



September 15, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on April 11, 2023, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (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, 5 U.S.C. § 7120, occurred in connection with the election of union officers conducted by the American Federation of Government Employees (AFGE) Local 1945 on February 28, 2023.

The Department conducted an investigation of your allegations. As a result of this 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. Following is an explanation of this conclusion.

You alleged that the election committee failed to respond to your February 6, 2023 email concerning how you wanted your name to appear on the ballot. You asserted that you wanted your nickname [REDACTED] placed on the ballot but instead the election committee placed your official name, [REDACTED] on the ballot. However, the February 6 email sent to the election committee simply states, "I [REDACTED] are protesting in writing my preferred name on the ballot and what name I want to be identified as on the ballot." During the Department's investigation, you explained that once you accepted your nomination for office, the election committee was required to contact you and inquire about how you wanted your preferred name to appear on the ballot. You contend that the election committee's failure to ask you about your preferred name on the ballot violated the LMRDA.

Section 401(e) of the LMRDA requires that a union conduct its election of union officers in accordance with its constitution and bylaws. 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.109; 29 C.F.R. § 452.2. However, nothing in the LMRDA specifically addresses the manner in which the names of candidates are to appear on the ballot. Therefore, a candidate has no statutory right to have a nickname or a preferred name placed on the

ballot. A union, however, may impose rules addressing the placement of and manner in which candidates' names appear on the ballot. Such rules must be applied in a reasonable manner, as permitted by the union's constitution and bylaws and consistent with the requirement of fairness and the other provisions of Title IV of the LMRDA. The governing documents at issue here include: the AFGE Constitution and Bylaws and the AFGE Rules of Conduct for an Election. AFGE's governing documents are silent with regard to the use of preferred names or nicknames on a ballot. The AFGE Election Manual provides *25 Steps for a Successful Election*, which includes guidance concerning the placement of such names on the ballot. Specifically, Step 14 states, "Be sure to determine the correct spelling of each candidate's name by checking with the candidate, and utilize the candidate's preferred name." Step 13 states: "Request the preferred listing of each candidate's name or nickname on the ballot *in accordance with the Election Rules.*" However, nothing in Local 1945's constitution and bylaws require the local to request from each candidate the preferred listing of the candidate's name on the ballot. Nor does it appear that Local 1945 has adopted election rules specifically prescribing any such requirement.

Moreover, the investigation disclosed that the local has a past practice of placing a candidate's preferred name on the ballot only if the candidate orally expresses such a preference during the nomination meeting. The investigation disclosed that during that meeting you never stated you preferred to have your nickname placed on the ballot instead of your official name. Instead, you sent the election committee an email on February 6, 2023. The Department's investigation found that in your campaign materials that were distributed to members you referred to yourself both by your official name, [REDACTED] as well as your nickname, [REDACTED]. It therefore appears that you were commonly known among the membership by both your nickname and your official name. Accordingly, the placement of your official name on the ballot, instead of your nickname, did not diminish voters' ability to identify your name on the ballot. There is no violation of section 401(e) that could have affected the outcome of the election.

Relatedly, section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Therefore, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy this same privilege. A union rule denying such privilege to an opponent would violate the LMRDA. *See* 29 U.S.C. § 481(c); 29 C.F.R. § 452.110(a). The Department's review of the official ballot used for the election showed that it did not include the nickname of any candidate. Thus, there was no unfair or disparate treatment concerning the use of nicknames on the ballot.

Finally, with regard to this allegation, the Department's investigation found that in your campaign materials that were distributed to members you referred to yourself both by

your official name, [REDACTED] as well as your nickname, [REDACTED]. It therefore appears that you were commonly known among the membership by both your nickname and your official name. Accordingly, the placement of your official name on the ballot, instead of your nickname, did not diminish voters' ability to identify your name on the ballot. There is no violation.

You also alleged that a candidate for Defense Logistics Agency 7th Vice President was ineligible to run for office due to a break in service, but the candidate's name appeared on the ballot. Section 401(e) of the LMRDA provides that every member in good standing is eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed). 29 U.S.C. § 481(e). The AFGE candidate eligibility requirements for local union office are set forth in Section 1(e), Appendix A, of the AFGE Rules of Conduct for an Election. This provision specifies that to qualify as a candidate for office, an individual must be a member in good standing; and must have been a member of an AFGE local for one year, immediately preceding the closing of the nomination process. Therefore, good standing is predicated on the timely payment of dues. In the AFGE Election Manual's *25 Steps for a Successful Election*, Step 9 further provides that those members who have had a break in membership within the past year [immediately preceding the closing of the nomination process] are not eligible for candidacy.

