



November 8, 2018

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on August 22, 2018, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by Local 2186, American Federation of State, County and Municipal Employees (AFSCME), on October 31, 2016.

Local 2186 is not a covered labor organization under the LMRDA because it is composed entirely of state, county, and/or municipal government employees. However, Local 2186 is affiliated with AFSCME District Council 47 (DC 47), which is a covered labor organization. The president of Local 2186, by virtue of that position, serves as a DC 47 executive board member, as well as a delegate to DC 47's delegate assembly. Therefore, the position of Local 2186 president is covered by the LMRDA and is subject to the Title IV election requirements. *See* 29 C.F.R. §§ 452.12, 452.22.

The Department conducted an investigation of your allegations with regard to the election for president.¹ 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 for president.

You first alleged that Local 2186 allowed members of another AFSCME local, Local 2187, to campaign to members of Local 2186 and that Local 2187 members placed campaign material in members' work mailboxes. Specifically, you alleged that [REDACTED] a steward at the Free Library and an election committee member, allowed [REDACTED] a retiree member and staff representative for Local 2187, to campaign with members of the opposing slate. You also alleged that Local 2187 members [REDACTED] and [REDACTED] placed campaign material in Local 2186 members' employee mailboxes at the Department of Human Services.

Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidacy. However, union and employer-financed campaigning is prohibited only to the extent that such financing advances the candidacy of a particular individual in an election of union

¹ The DC 47 delegates elected in October 2016 are also LMRDA-covered positions. However, those delegates have already participated in an intermediate body election — the election for an additional delegate to sit on the DC 47 executive board, which took place in November 2016 — and they will not participate in any other elections during their term of office. You did not file a complaint with the Department of Labor challenging the intermediate body election. For these reasons, allegations related to the Local 2186 election of delegates are now moot.

officers. In addition, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, and section 401(e) requires a union to conduct its election in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The Department's investigation confirmed that the incidents you alleged occurred, but it did not establish that they constituted a violation of the LMRDA.

With regard to campaigning on employer property, you acknowledged during the investigation that both your slate and the opposing slate campaigned at workplaces. You stated that your slate posted campaign flyers on bulletin boards and near elevators, in areas where you believed the city allowed such postings. You further stated that you and members of your slate walked around to members' offices to speak to members and left campaign literature on their chairs. You specifically acknowledged campaigning to members at the Free Library, taking advantage of the same opportunity to do so that was afforded to the opposing slate.

With regard to placing campaign literature in employee mailboxes, the Department's investigation established that it was the union's practice in past elections for members and candidates to distribute campaign literature using employee mailboxes. Therefore, any candidate, including you, could have attempted to distribute campaign literature using employee mailboxes. Accordingly, employer funds were not used to advance the candidacy of any particular individual in the election.

With regard to the campaigning conducted by members of Local 2187, no provision in the union's constitution or bylaws prohibits members from one local from campaigning with or on behalf of candidates from another local. The investigation established that it was common practice for members of Locals 2186 and 2187 to campaign together. Further, this does not constitute a violation of the LMRDA.

You next alleged that the election committee did not provide copies of the election rules to all candidates and, specifically, that you did not receive a copy of the election rules. You also alleged that your opponent, [REDACTED], failed to follow an election rule requiring that all questions be directed to the election committee chairs. Specifically, you alleged that [REDACTED] contacted third-party vendor Elections USA and AFSCME International with questions about ballots and the number of trustees to be elected.

As noted above, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, and section 401(e) requires a union to conduct its election in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

You were the incumbent president at the time of the election. During the Department's investigation, you stated that you appointed the members of the election committee and that you reviewed and approved the election rules that the committee created. Although you stated that the election committee never mailed you a copy of the election rules, you acknowledged that this

was merely an oversight and that it had no bearing on the election. Furthermore, election committee co-chair ██████ stated during the investigation that you were eventually mailed a copy of the election rules.

