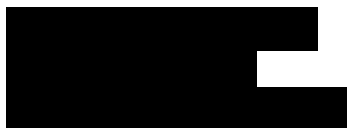




August 29, 2019



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on October 29, 2018, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers that was conducted on June 25, 2018 by the New York State Public Employees Federation AFL-CIO, Local 4053 (PEF).

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

You alleged that PEF violated section 401(b) of the LMRDA by appointing, rather than electing, certain positions that you alleged are officer positions. Specifically, you claimed that the Chief of Staff, Executive Director, Director of Finance, Member Benefits Administrator, Director of Civil Service, and Executive Board Retiree Representative are all officer positions that must be elected in accordance with the LMRDA. Section 401(b) requires that "[e]very local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing." 29 U.S.C. § 481(b). Section 3(n) of the LMRDA defines "officer" as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body." 29 U.S.C. § 402(n).

During your interview, you stated that you believed the above-referenced positions were officers because the incumbents: 1) attend Executive Council meetings; 2) make \$150,000; and 3) perform functions reserved for the union president. You also stated that PEF described the Chief of Staff, Executive Director, and Director of Finance positions as officers on its IRS 990 form. Furthermore, you noted that PEF's constitution provides that the Retiree Representative sits on the Executive Board. While you

acknowledged that the constitution limits the matters the Retiree Representative may vote on, you also alleged that these limits are frequently ignored.

Any person who in fact has executive or policy-making authority is an "officer" even though that person may not be identified as such under the constitution and bylaws of that union. 29 C.F.R. § 452.19. Moreover, a member of any group, committee or board which is vested with broad governing or policymaking authority will be regarded as a member of an "executive board or similar governing body." 29 CFR § 452.20(a). Professional and other staff members of a union who do not determine the organization's policies or carry on its executive functions and who are employed merely to implement policy decisions and managerial directives established by the governing officials of the union are not officers and are not required to be elected. 29 C.F.R. § 452.20(b).

The investigation found that the Chief of Staff, Executive Director, Director of Finance, Member Benefits Administrator, and Director of Civil Service positions are not officers. The PEF constitution at Article IV, Section D.10 provides that PEF's president may appoint assistants and staff to manage his office. The investigation found that the above-described positions are appointed pursuant to this authority. The incumbents report to the president or another officer and may not independently exercise executive power. Accordingly, there was no violation of the LMRDA.

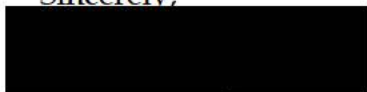
The investigation also found that the Retiree Representative is not an officer. When analyzing whether a position falls under the LMRDA's definition of "officer," courts look to whether the position's functions are executive in nature. The investigation found that PEF's constitution limits the Retiree Representative such that the position does not wield executive power. Specifically, the PEF constitution at Article VII, Section C provides that the Executive Board shall include a "Retiree Representative appointed by the President; provided, however, that no Retiree Representative shall be entitled to vote on the PEF budget or on matters affecting the terms and conditions of employment of Regular members, including but not limited to contract negotiations, contract ratification and contract enforcement." The investigation found that these limits are followed in practice. While the Retiree Representative may propose items for the agenda, speak during Executive Board meetings, and cast votes on a narrow range of topics, he is excluded from voting on most matters of policy. You alleged that the Retiree Representative frequently votes on budgetary matters in violation of the constitution. The investigation did not find evidence to support that assertion. Accordingly, there was no violation of the LMRDA.

You also alleged that PEF violated section 401(e) of the LMRDA by denying you the ability to nominate Nikki Brate as a candidate. Section 401(e) provides that "a reasonable opportunity shall be given for the nomination of candidates." 29 U.S.C. §

481(e). The investigation found that your complaint on this issue was not timely. The 2018 Election Rules provide, in relevant part, "For nominating petitions the time limit [for filing a complaint with the Election Committee] will be thirty (30) calendar days following certification of the nominating petition." The investigation determined that the nominating petition was certified in May 2018. You filed an internal protest with PEF on July 27, 2018, outside the thirty day timeline for challenging nominations. In any event, the Department investigated this matter in a separate complaint and found that no violation of the LMRDA occurred.

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,



Brian A. Pifer
Chief, Division of Enforcement

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