



November 15, 2019



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on February 9, 2019, alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act, 5 U.S.C. § 7120. You alleged that violations occurred in connection with the regularly scheduled election of union officers conducted by Council 170, American Federation of Government Employees (AFGE), on November 3, 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 no violation occurred that may have affected the outcome of the election.

Section 401(c) of the LMRDA requires, in pertinent part, that a union provide adequate safeguards to ensure a fair election, and section 401(f) requires a union to conduct convention elections of officers in accordance with the union's constitution and bylaws. 29 U.S.C. §§ 481(c), (f).

You first alleged that some locals submitted improper credentials for the council meeting. You alleged that a few locals submitted C-3 credential forms for the AFGE National Convention, which you stated could not be properly used for the Council 170 election. You alleged that these locals' votes should have been voided. You also alleged that Local 2433 and Local 3953 submitted constitutions and bylaws with their credentials packages that did not bear the National Executive Council (NEC) approval stamp. You alleged that this indicated that these locals' members had not approved the delegate election processes and officer automatic delegations.

Council 170's constitution and bylaws provide as follows:

Representation in this Council shall be by delegates selected in accordance with the constituent local's constitution and duly certified to the Council Treasurer. . . .

(c) Official AFGE Credential Form C-3 will be issued to delegates, alternate delegates, and proxy delegates elected by secret ballot plurality vote, for attendance at Council meetings. Credentials will be properly executed by constituent locals. Delegates, alternate delegates, and proxy

delegates will be furnished the blue copy; the pink copy will be retained by the local; and the original and yellow copy will be forwarded to the Council.

(d) Delegates and alternate delegates to the Council will be elected to serve for a period consistent with local Constitutions.

Constitution & Bylaws, Defense Contract Management Agency Council of AFGE Locals (C-170) (Council 170 Constitution & Bylaws), art. IV, sec. 2.

The Council 170 Notice of Nominations and Election included credential checklists and stated that credentials would not be accepted without the listed attachments. For officers who were delegates by virtue of election to the office, the following attachments were required:

- A copy of the local's Constitution and By-Laws (with NEC-approved stamp on first page), or
- Bylaws if the standard local constitution governs the local.
- A copy of the dated notice(s) to the membership of nominations and election for the election as an officer.
- A copy of the election results or meeting minutes establishing the election.

For elected delegates, the following attachments were required:

- A copy of the dated notice(s) to the membership of nominations and election as a delegate, and
- A copy of the election results or meeting minutes.

As part of its investigation, the Department reviewed the approved credentials packages and other related records. The investigation established that some locals submitted the incorrect C-3 form or submitted no form at all. However, the investigation found that the C-3 form was not required to verify the eligibility of delegates. The investigation also established that the locals that you alleged did not send in approved copies of their governing documents were governed by uniform local constitutions and bylaws, and therefore they were not required to submit copies to be credentialed. In these respects, there was no violation.

However, the Department's investigation did establish that Council 170 improperly permitted the delegate from Local 2723 to vote even though his term of office had expired. The local's president, who was a delegate by virtue of his office, should not have been credentialed after his term of office expired without an intervening election. This was a violation of Title IV of the LMRDA.

In response to your protest and appeal to the union, Council 170 remedied this violation. It assessed the possible effect on outcome by deducting Local 2723's 108 votes from the results of each race. The AFGE Constitution provides that "[a] majority of the valid votes cast is required for election to any office except delegates, alternate delegates, and proxy delegates." AFGE Constitution, app. A, pt. I, sec. 5(h). Applying this majority requirement, the union determined that subtracting Local 2723's 108 votes could have affected the outcomes of the races for second

west vice president and treasurer. Accordingly, on April 30, 2019, the union held a runoff between the second and third place west vice president candidates and a rerun of the treasurer's race. This violation has therefore been remedied.

Next, you alleged that Local 2433 improperly bypassed elected delegate [REDACTED] by sending [REDACTED], another delegate elected by the local, to vote in the Council 170 election.

