



December 17, 2019

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on October 17, 2018. Your complaint alleges that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the August 15, 2018 election of officers of the American Federation of Government Employees (AFGE).

The Department of Labor conducted an investigation into your allegations. As a result of the investigation, the Department concluded, with respect to your allegations, that there were no violations of the LMRDA that may have affected the outcome of the election.

You alleged that, from January 2017 to January 2018, AFGE unreasonably delayed in complying with your request to distribute campaign literature via email to delegates to the national convention and AFGE members. You alleged that the delay cost you the opportunity to build support among local union members and influence the selection of delegates to the 2018 national convention.

Under section 401(c) of the LMRDA, the union has a duty to comply with the reasonable requests of any candidate to distribute campaign literature to the membership at his or her expense. 29 U.S.C. § 481(c). A court has found that this duty may include the obligation to distribute campaign material via email where the union maintains an email list to communicate with members. *See Dimondstein v. Am. Postal Workers Union*, 964 F. Supp. 2d 37 (D.D.C. 2013). The union must provide a reasonable period prior to the election during which candidates may engage in the campaigning that the LMRDA guarantees, including the right to distribute campaign literature. *See* 29 C.F.R. § 452.79. What is a reasonable amount of time depends on the circumstances, including the method of nomination and the size of the union, both in terms of the number of members and the geographic area in which it operates. *Id.*

The investigation substantiated that you requested access to AFGE's email databases for campaigning purposes on January 19, 2017, and repeated your request through your attorney on August 10, 2017. The investigation also confirmed that AFGE maintains databases of email addresses that it uses to communicate with local officers and the general AFGE membership. Your request to distribute literature approximately a year and half before the election was not unreasonable given the protracted period of time during which locals selected delegates to the convention and the size of the national union.

The investigation established that it took AFGE until 2018 to provide a system to distribute campaign literature via email. In January 2018, candidates were informed they could pay a fee to distribute campaign literature via email to local presidents (delegates to the national convention by virtue of their position) and secretary-treasurers (most of whom were also delegates), and to registered delegates once registration for the convention had closed. Beginning in mid-February 2018, candidates could also pay a fee to email the AFGE membership at large. Beginning in mid-March 2018, candidates could email subsets of local presidents, secretary-treasurers, and known delegates from specific districts and agencies.

The investigation supported your allegation that there was undue delay in fulfilling your request. The union indicated the reasons for the delay were that AFGE needed to negotiate a contract with an outside vendor, review the membership email address list by hand to remove all government and AFGE email addresses in order to be in compliance with the law, and allow the selected outside vendor (TrueBallot) to set up a system for distributing candidates' literature via email. The investigation indicated, however, that little was done immediately following your first request in January 2017. AFGE's General Counsel denied your first request in an email on January 23, 2017, stating that AFGE's policy and practice did not allow granting candidates access to emails for campaigning purposes. After your subsequent request in August 2017, AFGE's General Counsel informed your attorney that AFGE had contacted a vendor about setting up a system, but it would take months before the system was operational. The union did not adequately explain its initial denial of your request on January 23, 2017, or explain the slow pace of progress in fulfilling your request, constituting a violation of section 401(c) of the LMRDA.

The investigation revealed, however, that this section 401(c) violation could not have affected the outcome of the election. Although there was a delay in providing you with a system to campaign via email to delegates to the national convention, you were still able to email campaign literature to the known delegates many months before the election, mitigating the impact of such delay. In February 2018, you used TrueBallot's system to distribute campaign literature to approximately 1,790 local presidents,

secretary-treasurers, and known delegates. You sent another campaign email to local presidents, secretary-treasurers, and the known delegates in April 2018. Therefore, the delay did not affect your ability to campaign to the delegates in advance of the election.

