



July 11, 2017

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on February 2, 2017, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act), as made applicable to elections of federal sector unions by Section 7120 of the Civil Service Reform Act of 1978 (CSRA), occurred in connection with the election of officers of American Federation of Government Employees Local 2109 (Local 2109 or Union), conducted on September 27, 2017 and the runoff election conducted on September 29, 2017.

The 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 LMRDA that may have affected the outcome of the election.

You alleged that the Union failed to properly apply candidate qualifications by permitting two individuals who were not valid members to run in the election in violation of the Union's constitution and bylaws. Pursuant to Section 401(e) every member in good standing is eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Appendix A, Part I, Section 1(e) of the Union's bylaws require that officers or candidates must: (1) be a member in good standing; (2) be a member for one year of an AFGE local, immediately preceding the closing of the nomination process; and (3) must not be a member in any labor organization not affiliated with the AFL-CIO.

Specifically, you claimed that candidates [REDACTED] and [REDACTED] were not in good standing for failure to pay dues. The investigation disclosed that [REDACTED] has been current on her dues and in good standing since her transfer to Local 2109 in June of 2015, which was more than a year before the September 6, 2016 nominations. Dues records indicate that [REDACTED] was also in good standing for the year preceding nominations because he made manual payments of dues for times he was on leave, including the payroll periods ending

August 22, 2015; September 5, 2015; September 19, 2015; and September 17, 2016 and October 1, 2016. The investigation disclosed no evidence that either candidate was a member of a labor organization not affiliated with the AFL-CIO. There was no violation of the Act.

You next alleged that [REDACTED] slate improperly used the AFGE logo in campaign literature which displayed photos of the slate candidates on one side of a postcard and the AFGE logo on the other side. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in union officer elections. Section 401(g) has been broadly interpreted to include almost anything of value including the use of a labor organization's logo, in certain circumstances. Specifically, a union logo may not be used where the union has taken steps to restrict the use of logo (such as copyrighting the logo or requiring permission before using the logo for any purpose), and where it is used in a manner that implies that the union has endorsed the candidate(s). Use of union logos on campaign material that does not suggest an official union endorsement, generally is considered not to affect the election outcome if no union resources, such as use of official union stationery, were involved and if the literature was clearly marked as campaign material. Here, the postcard was not on official stationery. The union does not send postcards for official union business. Rather, the postcard was clearly campaign material because it contained photos of only certain candidates (those running on [REDACTED] slate) and asked for members' support for those candidates in the election. Additionally, Attachment 12, Section 5 of the "AFGE Election Manual" states that "AFGE does not have a policy prohibiting candidates from using the AFGE shield or logo on clearly identified campaign material, where it is clear that the logo does not imply a union endorsement of the candidate." There was no violation.

Next, you alleged that the Union engaged in disparate candidate treatment by allowing the [REDACTED] slate to do a campaign mailing to only part of the membership, while requiring your slate to distribute materials to all members. Section 401(c) of the LMRDA prohibits disparate treatment among candidates for union office. The investigation disclosed that no official from the Union denied a request from your slate to conduct a partial campaign mailing or made any statements to candidates on your slate about whether a partial membership mailing was permitted. Rather, the investigation disclosed that a member of your slate, candidate [REDACTED], requested a mailing to the full membership and voluntarily bought additional postage for a full membership mailing when he submitted your slate's campaign materials to the Union for distribution. There was no violation.

You further alleged that the Union disparately treated candidates by allowing the Hardeman slate to tape campaign materials to the employee bathrooms, walls and doors at the Community Living Center (CLC), while delaying the posting of your

campaign materials at the CLC. The investigation disclosed that the Union only posted candidates' campaign materials on the Union's bulletin boards. There was no evidence to indicate that the Union posted campaign materials anywhere else at the worksites, that it applied different requirements for posting campaign materials to different candidates, or that it unreasonably delayed in posting your campaign materials after your materials were received. The only campaign material postings that were removed – at the request of Human Resources – were papers that were taped to walls without plastic sleeves, or that were posted in the main entrance at the worksite contrary to the employer's policies. There was no violation.

