



January 28, 2019

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your December 11, 2017 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481, as made applicable to elections of federal sector unions by the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, and 29 C.F.R. § 458.29, occurred in connection with the election of Regional Vice President and Alternate Regional Vice President for Region VI of the American Federation of Government Employees (AFGE) Council 222, conducted on August 2, 2017.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your allegations that no violation occurred which may have affected the outcome of the election.

Notice

First, you allege that Council 222 failed to provide proper notice of nominations and election because the notice was not mailed to all members 15 days prior to the meeting for nominations and election.

The Department's investigation established that on July 19, 2017, [REDACTED], the Council 222 Secretary, emailed combined nomination and election notices to all voting delegates of Region VI. She also mailed the notice to the home address of each delegate. The nomination and election meeting was held August 2, 2017, which was 14 days after the notice was sent.

Pursuant to Section 401(e) of the LMRDA, in any election which is required by the LMRDA to be held by secret ballot, the union must mail to each member, at his last known home address, notice of the election not less than 15 days prior to the election. 29 C.F.R. § 452.99. Officers of intermediate bodies, such as the Regional Vice President

and Alternate Regional Vice President for Region VI, however, are not required under the LMRDA to be elected by secret ballot. *See* 29 U.S.C. § 481(d), 29 C.F.R. § 452.123. Accordingly, the election notice here was not subject to the statutory requirement that it be mailed to each member's last known address not less than 15 days prior to the election.

Additionally, it is not clear whether the union's constitution requires that notices of election for regional officers be sent to all members 15 days prior to the election. While Part I, sec. 3(a) of Appendix A of the AFGE National Constitution calls for notices of election to be "mailed to each member at his or her last known home address not less than 15 days prior to the date of the election," this provision applies to the direct election of local officers and delegates. Part II, sec. 1(e)(3) of Appendix A of the AFGE National Constitution, which applies to the indirect election of council officers, provides that the elections shall be conducted according to the Council Constitution. Art. VII, sec. 3 of the Council 222 Constitution and Bylaws states that "[o]nly duly elected delegates and/or proxy delegates representing locals will be allowed to nominate and vote for officers and appropriate Regional Vice Presidents." The Council 222 Constitution is silent with respect to the notice requirements for Regional caucuses.

Even if the election notice was required to be mailed to each member's last known home address 15 days prior to the election, the union's failure to do so here would not have affected the outcome of the election. Section 402(c)(2) of the LMRDA provides that an election will only be overturned where a violation may have affected the outcome of the election. Here, all eligible delegates in Region VI attended the nomination meeting and voted in the Region VI Vice President and Alternate Vice President election. Accordingly, any violation would not have affected the outcome of the election.

You also alleged that the election notice was insufficient in that it did not properly outline the process of the election and the process for filing a protest. Even election notices that are subject to section 401(e) of the LMRDA are not required to contain information regarding the filing of protests. *See* 29 C.F.R. § 452.99. Nonetheless, the union did state in the nomination and election notice that all protests to the election were required to be filed within ten days after the election with Sal Viola, the original election committee chairperson. Furthermore, you could not provide the names of any members who had any concerns or were confused regarding the election process. Accordingly, no violation occurred.

Ineligible Members Permitted to Vote

Second, you allege that some delegates to the Region VI election were not properly credentialed. You specifically claim that the delegate from Local 3138, Local President [REDACTED] was not properly credentialed, but you also claim that other delegates

may not have been properly credentialed as well, and therefore should not have been eligible to run or vote in the election for Region VI Vice President and Alternate Vice President.

All delegates voting in the Region VI Vice President and Alternate Vice President election must be elected in accordance with the requirements of Title IV of the LMRDA because the delegates elect officers of Council 222. 29 U.S.C. § 481(d); 29 C.F.R. § 452.22. Article VII, sec. 3 of the AFGE Council 222 Constitution and Bylaws states that only duly elected delegates and/or proxy delegates representing locals will be allowed to nominate and vote for officers and appropriate Regional Vice Presidents.

To be credentialed in time for the Council 222 Convention, each delegate was required to submit their credential package by June 27, 2017. Not all Region VI delegates met this deadline. However, the deadline does not apply to the regions' caucuses and elections for Regional Vice President and Alternate Regional Vice President. The Council 222 Constitution is silent on due dates for credentials for regional elections. Accordingly, the delegates did not need to have been credentialed by June 27, 2017 in order to vote in the August 2, 2017 election for Region VI Vice President and Alternate Vice President so long as they were properly credentialed by the date of the regional election. Three local unions within Region VI (3320, 3950 and 3963) provided the required documentation in time to be credentialed and attend the Region VI Caucus and Council Convention. The remaining two local unions (3475 and 3138) provided their required documentation in time to participate only in the Region VI Caucus.

