

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002



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**Issue Date: 19 April 2006**

Case Number: 2005SOC00001

In the Matter of:

Chief, Division of Enforcement,  
Office of Labor-Management Standards,  
Employment Standards Administrations,  
United States Department of Labor,  
Complainant

and

LOCAL 2054, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO,  
Respondent

**JUDGMENT**

It appearing to the Court, pursuant to a Consent Decree and Order filed on May 5, 2005, the following occurred:

1. The Respondent American Federation of Government Employees AFL-CIO, Local 2054 held an election for President on October 28, 2005 under the supervision of the Complainant, Chief, Division of Enforcement, Office of Labor-Management Standards, Employment Administration, United States Department of Labor.

2. The Complainant has filed a *Certification of Election* certifying the name of the President who was duly elected.

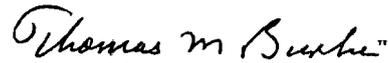
3. The Complainant has further certified that the election was conducted in accordance with the provisions of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 481 *et seq.*) ("Act") as made applicable to elections in federal sector unions by 29 C.F.R. § 458.29, and in conformity with the Constitution and Bylaws of the Respondent, insofar as is lawful and practicable.

4. The Complainant has also filed the *Declaration of Patricia M. Fox* stating that an investigation into protests received during the Respondent's October 28, 2005 election found no violations of the Act and that no further protests were received regarding the October 28, 2005 supervised election.

The Court having considered said *Certification of Election and Complainant's Motion for Entry of Judgment*, it is hereby:

ORDERED ADJUDGED AND DECREED that the person named in the Certification of Election filed by the Complainant as an attachment to the Complainant's Motion was duly elected to the President post and shall serve until the next regularly scheduled election for President.

It is further ORDERED ADJUDGED AND DECREED that each party shall bear its own costs in this matter, including attorney's fees.

  
THOMAS M. BURKE  
Associate Chief Judge

**SERVICE SHEET**

Case Name: **OLMS v. LOCAL 2054, AFGE, AFL -CIO JOHN L. MCCLE**

Case Number: **2005SOC00001**

Document Title: **JUDGMENT**

I hereby certify that a copy of the above-referenced document was sent to the following this 19th day of April, 2006:



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Barbara W Casanova  
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Attached herewith is a declaration setting forth the protest concerning a violation which was alleged to have occurred in the conduct of the election and the findings of our investigation of this protest.

Signed this 13<sup>th</sup> day of March, 2006

*Patricia Fox*

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Patricia Fox, Acting Chief  
Division of Enforcement  
Office of Labor-Management Standards  
Employment Standards Administration  
United States Department of Labor

## DECLARATION OF PATRICIA FOX

I, Patricia Fox, am the Acting Chief, Division of Enforcement, Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor (“Department”).<sup>1</sup> Pursuant to a Consent Agreement and Order (“Order”) dated June 1, 2005, of the United States Department of Labor, Office of Administrative Law Judges, the Office of Labor-Management Standards (“OLMS”) supervised the election for the office of President of Local 2054, the American Federation of Government Employees (“AFGE”), a labor organization within the meaning of section 7103(a)(4) of the Civil Service Reform Act of 1978 (“CSRA”), 5 U.S.C. § 7103(a)(4). The supervised election was held on November 28, 2005, and was conducted pursuant to the Labor-Management Reporting and Disclosure Act (“Act”), 29 U.S.C. §§ 481 - 484, as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the CSRA, 5 U.S.C. § 7120. [REDACTED] (“complainant”), a losing candidate for the office of President, filed an election complaint with the OLMS Election Supervisor by letter dated December 3, 2005. OLMS investigated each of the complainant’s allegations. The allegations and an explanation for their dismissal are set forth below.

The complainant alleged that Election Committee Chairperson Phelicia Greer left the tally room with an official tally document in her hand and returned to the tally room with that document and with “white out.” The investigation disclosed that OLMS used its own tally sheets to record the tally results and that only the information recorded on

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<sup>1</sup> Patricia Fox, Acting Chief, Division of Enforcement, Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor (“DOE”), has been substituted for former Chief, DOE John H. Heaney.

the OLMS tally sheets was used to access the accuracy of the vote count. No violation occurred.

The complainant alleged that the slit at the top of the ballot box located at the North Little Rock polling site was wide enough for someone to have placed a hand in the ballot box and to have removed ballots from that box. The investigation disclosed that either an OLMS investigator or an Election Committee member was standing immediately next to the ballot box located at the North Little Rock polling site at all times and that at least one of these individuals was in the voting area at all times and in close proximity to the ballot box. Furthermore, none of the observers at that polling site reported that ballots were removed from the ballot box. No violation occurred.

The complainant alleged that voters at the North Little Rock polling site did not place their voted ballots in envelopes before they deposited them in the ballot box. This allegation suggests that there was a lack of ballot secrecy. The investigation disclosed that, although secret ballots envelopes were not used at the North Little Rock polling site, that polling site contained two voting booths and only one person voted at a time in each of the voting booths. The investigation further disclosed that voters folded their marked ballots at least once before leaving the voting booths and placing their ballots in the ballot box, which was located only five feet from the voting booths. This was done in a manner such that others could not see the choices of candidates that voters had expressed on their ballots. Thus, the secrecy of the ballots was not compromised. No violation occurred.

