



January 29, 2021

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on May 15, 2020, 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 Civil Service Employees Association 1000 (CSEA 1000 or Union), conducted on February 13, 2020.

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's 21-day voting period did not provide enough time for a member to request, receive, and return a duplicate ballot. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. Here, the American Arbitration Association (AAA)—hired on behalf of the Union—began mailing ballots to eligible members on January 22, 2020 with a voting return deadline of February 13, 2020. The election notice informed members that, beginning January 29, 2020, they could request a duplicate ballot by phone or by email if they had not yet received their original ballot. In other words, members could start requesting duplicate ballots a week after the original ballots were mailed out, leaving 15 days until the voting deadline for the duplicate ballot to be processed and sent by AAA, and received and returned by the member. The OLMS investigation disclosed that this timeline was consistent with previous CSEA 1000 elections. OLMS' review of the election records found that AAA mailed 289 duplicate ballots requested by members, out of which 174 successfully voted. The investigation also found that AAA processed duplicate ballots the same or next day after they were requested, including mailing duplicate ballots overnight to members who requested them late in the election schedule. In some cases, including in the case of your witness (Campaign Manager [REDACTED]), members that had requested a duplicate ballot received their original ballot while awaiting the duplicate and were able to successfully vote. There was no violation of the Act.

You next alleged that "a substantial number of ballots were voided" because the Union failed to provide adequate safeguards. Specifically, you alleged that the voting instructions were inadequate and ambiguous because they did not inform members that their vote would be voided if they marked the box to vote for an entire slate and also marked a box to vote for an individual for the same office. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 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 their choice. The investigation confirmed that none of the 21,864 voted ballots were voided in their entirety solely due to an excessive number of votes in a single race. Additionally, the absence of a vote for a specific race did not prevent properly-cast votes from the same ballot from being counted. The instructions on the front of the ballots stated, "TO VOTE FOR ENTIRE

SLATE, MARK THIS BOX,” and also included a direction to see the reverse side. Next to the president’s race, the instructions stated, “Vote for no more than 1.” The reverse side of the ballot stated, in part:

FAILURE TO FOLLOW INSTRUCTIONS MAY VOID YOUR BALLOT

...

2. Mark your ballot with an X in the box(es) of your choice. You may vote in the following ways:

- a) You may vote for an entire SLATE by marking the slate box at the top of the slate column.
- b) If you chose not to vote for an entire slate, you may vote for INDIVIDUAL CANDIDATES for any office by marking an “X” in the box next to the individual candidate’s name. You may do this whether the candidate is running individually or as part of a slate. You may vote for any candidates individually as long as your total votes do not exceed the number set forth for the specific race.

OLMS determined that these instructions were not vague or ambiguous because they state that voters may either: a) vote for an entire slate by checking the slate box, or b) vote for individual candidates by checking the box next to the individual’s name. Further, the instructions notified voters that they were permitted to vote individually “[i]f [they] chose not to vote for an entire slate” and if the number of votes for individual candidates did not exceed the number of seats for a specific office. Therefore, there was no violation of the Act.

You further alleged that the Union placed improper restrictions on observers. Specifically, you alleged that observers were unable to review or challenge voided ballots, and the reasons for voiding ballots, during the tally because the Election Committee was situated in a conference room separate from the observers. 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. The Department’s interpretive regulations at 29 C.F.R. § 452.107(a) make clear that the right to have an observer “encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots.” The Department’s investigation disclosed that observers were present with the ballot scanning computers and workers in the tally room. When the Election Committee reviewed or discussed a ballot rejected by the scanning computers, the observers could neither hear their deliberations nor physically review the ballot itself because they were only permitted to view the Election Committee’s actions through a conference room window. However, ballots that the Election Committee determined were eligible for voting were brought outside of the conference room to be scanned in the tally room, enabling observers to view and challenge those votes before they were counted. Therefore, observer restrictions only prevented observers from challenging Election Committee decisions not to count specific ballots. Nevertheless, there was no evidence of election fraud or ballot tampering. Further, OLMS’ review of the 53 ballots that were set aside by the Election Committee revealed only two Region 3A ballots that should have been opened and counted according to the election rules, with the remainder of these ballots correctly withheld from counting. The smallest margin of victory in a statewide race was 469¹, in the President’s race. The

¹ OLMS’s recount of the Statewide President’s race resulted in a margin of 469 between the winning candidate and the runner up, compared to the 484-vote margin recorded by AAA during its count.

smallest margin for a Region 3A race was 84 votes for Region 3 Delegate. Therefore, the two uncounted ballots could not have affected the outcome of those races.² No violation of the Act occurred that may have affected the outcome of the election.