The investigation did not substantiate your claim that the union's delay cost you the opportunity to campaign directly to the AFGE membership at large and influence the selection of local officers and delegates. The investigation established that most AFGE locals hold their delegate elections after the convention call is sent out, and the call for the 2018 convention was not sent out until February 2018. Although the system to email campaign literature to the general AFGE membership became available for use at a time when many delegates to the convention were yet to be elected by locals, you did not take advantage of the opportunity. In light of your failure to use the system once it was operational, any delay in its implementation cannot be said to have had an effect on the outcome of the election. Therefore, although AFGE's delay in responding to your request to distribute campaign literature via email constituted a violation of section 401(c), the violation could not have affected the outcome of the election.

You also alleged that AFGE did not provide you with a complete and accurate list of convention delegates in July 2018. You stated that another candidate you knew [REDACTED] [REDACTED] received a list of delegates shortly after you did that included about 800 more delegates.

As a labor organization that chooses its officers by a convention of delegates elected by secret ballot, AFGE is required by section 401(f) of the LMRDA, 29 U.S.C. § 481(f), to conduct its convention in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. Article VIII, Section 2(b) of the AFGE Constitution states that all declared candidates for national office will be provided, upon request, the names, addresses, and local affiliation of the delegates. Additionally, section 401(c) of the LMRDA, 29 U.S.C. § 481(c) requires in relevant part that a union refrain from discrimination in favor of or against any candidate with respect to the use of lists of members.

The investigation established that local unions were required to register their delegates and submit their convention credentials to AFGE by July 14, 2018 and that the bulk of the credentials were received in the days preceding the cut-off date. When the credentials were received, AFGE employees reviewed and processed them, a process that continued through the first week of August. Up until the convention, AFGE employees made minor changes to the list of delegates as needed, such as to upgrade alternate delegates.

The Department's investigation confirmed that AFGE sent you the most up-to-date list of delegates available at the time of each of your requests. The investigation confirmed

that you requested a list of delegates and mailing labels for the convention delegates on July 18, 2018 through your attorney. On July 20, 2018, Executive Assistant to the National Secretary-Treasurer ██████████ sent you a list of convention delegates, which you received by July 23. On July 26, 2018, you sent ██████████ an email requesting a spreadsheet of the convention delegates, which she emailed that same day. Differences in the two lists you received can be attributed to the fact that AFGE employees were still in the process of approving credentials and updating the list.

The investigation revealed that the lists you received differed from the list received by ██████████ because of an oversight on ██████████ part. ██████████ declared his candidacy on July 27, 2018 via an email wherein he requested the list of delegates. On July 30, 2018, ██████████ was sent a candidate packet, which mistakenly contained a mailing list and labels for the AFGE local presidents and treasurers instead of the convention delegate list.

The investigation also confirmed that the lists you were provided were consistent with the number of delegates at the convention. There were 1,438 delegates that checked in at the convention and so appeared on the final eligible voter list provided to TrueBallot. The delegate lists that you received in July were the most current available at the time of your requests and contained most of the convention delegates that attended the convention and voted. Therefore, there was no violation of the LMRDA.

You alleged that you believed AFGE did not allow some AFGE locals in trusteeship to elect delegates to the convention. You were unsure which of the locals were denied this opportunity.

As noted earlier, section 401(f), 29 U.S.C. § 481(f), of the LMRDA requires that AFGE conduct its convention in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. AFGE's Constitution provides that members be afforded the opportunity to determine whether to send delegates to the convention. *See* AFGE Constitution, Appendix A, Part I, Sec. 6(a)&(c). Additionally, section 401(e) of the LMRDA provides that every member in good standing is entitled to vote in any election the LMRDA requires to be held by secret ballot, which would include the election of delegates to the AFGE convention. *See* 29 U.S.C. § 481(a) & (e).

The investigation revealed that there were 26 locals in trusteeship between January 1, 2018 and August 13, 2018, which was the period prior to the election. Nine of these locals sent delegates to the convention after holding a vote or an election to elect delegates or a proxy to the national convention. Another local had a delegate election, but then the membership voted not to send these delegates to the convention for financial reasons. OLMS' investigation revealed that some of the remaining 16 locals did not hold a delegate election while they were in trusteeship, which was a violation of

the LMRDA. However, this violation could not have affected the outcome of the election because of the margins of victory for the national candidates. The remaining 16 locals were collectively entitled to a total of 2,003 delegate votes and the closest margin at the convention was more than 10,000 votes.

