



May 26, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor (Department) on September 20, 2022. Your complaint alleged that violations of 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 (CSRA), 5 U.S.C. § 7120, occurred in connection with the American Federation of State, County and Municipal Employees (AFSCME or union) decision to order a rerun of Local 1653's election of officers held on May 20, 2022.

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

You alleged that the union violated the LMRDA and failed to follow its constitution and bylaws when it decided to rerun the election without accepting new nominations, even though two of the candidates who had won in the May 20, 2022 election were no longer available to run for office, leaving those positions uncontested.

Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e). The AFSCME Constitution and Local 1653 Bylaws do not address whether the union is required to reopen nominations when a new election is ordered as a result of a protest or appeal.

You alleged that the union failed to provide a reasonable opportunity for nominations because nominations were not reopened for the rerun election. You also alleged that this practice violated Appendix C, Article VI, Section 6 of the AFSCME International Constitution and Article VI, Section 6 of the AFSCME Local 1653 Constitution, both of which state that "[v]acancies in office shall be filled for the remainder of the unexpired

term by vote of the executive board.” However, you do not allege that the union failed to provide a reasonable opportunity for nominations during the original election.

Section 401(e) of the LMRDA provides that unions must provide a reasonable opportunity to nominate candidates for election. 29 U.S.C. § 481(e). As such, the Department’s general position is that a new election involves all phases of the election, and therefore, must include new nominations. Under limited circumstances, however, the Department will exercise its discretion during a remedial election that it supervises and not require the union to reopen nominations. Notably, union-initiated rerun elections need not be run under the same practices that the Department would use in a supervised rerun election. The requirement set out in section 402(a) of the LMRDA, 29 U.S.C. § 482(a), that a member exhaust internal union remedies before complaining to the Secretary of a violation of Section 401 of the LMRDA, was included in the Act to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a high degree of deference to unions on their decisions in internal union election protests providing for the conduct of a new election. The Department will not seek to reverse a union’s remedial decision to hold a new election unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the LMRDA and holding a new election was unreasonable.

As there is no statutory or regulatory provision under the LMRDA that requires reopening of nominations for a union’s voluntary rerun election, the decision not to reopen nominations for a rerun election does not violate the AFSCME constitution or the AFSCME Local 1653 bylaws because both documents are silent on this issue. Accordingly, the union’s failure to reopen nominations does not violate the union constitution or the LMRDA.

As a related matter, you specifically alleged that the union’s failure to reopen nominations led to two unopposed candidates being installed by acclamation, which violated the LMRDA. The Department’s investigation found that members of Local 1653 were afforded a reasonable opportunity to nominate candidates during the original election, as required by section 401(e) of the LMRDA. 29 U.S.C. § 481(e). As explained above, during a union-ordered rerun election, there is no legal obligation that the union reopen nominations. Because the union had no statutory requirement to reopen nominations, the fact that two offices were unchallenged and won by acclamation in the rerun election does not constitute a Title IV violation. Moreover, the union’s decision not to rerun uncontested races was not inconsistent with the union’s constitution, which contemplates election by acclamation. Appendix D, Sec. 2(F) of the

AFSCME International Constitution states that “[i]n any case where there is only one nominee for office, such nominee shall be declared elected. In all other cases, election shall be by secret ballot.” Accordingly, the investigation found no violation of the union’s constitution or the LMRDA.

In your complaint, you also alleged that the union did not follow the procedures outlined in Article VI, Section 6 of the AFSCME International Constitution and the Local 1653 Bylaws, which require vacancies to be filled for the remainder of the unexpired term by vote of the executive board.” The Article VI, Section 6 provision on vacancies is inapplicable because the positions at issue were not “vacant.” See 29 C.F.R. § 452.25. These positions were subject to the union’s regular election, which was ongoing because the AFSCME Judicial Panel determined that a rerun election was required. The union’s decision to overturn the May 2022 election and order a new election was reasonable. As such, these officers’ positions were not vacancies and the union’s decision to fill them through its regular election process does not violate the union’s governing documents or the LMRDA.

You also raised multiple one issue not covered by Title IV of the LMRDA which was not investigated.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



Chief, Division of Enforcement

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