



November 21, 2019

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaints filed on August 7, August 8, August 26, September 11, and September 17, 2019, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of the National Union of Hospital and Health Care Employees (NUHHCE), AFSCME, District 1199C (Union), conducted on May 7-8, 2019.

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 provide proper notice of nominations. Section 401 (e) of the Act requires that "[n]ot less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address." 29 C.F.R. 452.56(a) provides that: "Posting of a nomination notice may satisfy the requirement of a reasonable opportunity for making nominations if such posting is reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice." Specifically, you alleged that the distribution of the combined nominations and election notice was improper because not every member received it by mail. Additionally, you alleged that the Union posted the

notice in an inadequate number of locations. Both Section 2(D) of the AFSCME International Constitution--Appendix D and the AFSCME Local Union Election Manual require that: "Not less than fifteen days prior to the holding of nominations for local union officers, a notice of the nominations and elections shall be mailed to each member at the member's last known home address."

The investigation revealed that the Smith-Edwards-Dunlap Printing Company mailed the nominations and elections notice on February 1, 2019—more than a month prior to the March 21, 2019 submission deadline for nominations—to 9,704 members from the most recent District 1199C membership mailing list. The printer stated that prior to mailing, addresses were verified through the U.S. Postal Service National Change of Address and Coding Accuracy Support System databases, which only identified seventeen addresses as invalid. Further, the Union posted the notice on its public website and at member worksites. The investigation found no evidence that any members were prevented from running for office because they were not aware of the nominations timeframe. Thus, the notice posting and mailing were reasonably calculated to inform all members of the nominations. No violation of the Act occurred that may have affected the outcome of the election.

You alleged that the Union improperly applied a candidate qualification rule in violation of its constitution and bylaws. Pursuant to Section 401(e) of the LMRDA, every member in good standing is eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Specifically, you alleged that the Union improperly allowed [REDACTED] to run for office in contradiction to the bylaws because they were not members of a division and/or division delegate assembly. Article IV, Section 4 of the Union's bylaws states, "Any elected Officer, Vice President or elected Organizer shall be a member of the Division and of the Division Delegate Assembly from which he emanates and shall be an ex-officio member of all other Division Assemblies." Section 5(D) of Article IV states, "The Vice Presidents shall be members of the Division from which they emanate or to which they are assigned."

The investigation disclosed that staff members of the Union are frequently permitted to run for office, and that the Union has never interpreted these bylaws to mean that candidates must be members of the bargaining unit that they are running to represent. Rather, past practice indicates that the candidate for Executive Vice President that receives the highest number of votes is assigned to the Hospital Division, and the candidate with the next highest number of votes is assigned to the Guild Division. The Union asserted that the only eligibility requirement for officer candidacy is Article XI, Section 2, which states that: "To be eligible as a candidate for Officer, Executive Board, elected Organizer or Delegate, a member must be in good standing for a minimum of

one (1) Year.” ██████████ met this eligibility requirement, which was uniformly imposed. The qualification rule was not unreasonable nor improperly applied. There was no violation of the Act.

You next alleged that the nominations petition process was improperly burdensome and disparately advantaged incumbents running for office. Section 401(e) of the LMRDA requires that members have a reasonable opportunity to nominate candidates. The LMRDA does not, however, prescribe particular procedures for the nomination of candidates, and the labor organization is “free to employ any method that will provide a reasonable opportunity for making nominations,” as long as those methods are “properly and fairly employed” and “they conform to the provisions of the labor organization’s constitution and bylaws.” 29 C.F.R. §§ 452.55, 452.57. Specifically, you alleged that the Union: 1) improperly rejected nominating petitions from ██████████ and ██████████ due to an unreasonable signature requirement; 2) disparately favored incumbent nominees over challenging nominees in that a slate of nominees only had to collect a total of 210 signatures while non-slate nominees each had to collect 210 signatures, and 3) disparately gave incumbent candidates access to the Union’s dues or membership databases to assist in collecting petition signatures. Article X, Section 1 of the Union’s bylaws requires that nominees for President, Secretary-Treasurer, and Executive Vice President submit nominating petitions with signatures from no less than “[t]wo percent (2%) of the members in the District in good standing.” Both the combined notice of nominations and election and Rule #5 of the Election Rules, dated January 17, 2019, specified that candidates for President, Secretary-Treasurer, and Executive Vice President needed signatures of 210 members in good standing, including at least 153 members from the Hospital Division and 57 from the Guild Division.

Regarding the allegation that the signature requirement was unduly burdensome and improperly prevented members from candidacy, the investigation disclosed that the Union’s nominating petition forms for the Secretary-Treasurer position mistakenly stated that “signatures of at least 20 members in good standing” were required. However, the form also stated that the signature minimum was “representing two (2) percent of the membership” and included four pages of signature spaces, indicating that many more than twenty signatures were required. ██████████, who sought nomination for Secretary-Treasurer, acknowledged in her pre-election protest that the Union has over 10,000 members, demonstrating that a twenty-signature threshold was an unlikely threshold for nomination. In addition, ██████████, who sought nomination for Executive Vice President, acknowledged during the investigation that he miscalculated the number of signatures he obtained on his petition form and simply fell short of the requisite 210 member signatures. The investigation revealed no other evidence indicating that 210 signatures was unobtainable. *See, e.g., Herman v. Local 50, Serv. Employees Int’l Union*, 211 F. Supp. 2d 1111, 1119 (E.D. Mo. 2001) (200 signature requirement for nominating petitions representing over 3% of the membership was not

unduly burdensome); *Donovan v. Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.)*, 601 F. Supp. 352, 355 (N.D. Ill. 1984) (250 signature requirement for nominating petitions representing over 3.8% of the membership did not unreasonably hinder non-incumbent candidates despite members being spread over 800 employers). Because the signature requirement provided members with a reasonable opportunity for making nominations, there was no violation of the Act.

Regarding the disparate treatment allegations, Section 401(c) of the LMRDA prohibits disparate treatment among candidates for union office. The investigation disclosed that no nominees were prevented from running on a slate. The investigation also revealed no evidence that the Union gave officers access to the dues database or membership list which are administered by NUHHCE, not the Union. Further, no nominees or candidates requested access to the databases or were denied access. Thus, the Union did not disparately treat nominees nor candidates with regard to the petition signature requirement, or access to dues or membership databases.

You also alleged various LMRDA violations regarding the officer referendum conducted on


May 7-8, 2019, in which members could vote “yes” or “no” regarding each unopposed candidate for union office. Due to candidate disqualifications, all LMRDA-covered races were uncontested. Therefore, to the extent that there may have been LMRDA violations in the conduct of the referendum, the investigation did not establish that the outcome of the election was affected.

Finally, you alleged that the Union unlawfully scheduled the election for the month of May. Section 401(e) of the LMRDA requires a union to conduct elections of officers in accordance with its constitution and bylaws. Article XI, Section 1 of the Union’s bylaws state that officers “shall be elected every three (3) years in either the month of March or April” Although this was a technical violation of the constitution and bylaws, the investigation revealed no evidence that it affected the outcome of the uncontested election.

Your complaints to the Department also raised issues that were not addressed in your protest to the union. Section 402(a) of the LMRDA requires that allegations of wrongdoing be raised with the union before being brought to the Department. Therefore, these allegations were not investigated.

In sum, as a result of the investigation, the Department has concluded that there was no violation of the Act that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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