaigning, courts evaluate timing, tone, and content of the communication. In this case, the investigation showed that the union routinely distributes a newsletter to its members once a month and that the union distributed a newsletter to members one month prior to the run-off election. Therefore, the timing of the dissemination of the newsletter was within the context of the impending election. However, the tone of the newsletter was not laudatory of the incumbent candidates or critical of the opposition candidates. The content of the newsletter concerned general information about the run-off election, did not encourage or endorse the reelection of the incumbent candidates, and did not solicit members' votes. Further, the mere publication of the incumbent president's photograph and union office title in the newsletter did not advance his candidacy or give him an unfair political advantage over

the opposition candidates. The newsletter did not constitute unlawful union-financed campaigning. The LMRDA was not violated.

You alleged that an executive vice president of the local distributed campaign materials, candy, and business cards inside a facility while being paid by the union. As stated above, union officers and employees may not campaign on time that is paid for by the union. 29 C.F.R. § 452.76. The investigation showed that the executive vice president was on personal time or on leave when that campaigning occurred. The LMRDA was not violated.

In addition, you made several allegations implicating section 401(c) of the LMRDA which contains a general mandate requiring a union to provide adequate safeguards to ensure a fair election and whereby a union's wide range of discretion in conducting its officer elections is circumscribed by a general rule of fairness.

Initially, you alleged that the incumbent president instructed stewards to prohibit opposition candidates from campaigning at job sites but permitted incumbent candidates to engage in such activity. The incumbent president of Local 1633 denied instructing stewards to prohibit opposition candidates from campaigning at job sites or to notify him if campaigning occurred at their job sites. He further stated that all candidates were allowed to campaign at job sites so long as such campaigning did not occur while candidates were being paid by an employer or by the union. Information that you provided to the Department corroborated the president's statement. Specifically, you confirmed that candidates were allowed to campaign at the job sites if candidates notified the facility in advance that they planned to campaign at the facility. In addition, you stated that campaigning was permitted inside a facility so long as the campaigning was not disruptive to the workforce at such facility. Although you stated that every time you campaigned at a job site there were complaints that you were being disruptive, the investigation did not disclose that candidates who complied with the employer's campaign rules, including those on your slate, were prevented from campaigning inside or outside the work facilities. The LMRDA was not violated.

Next, you alleged that some members who voted at the polls were not required to show identification to vote but others were turned away if they did not show identification. The investigation revealed conflicting evidence concerning whether members were permitted to vote without showing identification. Consequently, the evidence does not provide an adequate basis for finding probable cause to believe that the LMRDA was violated. Moreover, the investigation disclosed that all of the voters who stated that they were permitted to vote without showing identification were eligible voters, including you. No ineligible voters were permitted to vote. There was no violation affecting the outcome of the election.

You alleged that incumbent officers were permitted to enter and exit a rear access door to the polling site on the morning of the election. You stated that you assumed that voters were in the voting area casting their ballots when this incident occurred. During the investigation the incumbent president denied that he used a rear access door to enter the polling site on the day of the election. The investigation revealed that the incumbent secretary treasurer used a rear door to the polling site around 6:30 a.m. on the morning of the election, before the polls opened, so that she could give the membership master list that was used to verify voter eligibility to the election committee members who were in the polling area. The incumbent secretary treasurer stated that she did not use the door again that day. The investigation disclosed that, after the election chairperson saw maintenance workers using a rear access door to enter the polling site on the day of the election, she informed them that they could not use it and locked the door. In any event, no ineligible voters voted in the election. Further, the investigation did not disclose any election improprieties at the polling site (either before or during voting). The LMRDA was not violated.

You also alleged that campaign workers for the incumbent slate distributed campaign cards to voters entering the polling area, even though campaigning was restricted to a location at least 50 feet outside the polling area. Consistent with the general mandate that a union must provide adequate safeguards to ensure a fair election, there must not be any campaigning within the polling place. 29 C.F.R. § 452.111. Further, a union may forbid any campaigning within a specified distance of the polling place. The local's election and campaign rules prohibit campaigning in the polling area but are silent regarding campaigning within a specified distance of that area. The investigation disclosed that an auditorium located at a medical center served as the polling site for the run-off election. Voting booths were set up inside the auditorium in a location used for the polling area. The investigation further disclosed that some of the incumbent slate's supporters campaigned outside or near the main entrance to the auditorium. However, there is no evidence that this campaigning occurred in or within 50 feet of the designated area where voters actually marked and cast their ballots. The LMRDA was not violated.

You further alleged that the union failed to provide adequate safeguards because candidates and officials had possession of the keys to the post office box that was secured for the returned voted ballots. The investigation disclosed that only one of the election chairpersons for the run-off election, not any of the candidates, retained possession of the two keys to the post office box. The LMRDA was not violated.

You alleged that you were not provided adequate time to make arrangements to have observers at the polls. The adequate safeguards provision in section 401(c) of the LMRDA includes the right of any candidate to have an observer at the counting and tallying of the ballots and at the polling place. 29 C.F.R. § 452.107. You informed the Department's investigator that an election chairperson sent an email requesting that

you provide her with the names of your observers, but that you did not receive it until 10:00 p.m. on the night before the run-off election because it was sent to your personal email address. You said this resulted in your slate not having observers at the polling place or the tally. The LMRDA places the onus on the candidate to request and to have an observer present. The union violates the Act when the union denies the candidate the right to have an observer or in some way discriminates among candidates with respect to the right to have an observer. The investigation found that all candidates were treated equally with respect to the right to have an observer. The investigation disclosed that on August 3, 2016, the election chairperson emailed all candidates, including you, to inform them of the August 5, 2016 candidates' meeting, and requested that candidates submit the names of their intended observers during the meeting. The investigation also revealed that the union never refused you the right to have an observer. The LMRDA was not violated.

