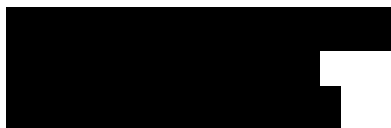




May 8, 2020



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint, received by the U.S. Department of Labor (Department) on May 3, 2019. The complaint alleged that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, was violated in connection with the regularly scheduled election of officers of Local 2207 (Local 2207 or local), American Federation of Government Employees (National or AFGE), completed on October 16, 2018.

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

You alleged that the manner in which the election committee distributed and collected absentee ballots to and from members violated the AFGE Election Manual. Section 401(e) of the LMRDA requires unions to conduct their elections in conformity with their constitutions and bylaws insofar as those governing documents are not inconsistent with the LMRDA. Section 5(d)(2) of Appendix A, AFGE International Constitution (IC), which governs local union elections, provides that members who are unable to attend the election polls, upon a timely written request to the election committee, shall be furnished with an absentee ballot. The AFGE Election Manual (Election Manual), Step 16, provides that the election committee must prepare a mail ballot package for each member who requests an absentee ballot. The member should return the absentee ballot either by mail to the election committee's post office box or by delivery to an election official prior to the close of the polls. The LMRDA does not prohibit the hand-delivery of blank absentee ballots to members as long as the secrecy of the ballot is preserved. 29 C.F.R. § 452.115 (any method that actually provides each eligible voter with one blank ballot would be in conformance with the law). Section 401(c) of the

LMRDA requires unions to provide adequate safeguards to ensure a fair election; those safeguards include a general rule of fairness that applies to every aspect of the election process.

The investigation disclosed that the local hand-delivered nine absentee ballots to members. Election committee member [REDACTED], who ran unopposed for recording secretary, handed a blank absentee ballot to seven members located at her place of employment in Huntsville, Alabama. In addition, a union officer at the union hall handed a blank absentee ballot to two members. The local did not violate the LMRDA or its governing documents when it hand-delivered those nine absentee ballots to members because neither prohibit the hand-delivery of blank ballots to members so long as the union ensures adequate safeguards.

However, the local's method for accepting members' hand-delivered, *voted* absentee ballots violated section 401(c) by failing to provide adequate safeguards to ensure a fair election in two instances when: (1) an election committee member, who was also an unopposed candidate, collected voted ballots; and (2) four voted ballots were left unsecured at the union hall. The investigation disclosed, however, that these violations involved only eight ballots cast by eligible voters (*i.e.*, five Huntsville ballots, and three hand-delivered to the union office).

Of the seven absentee ballots hand-delivered to members in Huntsville, five were cast by members eligible to vote and those ballots were included in the tally; the other two absentee ballots were not included in the union's tally because those members were properly deemed ineligible to vote. With respect to the four absentee ballots hand-delivered to the union hall, three of those absentee ballots were cast by eligible members and those ballots were included in the tally. The fourth absentee ballot was cast by an ineligible member and was not included in the tally. In sum, the local included in its tally eight votes of eligible members (five delivered to Huntsville, three delivered to union office) who hand-delivered their voted absentee ballots – ballots for which the union failed to ensure adequate safeguards.

However, those eight votes could not have affected the outcome of the election because the lowest margin of victory was 30 votes for president. *See* 29 C.F.R. § 452.5 (Secretary will not take action unless the violations found are such that the outcome may have been affected.) Further, the investigation found no evidence of ballot tampering. There was no violation that may have affected the outcome of the election.

You also alleged the election committee did not provide candidates with a schedule of election events, thereby denying candidates the opportunity to have observers present during the election process. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots, a right that encompasses every

phase of the counting and tallying process. 29 C.F.R. § 452.107. Step 20 of the Election Manual requires the election committee to notify candidates of the time and place for the mailing and collection of absentee ballots, and further states that it is the responsibility of the candidates to direct their observers to observe this step. In addition, Step 20 provides that, with observers present, the election committee should pick up the absentee ballots and safeguard them.

The investigation disclosed that the election committee did not provide candidates with a schedule of events, including the dates for mailing and collection of absentee ballots. However, the election committee chair (ECC) provided each candidate a copy of the Election Manual, including Step 20. The ECC stated no candidate asked her any questions about the above mentioned election dates, and had anyone inquired she would have willingly provided such information. To the extent that the local's failure to provide a schedule of election events was a violation, there was no effect on the outcome of the election, because the Department's review of the election records, including the ballots, showed no evidence of fraud.