During the Department's investigation, ██████ acknowledged that she contacted Elections USA to seek information that the election committee allegedly failed or refused to provide to her. She also acknowledged that she and her slate sent letters to AFSCME officials to notify them of what they perceived as the election committee's failures to fulfill its responsibilities. No provision of the union's constitution or bylaws prohibits such contact, and such contact does not violate the LMRDA. Further, the election rules stated only that "questions may be directed" to the election chair and co-chair; they did not prohibit candidates from contacting the vendor or the international. There was no violation.

You next alleged that Local 2186 failed to afford all members a reasonable opportunity to vote. Specifically, you alleged that members did not receive their ballots timely, that members who needed duplicate ballots did not have enough time to receive them and mail them back, and that the ballot instructions were confusing because they contained two different dates, October 21 and October 25. You provided affidavits from 30 members who stated that they planned to vote but did not receive ballots or did not timely receive the duplicate ballots they requested.

Section 401(e) of the LMRDA provides that in any election that is required to be held by secret ballot, "[e]ach member in good standing shall be entitled to one vote." In addition, as noted above, section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure fair elections.

The Department's investigation established that 1,010 ballot packages were mailed to members on October 12, 2016. The Department's review of membership records established that Local 2186 had 1,000 active members at the time of the mailing of ballots. The voting instructions stated that ballots had to be received in the post office box by noon on October 28, 2016, to be counted. The voting instructions further stated that requests for duplicate ballots could be made until October 21, 2016.

The investigation disclosed that duplicate ballots were mailed out on the same date that members requested them, up until the October 21 deadline. Of the 22 duplicate ballots mailed, eight were voted and counted. Of the 30 members who provided affidavits to you, three actually requested duplicate ballots on October 21 and returned their voted ballots to the post office box by noon on October 28. Therefore, enough time was permitted to receive and vote a duplicate ballot.

The investigation further revealed that, of the 30 individuals who signed affidavits, 22 were mailed ballots. Of the 8 who were not mailed ballots, 2 were not members and therefore were not entitled to receive ballots: ██████, who did not become a member until after the 2016 election, and ██████, who is not a member (the investigation included searches of records using various spellings of that name). However, the remaining 6 — ██████, ██████, ██████, ██████, ██████, ██████, were members and should have been mailed ballots.

Further, the Department's review of membership and election records identified 3 additional members who were not mailed ballots: [REDACTED]. In all, 9 members who should have received ballots were not mailed ballots, thus were denied the right to vote in violation of the LMRDA. However, the margin for the president's race was 26 votes; therefore, this violation could not have affected the outcome of the election.

Your allegation that the ballot instructions were confusing because they contained two different dates, October 21 and October 25, was not substantiated. You acknowledged that neither you nor any other member you were aware of found the ballot instructions confusing. When given the opportunity to review the ballot instructions during the investigation, you were unable to locate the dates about which you complained. The dates about which you complained appeared only in the election rules, which were provided only to candidates; they were never sent to voters. Furthermore, you stated that, as incumbent president at the time of the election, you reviewed the ballot packages provided by Elections USA before they were mailed to members. There was no violation that may have affected the outcome of the election.

You also alleged that [REDACTED] failed to identify her observer to the election committee and to request that an election committee member be present when the ballots were picked up at the post office; that an observer at the tally disregarded the instructions from Elections USA that questions be directed to the election committee; that [REDACTED] and another candidate, [REDACTED], were at the union hall during the entire ballot counting process and entered the tally room while the election materials were still on the table; that [REDACTED] contacted Elections USA and threatened to sue them if they did not provide her with the certified election results; and that [REDACTED] improperly fired Hill from the election committee and refused to allow the election process to be finalized.

