



September 26, 2019

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on February 15, 2019 with the United States Department of Labor alleging that violations of Section 7120(d) of the Civil Service Reform Act of 1978 (CSRA) and the incorporated applicable sections of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of American Federation of Government Employees (AFGE) Local 1012 (Union), conducted on December 5, 2018.

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 notify members, including candidates, of when and where returned absentee ballots would be retrieved. Section 401(c) of the LMRDA provides that candidates have the right to an observer present at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). The Department's interpretive regulations at 29 C.F.R. § 452.107 state that the right to have an observer "encompasses every phase and level of the counting and tallying process" including the receipt of mailed ballots. Specifically, you alleged that two election committee members retrieved an absentee ballot from the designated post office box without giving advanced notice to all candidates. The Union acknowledged that it failed to provide candidates and their observers an opportunity to observe the absentee ballot pickup. However, the Department's review of records uncovered no evidence of ballot tampering or receipt of additional absentee ballots. Rather, only one voted absentee ballot was requested, received, and counted. Additionally, you were able to have an observer at the polling site. The margin of victory for the only contested race, president, was 78 votes. Thus, to the extent there may have been a violation, there was no effect on the outcome of the election.

You next alleged that the Union denied your right to have an election observer. Specifically, you alleged that during the tallying of the votes, the Union interfered with your right to have an observer by denying your observer's request to see names on ballots. However, there was no evidence indicating that your observer, [REDACTED], asked any member of the Election Committee to view a name on a ballot. The investigation did not reveal evidence supporting your observer's claim that she was prevented from seeing ballots. Rather, the investigation established that observers were able to position themselves wherever they preferred during the tally, and that each ballot was shown to all present. There was no violation of the Act.

You also alleged that the Union disparately treated candidates by holding them to different standards for campaigning while using union or employer resources. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office, 29 U.S.C. § 481(c), and section 401(g), 29 U.S.C. § 481(g), prohibits the use of union or employer resources to promote a candidate. Specifically, you alleged that [REDACTED] the incumbent president and an employee of the Union, was permitted to distribute campaign literature throughout the day on Union time at the employer's facility while the Union informed you that you could not distribute literature during your break times, and then only outside the facility gate. The investigation disclosed that the Election Committee informed candidates on November 2, 2018, that direct campaigning and posting campaign literature at the employer's facility was prohibited; however, candidates were permitted to distribute campaign mailers provided neither the candidates nor members were on employer time. There was no evidence that the Union or the employer expressly permitted [REDACTED] to directly campaign to members at the employer's facility. The Department's investigation also did not establish that [REDACTED] engaged in direct campaigning in the facility during union or employer time. However, you acknowledged that you campaigned at the employer's facility while members were working on employer time. Candidates were afforded an equal opportunity to distribute their campaign literature at the employer's facility as long as they were not on employer time. Thus, there was no disparate candidate treatment and no violation of the Act that may have affected the outcome of the election.

You further alleged that the Union discriminatorily failed to provide you with the mailing addresses of retired Union members to distribute your campaign mailing. Section 401(c) of the LMRDA provides that each candidate for office "has a 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 addresses of all members of the labor organization." 29 U.S.C. § 481(c). Section 401(c) and the Department's regulations also prohibit unions from discriminating in favor of or against any candidate with respect to the use of lists of members. 29 C.F.R. § 452.71(b). Candidates are not, however, entitled to a copy of the list. 29 C.F.R. § 452.71(a). At your request, on or about November 25, 2018, the Union mailed twenty of your pre-stamped envelopes with your campaign literature to retired members. [REDACTED] did not request the membership list, and


did not distribute a campaign mailing. Thus, the Union did not disparately treat candidates with respect to access to the membership list or distribution of campaign mailings. There was no violation of the Act.

You finally alleged that the Union denied members the right to vote when it did not postpone the election after the federal government announced a Day of Observance on the scheduled date of the election, and instructed "non-essential" employees not to report to work on that day. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of her choice. 29 U.S.C. § 481(e). However, the worksite was open to treat patients that day, and patients' appointments were not canceled. The Department's investigation disclosed that a majority of the Union's members held "essential," patient-related positions and were required to report to work unless they were on pre-approved leave or were not scheduled to work that day. "Non-essential" employees were not prohibited from entering the worksite to vote in the election. Therefore, the Union did not prevent any members from exercising their right to vote in the election. There was no violation of the Act.

Your complaint to the Department contained additional allegations that were not timely filed under section 402(a)(2) of the LMRDA. 29 U.S.C. § 482(a). These allegations are not properly before the Department and were not investigated.

For the reasons set forth above, it is concluded that no violation of the LMRDA that may have affected the outcome of the election occurred. Accordingly, the office has closed the file in 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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