You next alleged that the Union used an inaccurate voter eligibility list in violation of the LMRDA, resulting in some voters not receiving their ballots. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Section 401(e) of the Act provides that each member in good standing shall be entitled to one vote. Article III, Section 2 of the CSEA 1000 Constitution and By-Laws provides that: “Only CSEA members in good standing as of December 1 of the year preceding the election will be eligible to vote in the election.” The investigation found that the Union’s Manager of Systems and Programming generated the initial voter eligibility list with members whose dues were paid through December 1, 2019, excluding retirees and associate members who are not eligible to vote. On January 22, 2020, AAA mailed ballot packages to these members. The Union updated the list on January 24 and 27, 2020, to add members who had actually paid dues through December 1, 2019, but who had previously been excluded from the eligibility list because their paper records were processed late. Upon receipt of these updates from the Union, AAA mailed ballots to the members added to the voter eligibility list on January 24 and 27, 2020.

AAA mailed a total of 172,332 ballot packages to voters. These included eight ballot packages mailed to the Union office, addressed to Union employees who were eligible to vote. Of the 172,332 ballot packages mailed, 1,420 were returned as undeliverable by the Postal Service. The Union made efforts to reconcile these undeliverable ballots by obtaining better addresses for their recipients. The Union obtained better addresses from postal address correction stickers, the employer, Google, and the White Pages. AAA then mailed duplicate ballot packages to those updated addresses. Further, members who did not receive a ballot package could request a duplicate ballot as described in the first allegation, above. Ultimately, AAA mailed 515 duplicate ballots. Therefore, the investigation did not substantiate your allegations. The evidence showed that CSEA 1000 made reasonable efforts to maintain a current mailing list, made efforts to re-mail ballots returned as undeliverable, and implemented a duplicate ballot process for members who did not receive a ballot package in the mail. There was no violation of the Act regarding the accuracy of the voter eligibility list.

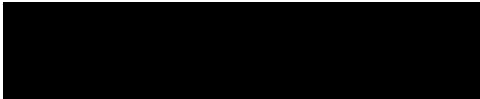
Finally, you alleged that the Union failed to publish a complete accounting of the election results. Section 401(e) of the LMRDA provides that, in any election that is required to be held by secret ballot, votes cast by members of each local labor organization shall be counted, and the results published separately. The investigation revealed that the officers of CSEA 1000 were elected by secret ballot among its members in good standing. This was consistent with Article III, Section 2 of the CSEA 1000 Constitution and By-Laws, which requires elections of officers to be held by secret ballot. The Union, however, did not publish the full results for all of the membership to review, only publishing the names of the winning candidates in the March 2020 edition of the Union’s paper, *The Work Force*. Insofar as this violation of the Act occurred after results were finalized and the published list of winning candidates was accurate, no violation of the Act occurred that may have affected the outcome of the election.

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 in connection with your allegations that were properly filed. As to allegations in your complaint to the Department not addressed in this Statement of Reasons, those issues were not considered because the allegations, even if true, were not properly exhausted under the Union’s protest procedures. For example, you alleged that bags of late ballots that

² Ballots for Region 3A voters contained only races for statewide positions and Region 3A positions.

arrived at the post office on February 13, 2020, were improperly excluded from the ballot tally due to ambiguous voter instructions. Regarding this allegation, you did not follow the protest procedure delineated in the Union's Constitution and Bylaws which requires that a "written protest must be postmarked within ten (10) calendar days after the member first knew or should have known of the act or omission complained of." Because you did not file a complaint about this allegation within ten days of receiving the voter instructions with your ballot on or about January 29, 2020, your allegation was not properly exhausted. *See* 29 U.S.C. § 482(a). Nonetheless, OLMS's review of election records did not establish that there were uncounted late ballots at the tally. Accordingly, I have closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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