The complainant alleged that an email sent to the Supply, Processing and Distribution Department (“SPD”) employees erroneously stated that voting would be

conducted in the SPD training/break room instead of room 7B-114. The investigation disclosed that the secretary of the SPD inadvertently sent an email to the SPD employees informing them that voting would occur in the SPD training/break room because the secretary was unaware that the local had changed the voting location from the SPD training/break room to room 7B-114. In any event, the election notice with the correct voting location, room 7B-114, was mailed to the last known home address of all local members, posted on the union bulletin boards located at both employer facilities and emailed to all SPD employees at their place of employment. No violation occurred.

The complainant alleged that the local's Election Committee attended a steward's meeting and provided the stewards with updated information concerning the upcoming election. The complainant further alleged that because some stewards who attended the meeting were candidates, they gained an advantage over other candidates. The investigation disclosed that the Election Committee met with the stewards and discussed the general election rules and other election-related matters. This discussion did not in any way favor one candidate over another candidate. All candidates were privy to these rules. Furthermore, the stewards/candidates who attended the meeting did so in their official capacity as stewards of the local, not as candidates in the election. No violation occurred.

The complainant alleged that she received an email from an Election Committee member concerning the inappropriate posting of her campaign literature at one of the employer's facilities. The investigation disclosed that the election rules permitted campaign materials to be posted on the break room bulletin boards and on the informational bulletin boards located throughout the employer's facilities. The

investigation also disclosed that an Election Committee member asked the complainant to remove campaign literature endorsing her candidacy from the door of the learning resources office because such door did not constitute a designated area for posting campaign materials at the employer's facilities pursuant to the election rules. The investigation further disclosed that the Election Committee provided all candidates with a copy of these rules, which set forth the appropriate locations for posting campaign materials at the employer's facilities and that the Election Committee did not discriminate in favor of or against any candidate in enforcing the rules. No violation occurred.

The complainant alleged that the local's incumbent Secretary Treasurer, [REDACTED] used the employer's email system and transmitted a letter to the complainant asking her to stop disseminating erroneous information. The investigation confirmed that [REDACTED] used the employer's email system to send the complainant an email asking her to refrain from disseminating erroneous information to members concerning the alleged misuse of union funds by the local. [REDACTED] transmitted the email to the complainant and only two other eligible members on November 22, 2005. Even if it could be shown that the letter constituted employer financed campaigning in violation of section 401(g) of the LMRDA, the number of members who received the email was insufficient to have affected the outcome of the election. The complainant was defeated by a vote margin of 256 votes. Moreover, an examination of the email revealed that it did not constitute campaigning. Generally, the Department examines the timing, tone, and content of written material in determining whether that material constitutes campaigning. Here, the timing of the email reveals that it was transmitted on November 22 just six days prior to the November 28 election and well within the

campaign period such that it could be regarded as campaign material. The message of the email, although critical of a specific action taken by the complainant and would not be viewed as encouraging of her candidacy, makes no reference to the complainant's campaign. The message did not concern the candidacy of the complainant. Further, the tone of the message is not that the complainant should not run for or be elected to office. The transmittal of the letter to only two individuals other than the complainant tends to show that the email was not aimed at defeating the complainant's candidacy or at encouraging the candidacy of any person. No violation occurred.

The complainant alleged that on October 18, 2005, incumbent President Barbara Casanova used the employer's email system and transmitted an email to 837 local members concerning the death of a family member. Although Casanova transmitted the email using the employer's email system on October 18, 2005, only approximately 6 weeks prior to the November 28, 2005, election, the email merely thanked the local membership for their kindness during Casanova's time of bereavement. There was no campaigning. No violation occurred.

The complainant alleged that incumbent President Barbara Casanova campaigned to members when they came into the union office and requested absentee ballots and that a supporter of Casanova campaigned to members by encouraging them to request absentee ballots if they would be unable to vote in person. Section 401(g), 29 U.S.C. § 481(g), prohibits the use of employer and union funds to promote the candidacy of any person in an election of union officers. The investigation disclosed that neither Casanova nor any of her supporters campaigned on her behalf when members came to the union office and requested absentee ballots. Furthermore, even if a supporter did encourage

members who would be unable to vote in person to request absentee ballots, she did not promote the candidacy of any particular person while engaging in this activity. Further, such encouragement rather than violating the Act is consistent with the Act's principle of allowing every member in good standing the opportunity to vote. No violation occurred.

The Department has concluded from its investigation and analysis that no violation of Title IV of the Act occurred during the November 28, 2005, supervised election for President. The election held pursuant thereto, complied with the June 1, 2005 Order of the United States Department of Labor, Office of Administrative Law Judges, and no reason exists to overturn the results of this election.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13<sup>th</sup> day of March, 2006, at the City of Washington, District of Columbia.

*Patricia Fox*

Patricia Fox, Acting Chief  
Division of Enforcement,  
Office of Labor-Management Standards,  
Employment Standards Administration,  
United States Department of Labor