You further alleged the ECC maintained sole custody of the key to the local's post office box rented for the collection of voted ballots, rather than sharing that key with other election committee members. The investigation disclosed that the post office box was accessed four times, not including the times the box was rented and closed. In three of those four instances, the ECC provided her key to two other election committee members to collect ballots from the post office. The ECC shared her post office key with other election committee members. There was no violation.

You alleged that the ECC removed challenged and/or absentee ballots from the tally area. Although you did not witness this purported event, you stated [REDACTED], an election committee member, informed you of this incident. The investigation disclosed that although [REDACTED] was present on election day, October 16, 2018, he worked during the first shift, from 6:30 a.m. to 2:30 p.m. shift, leaving immediately thereafter. He was not present at the counting of the ballots which commenced after the polls closed at 7:00 p.m. Therefore, [REDACTED] could not have witnessed any such event, nor did he claim to have witnessed any such event in his interview with the Department. The investigation disclosed that no ballots were removed from the tally area during the election process.

However, the Department's investigation disclosed that the ECC removed from the tally room to the union office a list of members' names she had created to determine the eligibility of eight members who had cast challenged ballots. The ECC did not include those eight members' votes in the tally. Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall have the right to vote. The investigation disclosed that 46 challenged ballots were cast. Those members were required to vote a challenged ballot when their names did not appear on the voter eligibility list. Relying solely on her memory, the ECC deemed 38 of those members

eligible and included their votes in the tally. Because she was unfamiliar with the membership status of the remaining eight members, she jotted their names and ballot numbers on a piece of paper. The ECC then took that paper to the union office, located on a different floor than the tally room, and confirmed those eight members' ineligibility to vote.

By relying on her memory rather than official union records documenting each member's dues payments to determine each of those members' eligibility to vote, the ECC violated section 401(c) by failing to provide adequate safeguards to ensure a fair election. Further, in jotting those members' names and ballot numbers, the ECC compromised the secrecy of the ballot because it may have been possible to identify the member with his or her vote.

However, the investigation disclosed that these violations could not have affected the outcome of the election. The Department confirmed that the eight members who cast a challenged ballot and whose identity and vote may have been disclosed, were ineligible to vote and their votes were properly not included in the tally. In addition, the Department reviewed the local's membership records and confirmed that all 38 members who had cast a challenged ballot and whose ballots were included in the tally were in fact eligible to vote. There was no violation that may have affected the outcome of the election.

In addition, you alleged the ECC counted the challenged ballots in a manner that disfavored your candidacy. Specifically, you alleged that you witnessed election committee members conversing among themselves about challenged ballots, and the election committee chair stating something to the effect that two challenged ballots had not been sent or were cast by ineligible members, but you did not know to what the chair was referring nor did you ask for clarification. Section 401(c) imposes a general rule of fairness on unions when conducting their elections. 29 C.F.R. 452.110. That rule of fairness necessarily requires unions to treat all candidates equally. The investigation disclosed that of the 38 valid challenged ballots cast and counted, 20 were cast in your opponent's favor while 18 were cast in your favor. As for the eight challenged ballots cast by ineligible members, you and your opponent each received four votes. The Department found no evidence that the election committee treated you differently from any other candidate. There was no violation.

You alleged that the election committee failed to display the voted ballots in a manner that would allow candidates to confirm the call for each ballot. Section 401(c) permits candidates the right to have an observer at every phase of the election. With respect to the proximity of the observer to the ballots, section 401(c) permits observers to be placed so that they do not compromise, or give the appearance of compromising, the secrecy of the ballot. 29 C.F.R. § 452.107(a). Step 23 of the Election Manual provides that the election committee is to tally the ballots in the presence of the observers and

that the election committee should, among other factors, “(7) [a]llow observers to watch the counting and other related activities closely enough to verify the accuracy of the tally.”

The investigation disclosed you never requested permission or attempted to move closer to the election committee members who were calling and confirming the votes for each ballot. In fact, one of the observers moved within easy proximity of those election committee members and was permitted to remain in that location without any interference from the election committee. You readily admitted you did not request to move closer and that no one prevented you from doing so. You were not denied access to stand in closer proximity to the election committee to observe the markings of each ballot. There was no violation.

Lastly, you alleged that election tellers announced only the vote totals for each office but did not provide a complete accounting of the ballots after the close of the tally. The union’s governing documents are silent on the issue of accounting of the ballots. The investigation disclosed that by the end of the tabulation process the election committee chair announced the vote tally for each challenged office. The election committee was not required to provide a detailed accounting of the ballots. There was no violation.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its 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 Chief, Division of Enforcement (DOE), and the union, and a statement of service 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. § 458.64(c); *see also* 29 C.F.R. § 458.59.

Sincerely,



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Chief, Division of Enforcement

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