As noted above, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, and section 401(e) requires a union to conduct its election in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

During the investigation, Hill stated that the election committee did not receive advance notice of [REDACTED] designation as [REDACTED] observer and did not arrange to have any members of the committee present for the ballot pickup conducted by Elections USA. However, the investigation established that [REDACTED] named [REDACTED] as her observer for the ballot pickup in an email to [REDACTED] dated October 26, 2016, two days before the ballot pickup. The investigation further established that [REDACTED] responded to [REDACTED] email on October 27, 2016, the day before the ballot pickup, copying the other election committee members and confirming [REDACTED] request to have [REDACTED] observe the ballot pickup on her behalf. [REDACTED], director of election services for Elections USA, confirmed that [REDACTED] was present for the ballot pickup on October 28, 2016. [REDACTED] stated that [REDACTED] did not handle any of the ballot packages and that there was no evidence of any ballot tampering.

The investigation confirmed that an observer at the tally, ██████████, asked ██████████ questions about the election process and was redirected to the election committee. As noted above, the election rules stated that “questions may be directed” to the election committee; they did not prohibit individuals from asking questions of the election vendor. There was no evidence that Scott’s questioning interfered with the election process or affected the results of the election.

In your protest, you stated that candidates were not “permitted on the premises, including the hallways, adjoining rooms or waiting areas during the election process.” However, the Department’s investigation did not reveal any election rule preventing candidates from being “on the premises” during the tally. The AFSCME Local Union Election Manual provides only that candidates may not serve as observers “during the period when voting is actually taking place.” With regard to observers at the tally, the Local 2186 election rules provided simply that one observer per candidate would be permitted in the counting room at a time. The investigation uncovered conflicting evidence about whether ██████████ and ██████████ were at the union hall while the tally was taking place. However, multiple witnesses, including ██████████, stated that neither ██████████ nor ██████████ was present in the room during the ballot tally. Furthermore, you stated that you did not believe that ██████████ tampered with the ballots or had an effect on the outcome of the election. Your observer was present at the ballot tally and did not report any mishandling of ballots.

The Department’s investigation confirmed that ██████████ contacted Elections USA on November 1 or 2, 2016, to ask for the official election certification. ██████████ stated that she contacted Elections USA because the election committee had not released any election results, although ██████████ and the other officers had already been sworn in. Pursuant to the service contract, Elections USA provided the official election certification to the election committee on November 3, 2016. As explained above, ██████████ contact with Elections USA did not violate any election rules. In addition, this contact occurred after the election was complete and could not have interfered with the election process or affected the results of the election.

The Department’s investigation established that ██████████ removed ██████████ from the election committee on or around November 15, 2016, and reinstated her to the committee on or around November 18, 2016. These actions occurred after the election was complete and, therefore, could not have interfered with the election process or affected the results of the election. You alleged that ██████████ actions prevented the election committee from considering your protest and issuing a recommendation to the membership as provided for in appendix D, section 4, of the AFSCME International Constitution. However, the AFSCME Judicial Panel subsequently accepted your appeal, considered it in full, and issued a decision on the merits, in accordance with the next step of the protest procedures under the constitution. There was no violation.

Finally, you raised allegations in your complaint that you had previously withdrawn at the hearing on your appeal before Judicial Panel Chairperson ██████████ on January 20, 2017. Section 402(a) of the LMRDA requires that a member exhaust the remedies available to him or her under the union’s constitution and bylaws before filing a complaint with the Secretary of Labor. These allegations were not properly exhausted and were not investigated by the Department.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



Sharon Hanley
Chief, Division of Enforcement

cc: Lee Saunders, President
American Federation of State, County and Municipal Employees
1101 17th Street, NW, Suite 900
Washington, DC 20036-5687

Frederick Wright, President
AFSCME District Council 47
1606 Walnut Street
Philadelphia, PA 19103-5482

Pamela Robinson, President
AFSCME Local 2186
1606 Walnut Street
4th Floor
Philadelphia, PA 19103

Lee W. Jackson
Alice Hwang
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, DC 20036

Beverly Dankowitz, Associate Solicitor
Civil Rights and Labor-Management Division