



February 16, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint, received by the United States Department of Labor (Department) on July 12, 2022. 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 1929 (Local 1929 or local), American Federation of Government Employees (National or AFGE), completed on March 29, 2022.

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.

As background information, this election was conducted under the authority of the National to remove the trusteeship it imposed over this local on August 11, 2020. The National appointed [REDACTED] as Trustee during the duration of the trusteeship. In order to conduct the election at issue, District 10 National Vice President [REDACTED] assigned National Representative [REDACTED] to serve as election committee chair (ECC).

You alleged your opponents campaigned on multiple Facebook group pages while you and other candidates were denied similar access. Section 401(c) imposes a duty on unions and its officers to comply with all reasonable requests of any candidate to distribute campaign literature to the membership at his or her own expense. 29 U.S.C. § 481(c). When a union or its officers authorize the distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if so requested. 29 C.F.R. § 452.67.

The Department's investigation disclosed that the local maintains an official Facebook page and website that is open to the public. There are eleven border patrol stations under the jurisdiction of this local whose membership is comprised of federal border patrol agents. Each of those eleven border patrol stations maintains a private Facebook page available by invitation only. These are not official Facebook pages of the local union.

The investigation disclosed that you were the administrator of the El Paso Patrol Station Facebook page but did not make that page available to other candidates for campaigning purposes during the election period. The investigation further disclosed that no candidate posted any campaign material on either the local's Facebook page or its website. However, [REDACTED], candidate for Second Vice President, by virtue of his position as an administrator for the Facebook pages of all eleven patrol stations, made improper campaign postings on ten of these private Facebook sites. With the exception of the El Paso Facebook page, [REDACTED] posted an endorsement for three candidates, including your opponent for local president. The Department's investigation determined that during the course of the election period you were aware of [REDACTED] postings on patrol station Facebook pages, but you never requested that the ECC permit you to make similar campaign postings. Since the union did not deny any request to similarly post campaign messages, there was no violation.

You alleged Local 1929 did not adequately secure the post office box designated for receiving voted ballots when it did not provide the ECC with a key to that post office box. 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. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. The investigation disclosed that upon the ECC's request, District 10 National Representative [REDACTED] rented a post office box for receiving voted ballots. She received two keys which she mailed to ECC [REDACTED]. On March 29, 2022, ECC [REDACTED] went to the post office to collect the voted ballots but soon realized he had forgotten to bring the post office box key. He called [REDACTED] who authorized the post office to open the local's designated post office box. The Department's investigation found that the ECC retained control and custody of the key to the local's rented post office at all times during the election period. The local provided adequate safeguards to ensure a fair election. There was no violation.

You alleged the local failed to post the election notice on all bulletin boards, the local's official Facebook page, and the union's web page, which resulted in some members not receiving election notice. You acknowledged, however, that the local mailed all members an election notice to their last known address. Section 401(e) of the LMRDA requires that unions mail an election notice to all members to their last known address, at least 15 days in advance of the election. 29 U.S.C. § 481(e). The local complied with

this requirement. The investigation disclosed the local mailed to all members at their last known addresses an election notice on February 7, 2022, well in advance of the March 29, 2022 election date. The local provided adequate safeguards to ensure a fair election. There was no violation.

You alleged the local denied members the right to vote when it used an inaccurate membership list. Specifically, you alleged the membership list contained 237 inaccurate addresses of members which indicated the local failed to make a reasonable effort to update its membership list for the election. Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). The investigation disclosed that Trustee ██████ notified members on three occasions (September 13, 2021, November 20, 2021, and December 21, 2021), via email, to provide the local with their updated addresses. Of the 1,369 election notices mailed to members, 35 were returned as undeliverable. The local found good addresses for 20 of those members and re-mailed election notices to them; however, the local could not find good addresses for the remaining 15 members.

In mailing the ballot packages, the local used the same but updated membership list used to mail combined notices of nominations and election. Of the 1,369 ballot packages mailed to members, 34 were returned as undeliverable, 23 of which were returned before the election. The local found good addresses for 9 of those 23 members, leaving 14 members who were not re-mailed a ballot package because the local had no current addresses for them on file. Given that the local made reasonable efforts to update its membership list by notifying the membership in September, November, and December, and continuously updated its list when it received undeliverables, the local's membership list was reasonably accurate and met the requirements of section 401(e). There was no violation.