You alleged that the election was not conducted by secret ballot. You stated that AFGE Local 32 President [REDACTED] said that AFGE District 14 National Vice President [REDACTED] told her that AFGE could identify who delegates voted for in the national officer election. You suggested also that the election could have been hacked, which was how AFGE may have been able to determine how someone voted.

As previously noted, section 401(f) of the LMRDA requires that AFGE's election be conducted in accordance with the constitution and bylaws of the union in so far as they are not inconsistent with the provisions of the Act. *See* 29 U.S.C. § 481(f). Article VIII, Section 1 of the AFGE Constitution provides that the national officer election must be conducted by secret ballot.

The investigation uncovered no evidence that the national officer election was not conducted by secret ballot. AFGE officials explained that the conversation [REDACTED] had with [REDACTED] was in reference to how delegates voted on resolutions, which AFGE does not conduct in secret. OLMS examined the ballots and scanned the barcodes on the ballots used to identify the ballot type and voting strength. OLMS found nothing on the ballot that could reveal the identity of voter. OLMS analyzed the voting strengths and confirmed there were enough of each voting strength so that the identity of the voter could not be determined. Nothing in the investigation indicated that secrecy had been compromised. There was no violation of the LMRDA.

You alleged that delegates were not given the proper voting strength. You noted that a computer malfunction had assigned one delegate, [REDACTED], a voting strength of 16,000,000 votes. You also alleged that the voting strengths for AFGE Transportation Security Administration (TSA) locals were slightly inaccurate.

Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to insure a fair election. Additionally, section 401(f) of the Act, 29 U.S.C. § 481(f), requires that AFGE's election of union officers by delegates at its convention be conducted in accordance with the union's constitution and bylaws. *See also* 29 C.F.R. § 452.127.

The investigation established that a computer malfunction occurred with respect to delegate [REDACTED] and was fixed immediately. Each delegate to the national convention was assigned a unique identification number that appeared on his or her convention credential in the form of a barcode. In order to vote at the convention, the

delegate presented his or her credential to an election committee member, who would scan the barcode in order to determine the delegate's voting strength and then print the proper number of ballots for the delegate. [REDACTED] voted in the initial election without issue. When [REDACTED] credential was scanned in order to vote in the run-off election for National Secretary-Treasurer, the computer reported that her voting strength was 16 million votes. The election committee member sought assistance from TrueBallot officials, who were able to fix the problem. TrueBallot officials speculated that the error occurred because an operator, when scanning the credential, inadvertently pasted her delegate identification number into the field containing her authorized voting strength. OLMS' review of the election records verified that [REDACTED] voted her correct voting strength in both the initial election and the run-off election. The investigation found no evidence that any inaccuracies of this nature affected the election. OLMS did not find any other problems with other delegates voting the wrong number of votes.

The investigation revealed that slight differences in voting strength between the TSA Council 100 caucus election on August 12, 2018 and the AFGE national officer election were due to differences in the constitutions about calculating voting strength. Article IV, Section 2(b) of TSA Council 100's Constitution and Bylaws states that voting strength is computed based on the average number of paid members for the 12 month period ending three months before the convention. Article VI, Section 1 of the AFGE Constitution requires a slightly different time period to be used: representation at the national convention is based on the average number of paid members for the 12 month period between May 1 and April 30. In this case, it meant TSA Council 100 voting strength was calculated based on membership between June 1, 2017 and May 31, 2018 whereas AFGE national convention voting strength was calculated based on membership between May 1, 2017 and April 30, 2018. OLMS checked AFGE's calculation methods for the elections and confirmed they were in accordance with the respective constitutions. There was no violation of the LMRDA.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file regarding this allegation.

Sincerely,

[REDACTED]
Brian A. Pifer
Chief, Division of Enforcement

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