The Department's investigation determined that one delegate was not duly elected and was, therefore, not eligible to vote in the Region VI Vice President and Alternative Vice President election. The evidence uncovered during the investigation showed that members of Local 3963 did not receive sufficient notice of nominations and election for its delegate. While the union provided a notice, dated June 16, 2017, that a special meeting for the nominations and election of its delegate would be held on June 29, 2017, the union did not provide the results of that election. The only election results provided were those of the officer election held on June 30, 2017. Notice of the officer election and a "ballot," which members were instructed they could use to vote for the incumbent slate of officers or to cast a write-in vote, were emailed to all members on June 26, 2017. This notice was provided only three days before the close of voting. Additionally, Part I, sec. 1(d) of the AFGE National Constitution prohibits the use of write-in votes. The incumbent slate was elected by acclamation. Of the 21 members of Local 3963, only 15 voted. It is unclear if the remaining six members would have nominated or voted for other members. Accordingly, this violation may have affected the outcome of the Local 3963 officer election.

Nonetheless, the Department's review of the election records confirmed that each of the remaining delegates had been duly elected. For Local 3138, the Department determined that, on July 27, 2017, the local held a special meeting for the nomination and election of delegates. Notice of the special meeting was emailed to all members on July 21, 2017. Under the LMRDA, "notice of nominations may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice." 29 C.F.R. § 452.56. While the AFGE National Constitution requires notice of nominations to be sent to members ten days before the nominations meeting, the Department determined that Local 3138 members were provided an opportunity to nominate candidates for delegate, and [REDACTED] was the only member nominated. Accordingly, any violation did not affect the outcome of Local 3138's delegate election.

Local 3950 similarly failed to send timely notice of the special election for the nomination and election of the local's delegate when it became known that the local president would be unable to attend the convention. [REDACTED], the Local 3950 Vice President, was elected delegate by acclamation. While Local 3950 did not provide members sufficient opportunity to nominate candidates, the notice was emailed to all 15 members of the local; of those 15 members, only five members did not participate in either the nomination or the election. The Department interviewed those five members, each of whom confirmed that they had received the notice and did not want to make a nomination for delegate. Accordingly, any violation could not have affected the outcome of the election.

No problems were uncovered in the election and credentialing of the delegates from Locals 3320 and 3475.

Because only one delegate was improperly credentialed, the outcome of the Region VI Vice President and Alternate Vice President election would not have been affected. The margin of victory in both the race for Vice President and Alternate Vice President was two votes; accordingly, even if the vote of the delegate from Local 3963 is voided, the outcome would remain the same. Therefore, the violation did not affect the outcome of the election.

Failure to Follow the Union's Constitution and Bylaws and Failure to Provide Adequate Safeguards

Third, you allege that the union improperly failed to elect an election committee, in violation of the union's constitution and bylaws, and that, as a result, the election was not conducted fairly.

The Department's investigation revealed that, originally, [REDACTED] volunteered to serve on the election committee for the Region VI election, but decided that, because he would not physically be at the election, it would be best to have someone else who could attend the election serve as election committee chairperson. At the election meeting on August 2, 2017, [REDACTED] volunteered to take over the additional election committee duties and to conduct the election. [REDACTED] received the nominations from [REDACTED], ran the nominations process at the meeting, and conducted the election.

Section 401(c) of the LMRDA requires, in pertinent part, that a union provide adequate safeguards to insure a fair election, and section 401(e) requires that union officer elections be conducted in accordance with the union's constitution and bylaws. Article VIII, sec. 2 of the Council 222 Constitution and Bylaws states that "delegates shall elect an Election Committee to conduct the election." The other provisions of Article VIII, however, indicate that this requirement applies to the convention, rather than to regional caucuses. The Council 222 Constitution and Bylaws is silent with respect to the establishment of election committees for regional caucuses. Region VI election committee members could have volunteered or been appointed, and any member could have volunteered for the position. Additionally, you failed to provide any evidence that the absence of an election committee resulted in unfairness during the election process. There was no violation.

Failure to Properly Count the Ballots

Fourth, you claim the ballots were improperly counted. Specifically, you allege that three of the delegates from Local 3320 voted for you, but that only two votes were recorded in your favor. Section 401(c) of the LMRDA requires, in pertinent part, that a union provide adequate safeguards to insure a fair election. *See also* 29 C.F.R. § 452.66.

Section 401(e) requires that all members in good standing be permitted to vote in a union election. Additionally, Art. VII, sec. 2(a) of the Council 222 Constitution states that "the Regional Vice Presidents shall be elected by secret ballot and a majority vote of all delegates from those locals located within the jurisdiction of the region."

The Department's review of the election records concluded that a total of seven ballots were cast. One ballot was determined to have been improperly counted by the union, and was therefore voided by the Department. This ballot was voided because the voter marked no candidate for Region VI Vice President and marked more than one candidate for Region VI Alternate Vice President. The candidates who won in the union count remained the same after the Department's count. Accordingly, the violation could not have affected the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of 29 C.F.R. § 458.29, and I have closed the file regarding this matter. You may obtain a review of this dismissal by filing a request for review with the Director within 15 days of service of this notice of dismissal. A copy of your request must be served on the District Director and the union and a statement of facts must be filed with the Director. The request for review must contain a complete statement of facts and the reasons upon which your request is based. See 29 C.F.R. § 458.59.

Sincerely,



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