You alleged that the Union failed to provide proper notice of the nominations and the election by mailing the combined nominations and election notice late and failing to prominently display absentee ballot instructions in the notice. Section 401(e) of the Act requires that “[n]ot less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address.” Additionally, Appendix A, Section 3(a)(4) of the AFGE National Constitution requires local unions to mail notices of the election to the membership “not less than 15 days prior to the date of the election.” The Union mailed the combined nominations and election notice to the membership on August 25, 2016 – more than thirty days prior to the September 27, 2016 election – and also posted it on all the Union bulletin boards on August 24, 2016. The absentee ballot procedure was clearly outlined on the third page of the notice under the heading “4. ABSENTEE BALLOT Notice,” with the contact information and deadline for requesting absentee ballots. Ultimately, 39 members utilized the absentee ballot request procedure. The investigation found no evidence that any members were prevented from running because they were not aware of the nominations timeframe. There was no violation.

You alleged that members were not provided with a reasonable opportunity to vote because: 1) the sole polling location was only open from 8AM to 5PM, and members work shifts across a 24 hour day, and 2) members from multiple worksites (such as Austin, Killeen, and Cedar Park) may have needed to travel a great distance to get to the polling location. Section 401(e) of the LMRDA states that each member in good standing is entitled to cast one vote. Even if the polling hours and distance were so restrictive as to constitute a violation of the Act, no member was identified as unable to vote. Significantly, the Union did provide for absentee ballot procedures for those unable to get to the polls in Temple during voting hours. No violation of the Act occurred that may have affected the outcome of the election.

You also alleged that members were not provided with a reasonable opportunity to vote because there was insufficient notice of the runoff election, which was held two days after the regular election. The fifteen day notice of election also applies to runoff elections. However, Department of Labor regulations provide that the union may

include notice of the run-off election in the notice of the primary election so long as that notice advises members of the possibility of a runoff election and specifies such details as the time and place of such runoff election as may be necessary. 29 C.F.R. 452.103. Here, the union's combined notice of nomination and election stated the date, time and place of the runoff election. Moreover, in addition to the required mailed notice of the runoff, after the regular election, notice of the runoff election was posted at all the worksites, on the door of the Union office, and on the Union's website. There was no violation.

You further alleged that approximately 70 members were not provided with a reasonable opportunity to vote because they did not receive notice of the election. The investigation disclosed that 77 combined nominations and election notices were returned as undeliverable. Here the union has made reasonable efforts to keep its membership mailing list current. Consequently, having notices that are returned as undeliverable, in and of itself, does not violate the Act. However, even if the union has made reasonable efforts to update its mailing list, where the notice, returned as undeliverable, contains a forwarding address label, the union is required to re-mail the notice to the updated address. Six of the notices were returned with a more recent address indicated on the return mailing label. However, these six notices were not picked up by the Union until September 27, 2016 – too late to re-send the notices. At least six members were not mailed notice as required by the Act, and they did not vote in the election. However, the smallest margin of victory in the election was 29 votes. Thus, no violation of the Act occurred that may have affected the outcome of the election.

You also alleged that four members, [REDACTED] were not provided with a reasonable opportunity to vote because they did not receive absentee ballots in time for the election. The combined nominations and election notice informed members that absentee ballot requests had to be emailed by September 21, 2016. After [REDACTED] requested his absentee ballot late on September 22, the Union sent him an absentee ballot, but [REDACTED] did not return it. [REDACTED] was sent an absentee ballot on September 21 but did not return her ballot before the absentee ballot voting deadline of 3:00pm on September 26. [REDACTED] did not request a ballot and was not eligible to vote. The investigation did not substantiate that [REDACTED] requested an absentee ballot. No violation occurred.

Lastly, you alleged that the Union failed to organize an Election Committee (Committee) of at least three members in violation of its constitution and bylaws. Section 401(e) of the LMRDA requires a union to conduct elections of officers in accordance with the Union's constitution and bylaws. Part IV, Section 4 of the Union's constitution and bylaws states that the Committee should consist of an odd number of

at least three members who were not officers or officer candidates. The investigation disclosed that [REDACTED] were Committee members. The constitution and bylaws contains no language prohibiting AFGE District 10 staff members such as [REDACTED] from serving on the Committee. There was no other evidence that the Committee was unable to fulfill its duties. Thus, even if a violation of the constitution and bylaws occurred, it did not affect the outcome of the election.

As a result of the investigation, the Department has concluded that there was no violation of the Act affecting the outcome of the election in connection with your allegations. Accordingly, I have closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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