The investigation established that Local 2433 elected its officers and delegates on October 18, 2017. Local president [REDACTED] and local vice president [REDACTED] were delegates by virtue of their offices. [REDACTED] were elected as primary at-large delegates. The investigation established that Council 170 paid travel expenses for [REDACTED] to attend the council meeting because they were either on the council or served on the election committee. These three were seated as Local 2433's delegates at the council meeting. The investigation established that [REDACTED] did not seek to attend the council meeting and was not denied the opportunity to attend the council meeting. There was no violation.

You also alleged that Local 3540 was improperly denied casting its 87 votes in the Council 170 election. You alleged that when [REDACTED], who was appointed Council 170 credential chair, was temporarily unable to serve in that capacity, AFGE attorney [REDACTED] assisted with credentials. You alleged that [REDACTED] improperly required credentials to be submitted by October 10, 2018, unless there were extenuating circumstances. You alleged that you submitted Local 3540's credentials to [REDACTED] on October 25, 2018, and that he rejected them because they were late. You submitted supporting documentation to [REDACTED] to show that Local 3540 had not elected its delegate in time to meet the October 10 deadline, and you alleged that [REDACTED] still rejected your credentials. You and another member challenged [REDACTED] authority to take these actions and that [REDACTED] subsequently resigned from his position assisting with credentials. You alleged that [REDACTED], all the credentials he had accepted to [REDACTED], the Council 170 election chair, and [REDACTED] stated that any questioned credentials should be voted on at the council meeting. You alleged that you then submitted Local 3540's credentials and supporting documentation to [REDACTED], who signed and approved them. You submitted a copy of Local 3540's credentials to [REDACTED] at the council meeting. You alleged that [REDACTED] improperly entertained a vote on whether to accept Local 3540's credentials at the meeting and that the council voted to allow you to cast a provisional ballot as the Local 3540 delegate.

The Department's investigation established that the union's constitution and bylaws do not set a deadline by which delegate credentials must be received. The Council 170 Notice of Nominations and Election set a deadline of October 10, 2018, for receipt of credentials. The notice stated as follows: "Credentials at our elections will be handled by [REDACTED] AFGE National attorney and designated AFGE Election Supervisor. . . . If you have submitted your credentials to [REDACTED] and he has approved them, you do not need to send an update to [REDACTED] unless he requests it"

The investigation confirmed the sequence of events you described with regard to the submission of Local 3540's credentials. The investigation confirmed that [REDACTED] rejected Local 3540's credentials solely because they were submitted past the deadline and that the October 10, 2018, deadline was not applied uniformly to all locals. The investigation determined that [REDACTED] accepted Local 1711's credentials, which were not submitted until October 11, 2018. The investigation further established that [REDACTED] did not notify the council that Local 1711 had submitted late credentials whose acceptance should be voted on at the council meeting. In addition, the investigation confirmed that [REDACTED] accepted the Local 3540 credentials you submitted to him on November 1, 2018, and that he forwarded them to [REDACTED]. The investigation established that Local 3540 was permitted to cast a provisional ballot in the Council 170 election and that Local 3540's 87 votes were not counted because the union determined that they would not have affected any races. The investigation found that the union did not revisit this conclusion after it remedied the violation discussed above, which necessitated deducting Local 2723's 108 votes from the results of all races. The failure to count the votes of Local 3540's delegate violated Title IV of the LMRDA.

However, the Department's investigation concluded that this violation could not have affected the outcome of the election. Under Section 402(c) of the LMRDA, a union election is set aside only where the violation may have affected the outcome of the election. 29 U.S.C. § 482(c). As part of its investigation, the Department opened and tallied your 87 votes at the OLMS Los Angeles District Office after advising the union, complainants, and affected candidates of their right to have observers present. The results showed that including the 87 votes in the tally would not have affected the outcome of any race, regardless of how the expired delegate votes from Local 2723 may have been cast, with the exception of the race for 2nd West Vice President. In that race, the 87 votes in combination with the votes cast by the delegate from Local 2723 could have affected the outcome. However, the 2nd West Vice President race was subsequently rerun by the union for other reasons, thereby eliminating any possible effect of this violation. Therefore, this violation could not have affected the outcome of the election.