You alleged that the use of two post office boxes, one in El Paso (receiving voted ballots), the other in Desoto (receiving undeliverable ballot packages), may have confused members who may have lost the return ballot envelope and mailed a voted ballot to the Desoto post office box instead. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The voting ballot instructions were very clear, informing members to submit their voted ballot in the addressed, postage-paid envelope accompanying the ballot. The investigation disclosed ECC ██████ visited the Desoto Post Office every other day to retrieve undeliverable ballot packages; none of those envelopes contained a voted ballot at any time. No voted ballots were returned as undeliverable to the Desoto Post Office. There was no violation.

You alleged three members told you they voted for you, but their votes were not counted. Section 401(e) provides in relevant part that every member in good standing

shall have the right to vote. 29 U.S.C. § 481(e). Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation disclosed that the three members you identified were mailed a ballot package and their ballot packages were not returned to the local as undeliverable. None of those three members returned a voted ballot. A review of the election records showed that only one member – who was not among the three you identified – returned a ballot that was not included in the tally. There was no violation.

You alleged members on leave without pay (LWOP) were not notified of the election. Section 401(e) requires unions to mail an election notice to every member at his or her last known address. 29 U.S.C. § 481(e). Members may be removed from the local's membership list but only after the union has provided a delinquency notice to that member. Appendix B, Article IV, Section 2(b) of the Local 1929 Constitution and Bylaws provides that “Members may be dropped if dues are not paid by Tuesday of the full workweek of the month, provided, however, that a reasonable amount of time after notice of delinquency is given.” The Department’s review of the local’s dues records showed that 42 members missed a payment between January and the beginning of April 2022, the election period. Some, but not all of these 42 members were on LWOP status. The Department found that the union did not mail these 42 members a delinquency notice. Further, the Department found that the union mailed an election notice to 21 of those 42 members. But, out of the 21 members not mailed a notice of election, one member on LWOP status - [REDACTED] - voted in the election.

The local violated section 401(e) by failing to mail an election notice to the 21 members who retained their member status because the local failed to notify them of their dues delinquencies. However, because one of these 21 members ultimately obtained a ballot and voted in the election, the overall effect of the union’s violation is 20 votes. The lowest margin of victory was 23 votes. Given this margin of victory, this violation that may have impacted 20 votes could not affect the outcome of the election, and thus, could not provide a basis for litigation by the Department. *See* 29 U.S.C. § 482(c)(2).

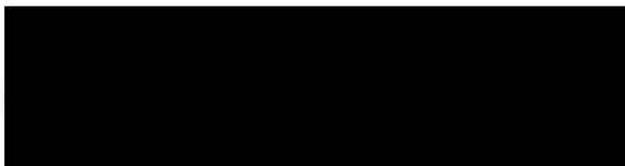
As a related matter, you alleged member [REDACTED], was permitted to vote even though he was on LWOP status. Section 401(e) provides that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). As discussed above, your allegation was substantiated when the Department investigation revealed that [REDACTED] obtained and voted a ballot. The investigation further disclosed that one other member that you identified as being on LWOP was also permitted to vote in the election. Viewed collectively, the union’s violations related to those members who had missed dues payments during the election period potentially impacted a maximum of 22 votes (20 members denied notice of the election and 2 ineligible members permitted to vote in the election). These violations, however, did not affect the outcome of the election because, as noted above, the lowest margin of victory was 23 votes.

You alleged the local failed to count the ballot of a recently retired member who was not informed she had to pay dues to retain her membership. Section 401(e) provides that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). The AFGE Constitution does not permit retirees to vote. Article III, section 1(e) provides that retirees are “eligible for a special retiree affiliation in the at-large or recruiting local...with all rights, except ...voting...and participation and representation in direct or indirect election....” [REDACTED] retired on January 31, 2022. Her last dues were deducted in February 2022, making her ineligible to vote at the time of the election. The investigation disclosed that a ballot was mailed to [REDACTED], who voted and returned that ballot but the local properly did not include it in the tally because she was ineligible to vote at that time. There was no violation.

You alleged the local failed to notify members they had the opportunity to serve on the election committee, in violation of the National and local constitutions. Section 401(e) requires unions to conduct their elections in accordance with their constitution and bylaws. 29 U.S.C. § 481(e). Nothing in the union’s governing documents requires the local to notify its membership of the opportunity to serve on the election committee. Appendix A, Section 2(a) of the National Constitution states “an election committee shall be constituted to conduct each election. The committee shall consist of not less than three members, and if a larger committee is required, it shall contain odd number of members.” Trustee [REDACTED] appointed to serve on the election committee three members who had volunteered to do so at the January 2022 membership meeting. Neither the National Constitution nor the local’s constitution requires notice to the membership regarding the selection of an election committee. 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 on this matter.

Sincerely,

A large black rectangular redaction box covering the signature area.

Tracy L. Shanker
Chief, Division of Enforcement

cc: Everett Kelley, National President
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