



March 5, 2014



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on August 26, 2013, with the U.S. Department of Labor against the American Federation of Government Employees (AFGE) Local 31 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of union officers held on May 17 and June 22, 2013. The LMRDA was made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120.

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

First, you alleged that Local 31 failed to provide members with the opportunity to nominate candidates of their choice because the notice was not posted and only 300 to 400 out of approximately 1,260 members received the notice via e-mail. Section 401(e) of the LMRDA requires that members be given a reasonable opportunity to nominate candidates.

The investigation disclosed that Local 31 maintained an up-to-date email distribution list of members' work e-mail addresses, which contained the e-mail addresses of approximately 1,100 members. The union sent the nomination notice to the e-mail addresses on this list. The investigation further disclosed that the number of e-mail addresses is different from the number of members because some members do not have work e-mail addresses, specifically, those members working as contract employees at the Louis Stokes Veteran's Administration Medical Center (VAMC). The investigation disclosed that nomination notices were posted in high traffic areas of the VAMC to reach these members. Accordingly, all members were provided a reasonable opportunity to nominate candidates for the election and there was no violation.

You further alleged that the nomination notice failed to include information explaining that officers would be delegates by virtue of their office. The investigation confirmed that the offices of President, Executive Vice-President, and Secretary-Treasurer are delegates by virtue of their office, but this was not specifically stated on the nomination notice, which did list accurately the number of delegates to be elected. The fact that these three positions also serve as delegates is stated in Article VII, Section 1, of Local 31's bylaws and has been a long-standing provision. There was no requirement that this information be included on the nomination notice. Accordingly, there was no violation.

You alleged several violations of Local 31's bylaws relating to the conduct of the election. Section 401(e) of the LMRDA requires that the election be conducted in accordance with the constitution and bylaws of the labor organization. You alleged that the local's bylaws were violated by not having a manual ballot election at the main VMAC combined with a mail ballot election to members working at the outlying Community-Based Outpatient Centers (CBOCs). In addition, you alleged that the bylaws were violated because the mail ballots were not required to be returned one week prior to the general election. Article VI, Section 6, of the union's bylaws does require a manual ballot election at the VMAC and a mail ballot election for the CBOCs and that the mail ballots be returned at least one week prior to the general election.

The investigation disclosed that the election committee voted before the election to conduct the entire election as a mail ballot election because it concluded that a mail ballot election would afford members the best opportunity to vote. Further, it disclosed that the local had in the past used a mail ballot election for the entire election and had done so in 2010, and no complaints were filed with respect to that election. The election was, nevertheless, conducted in a manner inconsistent with the local bylaws. However, section 402(c) of the LMRDA provides that an election will only be overturned where a violation may have affected the outcome of the election. There is no indication that the conduct of the election in a manner different than provided for in the bylaws had an effect on the election.

Next, you alleged that the bylaws were violated because the delegate election was held separately from the election of the executive board. Article VII, Section 1, of the bylaws require that the delegate election be "at the same time as the local officers."

The investigation disclosed that after the original election ballot was sent to members, the election committee discovered that the names of two candidates for the office of delegate had been omitted. The committee subsequently decided to continue with the election for the executive board, but to reissue a corrected ballot for the delegate race. This corrected ballot was included with the ballot for the run-off election that was sent

out on June 5 and 6, 2013. In this instance, where the election committee corrected its original mistake and incorporated the election for the delegate race into the run-off election, the delegate election was conducted at the same time as the election of the local officers. There was no violation.

Further, you alleged that the bylaws were violated because the election committee did not have the correct number of members. The investigation disclosed that Article VI, Section 4, of the local bylaws states that, "The [election] committee shall consist of not less than five members...." The AFGE Constitution requires a minimum of three members on an election committee. The investigation disclosed that eleven election committee members were originally elected to the committee. Following the discovery of the ballot errors discussed above, seven members left and one was removed, leaving three members. To the extent that this could be considered a violation of the bylaws, there was no evidence of any effect on the outcome of the election.

In addition, you alleged problems with the conduct of the election that implicate the requirement under Section 401(c) of the LMRDA to provide adequate safeguards to insure a fair election. First, you alleged that the election committee members distributed ballots to members less than 15 days before the tally, which may not have provided members an opportunity to vote within the allotted timeframe. Section 401(e) of the LMRDA requires that a notice of an election be mailed to each member "not less than fifteen days prior to the election."

The investigation disclosed that the election notice and ballots were mailed to all members at their last known address more than 15 days prior to the election. For those ballots that were returned as undeliverable, the election committee made efforts to contact those individuals and arrange to meet them to distribute the ballots to those members. In doing so, the election committee made a record of which members received replacement ballots. The investigation did not disclose that any of those members complained that they did not have an opportunity to vote within the allotted time. On the contrary, the election committee's efforts afforded those members the opportunity to vote. There was no violation.

Further, you alleged that the union failed to obtain a new post office box for the receipt of ballots for the re-run election, which could have allowed some of the ballots from the first election to be mixed with those of the second election. While the LMRDA requires the union to provide adequate safeguards, there is no specific requirement for separate post office boxes.

The investigation disclosed that the election committee segregated any ballots that it found from the first election into a separate marked envelope. Accordingly, there was no violation.

Finally, you alleged that Local 31 failed to provide members with proper notice of the run-off election, because the original election notice did not announce that the run-off election would be conducted on June 21, 2013, and did not follow the prescribed 14-day cycle. Section 401(e) requires that members be notified of the election at least 15 days in advance.

The investigation disclosed that the original election notice announced May 28, 2013, as the date of the run-off election; however, the election committee changed the date in order to allow a 15-day notice period for the new delegate election. The election committee communicated the new date on May 17, 2013, when it notified members of the election results. Further, the new notice of election and ballot were sent out on June 5 and 6, 2013, with an explanation to members of the new election date of June 21, 2013. Accordingly, the investigation disclosed that members received the required notice of the combined run-off election and delegate election and there was no violation.

For the reasons set forth above, the Department has concluded that there was no violation that may have affected the outcome of the election, and I am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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Chief, Division of Enforcement

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