You next alleged that the involvement of [REDACTED] in the credential approval process was a conflict of interest because Hemingway was the election committee chair and [REDACTED] also assumed other election duties. You alleged that separation is required between the credentials and the election committees.

The Department's investigation did not identify any requirement in the union's constitution or bylaws that the credentials and election committees be separate. The investigation did not uncover any evidence that [REDACTED] exhibited bias in her performance of election duties. The investigation established that [REDACTED] was the election supervisor and that he also assisted with credentials after [REDACTED] was injured and unable to serve as credentials chair. To the extent that [REDACTED] failed to uniformly apply the credentials submission deadline, as discussed above, his actions violated the LMRDA. For the same reasons discussed above, however, that violation could not have affected the outcome of the election.

You also alleged that the election committee did not send out absentee ballots. You alleged that the delegates from Local 2429 and Local 3973, both credentialed by [REDACTED] should have been allowed to cast their votes by mail.

The investigation established that the delegates from Local 2429 and Local 3973 did not attend the council meeting. AFGE's and Council 170's constitutions and bylaws do not require that Council 170 provide for absentee voting by delegates who are unable to vote in person at the council meeting. Instead, Council 170 permits proxy voting. The AFGE Rules of Conduct for an Election require that members first must be given a reasonable opportunity to nominate and elect delegates before nominating and voting for a proxy delegate. AFGE Constitution, app. A, pt. I, sec. 6(g). The Council 170 Notice of Nominations and Election included instructions for utilizing a proxy vote. The investigation established that Local 2429 and Local 3973 did not follow the proxy vote process after determining that their delegates would not attend the council meeting, and therefore those locals did not vote in the challenged election. There was no violation.

Next, you alleged that election material was not sent to the Council 170 local presidents telling them how home addresses and email addresses would be handled for any campaigning that could occur. You alleged that when you notified [REDACTED] that you wanted to send a campaign mailing, [REDACTED] responded that you should send the campaign material to him and he would send it out. You alleged that this was improper because [REDACTED] was not on the election committee and that is not the process in the AFGE election manual.

The Council 170 Constitution and Bylaws state that the election committee will comply with candidates' reasonable requests to distribute campaign literature to local presidents, treasurers, and delegates in good standing. The constitution and bylaws prohibit the election committee from discriminating in favor of or against any candidate with respect to the use of lists of delegates. Council 170 Constitution & Bylaws, art. VIII, sec. 2.

The investigation found that the Council 170 Notice of Nominations and Election stated that the election supervisor and/or the election chair would comply with candidates' campaign literature distribution requests. During the investigation, you stated that you ultimately sent your own campaign mailing. The investigation did not establish that the union denied your or any other candidate's reasonable request to distribute campaign literature or treated candidates differently in the distribution of campaign literature. There was no violation.

You also alleged that Council 170 improperly counted the ballots cast for the east and west vice president races. You alleged that for both races, more votes were cast than the total votes allowed.

The investigation found that delegates could vote for none, one, or two of the three candidates in the east and west vice president races. You acknowledged during the investigation that you misunderstood the total votes allotted for those races. There was no violation.

You also raised other allegations, regarding local delegates' alleged failure to get proper expense approval, a local's allegedly illegal amendment of a quorum requirement, and your alleged right to be reinstated to your office during any rerun of the challenged election, that, even if true, would not constitute violations of Title IV of the LMRDA.

Finally, you raised allegations in your complaint regarding Local 2433's election of delegates that were not timely and properly raised in a protest to the local union. 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. 29 U.S.C. § 481(a). These allegations were not properly exhausted and were not investigated by the Department.

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,

A solid black rectangular redaction box covering the signature of Brian A. Pifer.

Brian A. Pifer
Chief, Division of Enforcement

cc: American Federation of Government Employees
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