You alleged that you and your slate were denied access to membership contact information and the membership list. Section 401(c) of the LMRDA provides that each bona fide candidate for office has the 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 home addresses of all members of a labor organization. 29 C.F.R. § 452.71. The LMRDA does not give members further rights with respect to access to or the availability of lists of members. The investigation disclosed that the election campaign rules provided the dates and times the membership list would be available for inspection. The rules instructed candidates to contact the election chairpersons to make a request to inspect the membership list. During the investigation you stated that you never made any such request and that you were not aware of any candidates who asked to inspect the membership list. The election chairpersons told the investigator that they did not receive a request from any candidates on your slate or any other slate to inspect the list. Further, there is no evidence that a list of members was available to the incumbent candidates for a purpose other than inspection. The LMRDA was not violated.

***You alleged that historically the union has conducted its officer elections on Thursdays but the run-off election was conducted on a Friday. Section 401(e) of the LMRDA requires a union to conduct its election of union officers in accordance with the requirements of its constitution and bylaws. 29 C.F.R. § 452.109. Local 1633's constitution and bylaws require that an election of officers be conducted in July of the election year. Local 1633's constitution and bylaws and the AFGE constitution are silent regarding the day of the week the election must be conducted. Consistent with the local's constitution and bylaws, the regularly scheduled election was conducted in July of 2016. On-site voting for the run-off election was conducted on Friday, September 30, 2016, because True Ballot was not available to supervise such voting prior to that date. Neither the LMRDA nor the union's constitution and bylaws were violated.

In connection with your allegation that on-site voting for the run-off election was conducted on a Friday, you stated that most of your supporters do not work on Fridays and, as a result, they were prevented from voting on-site. Section 401(e) of the LMRDA provides that every eligible member is entitled to vote in an election of union officers. 29 C.F.R. § 452.84. The investigation disclosed that during the run-off election the auditorium at a work facility served as the polling place for on-site voting and the polling hours were from 7:00 a.m. to 7:00 p.m. The investigation showed that your supporters who do not work on Fridays but wanted to vote on-site at that facility were not prevented from doing so, even if they had to travel to the facility and vote on their day off. Your supporters were afforded a reasonable opportunity to vote on-site or by mail ballot. The LMRDA was not violated.

You alleged that the union did not mail notice of the run-off election to the entire membership. Section 401(e) of the LMRDA provides that notice of an election must be mailed to the last known home address of each member at least fifteen days prior to the election. 29 C.F.R. § 452.99. A union's duty to maintain accurate mailing lists is part of its duty to mail election notices. 29 C.F.R. § 452.100(d).

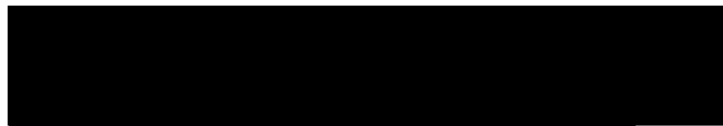
The investigation showed that on August 26, 2016, True Ballot, the company hired by the union to assist in the run-off election, mailed approximately 3,000 packages to members containing the election notices and ballots. The investigation disclosed that prior to such mailing the union took reasonable steps to obtain correct home addresses for all of its members and endeavored to keep the addresses current. The union had a systematic procedure in place that permitted it to routinely update such addresses. Specifically, the secretary treasurer stated during the investigation that if mail the local sent to members was returned as undeliverable, she reviewed the My Local database, (*i.e.*, the AFGE database) to confirm the member's address. If the address in the My Local database was the same as the undeliverable address, she attempted to contact the member by telephone or personal email to obtain the necessary information. If the secretary treasurer was still unsuccessful in reaching the member by telephone or personal email despite these efforts, she then emailed the member via the employer's global email system and attempted to obtain updated contact information.

In addition, the investigation showed that, on August 2, 2016, the secretary-treasurer sent a mass mail to members' last known email address to ask them to update their contact information with the union. Also, the union emailed two newsletters to members' personal and/or work email addresses prior to the run-off election. One of the newsletters contained notice of the run-off election and the other newsletter contained similar information. Under these circumstances, the efforts taken by the union to obtain correct home addresses for all of its members, to maintain the accuracy of such addresses, and to notify members of the run-off election were reasonable and consistent with the requirements of the LMRDA. The LMRDA was not violated.

Finally, you alleged that some members voted twice. Section 401(e) of the LMRDA provides that each member in good standing is entitled to one vote. You told a Department investigator that one individual told you she voted once in person and once by mail ballot. The investigation found that only the ballot she voted at the polls was counted (her mail ballot was not counted), so there was no violation with respect to this individual's vote. However, the investigation disclosed that four members voted twice, in violation of section 401(e) of the LMRDA. Because each of these four members was entitled to cast only one vote, but voted twice, a total of four improper votes were cast in the election. However, section 402(c) of the LMRDA provides that an election may be overturned only when there is a violation that may have affected the outcome of the election. The smallest vote margin on the run-off election was 19 votes and, thus, the four improper votes did not affect the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,



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