The investigation disclosed that Local 1945 held its nominations meeting on December 13, 2022. Thus, the one-year period immediately preceding the closing of the nomination process was December 12, 2021, to December 12, 2022. The Department's review of the employers' records revealed that the candidate in question transferred from the Anniston Army Depot (ANAD) to the Defense Logistics Agency (DLA) in August 2022. The Department's review of the ANAD records revealed that the ANAD withheld dues from the candidate's paycheck from December 2021 until August 2022. Further review of Local 1945's dues payment records and the candidate's dues payment receipts showed that after August 2022, the candidate made advanced cash payments for full dues directly to Local 1945 in the amount of \$20.16, on September 7, 2022, September 21, 2022, October 5, 2022, November 2, 2022, November 9, 2022, and December 20, 2022. The DLA began withholding full dues from the candidate's earnings on December 17, 2022.

The Department's reliance on this documentation and evidence of dues payments is consistent with the election standards in Title IV of the LMRDA. As demonstrated by the investigation, the candidate was current in dues payments and in good standing for the relevant period and had no breaks in dues payments or membership during that period. Therefore, the candidate was eligible to run for and hold union office. The LMRDA was not violated.

In addition, you alleged that the membership list the printer/ mailer used to mail the ballot packages to members did not include the names of all the members. You asserted that according to the November 2022 membership list there were 1,111 Local 1945 members but the printer indicated that there were only 1,089 members. You claimed that this discrepancy of 22 members may have affected the election outcome. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. 29 U.S.C. § 481(e).

The basis for your allegation is unclear, but you appear to contend that on December 30, 2022, the printer provided your slate with mailing address labels for 1,089 eligible voters to do a campaign mailing. Apparently, you assumed that the ballots also would be mailed to only 1,089 eligible voters, based on the number of mailing labels your slate received from the printer. Evidence disclosed during the investigation suggests that Local 1945's membership is determined by the number of members for which the local pays per capita taxes (PCT) to the AFGE. On a regular basis the AFGE issues Local 1945 a PCT billing statement listing that number.

You stated during the investigation that during a November 8, 2022, budget meeting, Local 1945 union officials mentioned a PCT billing statement dated October 10, 2022, showing PCT payments for 1,110 members. It appears that one additional member may have joined the local after the AFGE issued this billing statement, bringing the total number of members to 1,111. However, the investigation disclosed that the number of Local 1945 members fluctuates and, thus, this number may change on any given day. In fact, the PCT billing statement dated December 10, 2022, showed PCT payments to the AFGE for 1,108 members. On February 13, 2023, the printer mailed ballot packages to 1,108 members in good standing, as of January 31, 2023. The printer mailed to all members in good standing; no members in good standing were excluded. Accordingly, there was no violation of the LMRDA.

Next, you alleged that the election committee and the Local 1945 president posted inaccurate information on the union's bulletin board because the posting stated that 189 ballots were cast in the election. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation showed that on the day of the ballot tally, February 28, 2023, the election committee retrieved the ballots from the post office for counting. During the ballot retrieval, a candidate for 2nd Vice President requested that the ballot envelopes first be counted at the post office. The investigation disclosed that the National Representative for AFGE's 5th District (NR) was responsible for collecting the ballot envelopes from the post office and agreed to do a count of those envelopes before leaving the postal facility. The investigation also disclosed this count was conducted in front of the

observers and candidates, including you. The NR announced at the post office that he had counted and collected 189 ballot envelopes.

However, the election committee's official count of the ballot envelopes during the ballot count at the union hall indicated that the NR had picked up 187 ballot envelopes from the post office, not 189. During a review of the election records, the Department found 189 voted ballots among the election records. Further review showed that the election committee included 186 of these ballots in the vote tally and voided three ballots for various reasons, for a total of 189 ballots. Thus, the union officials' posting that 189 ballots had been voted in the election was accurate. The LMRDA was not violated.

Also, you alleged that your observer was not allowed to observe the ballots after the ballots arrived at the union office for counting. Section 401(c) of the Act requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C § 481(c). These safeguards include the right of candidates to have observers at the counting of the ballot. This right encompasses every phase and level of the counting and tallying process, including the counting, and tallying of the ballots and the totaling, recording, and reporting of tally sheets. Therefore, unions may not place improper restrictions on observer activities. 29 C.F.R. § 452.107.

You asserted that the NR arrived at the union hall with the sealed box containing the ballots at 9:45 a.m. and then took the box into the local president's office, preventing observers from seeing the ballot box while it was in the office. During the investigation the Local 1945 president and the NR both denied that the NR took the ballot box into the president's office after he transported the ballots from the post office to the union hall for counting. The NR stated that after arriving at the union office with the ballots, he took the taped box containing the ballots directly into the conference room located at the union hall where the election committee members were waiting. The NR stated that the ballot box remained in the conference room with these members until the completion of the ballot count and vote tally.

You complained that after the ballot box arrived at the union hall, it was not within the observers' sight from 9:45 a.m. to 10:00 a.m. The election committee did not allow the candidates or observers to enter the building until 10:00 a.m. Your observer, however, stated during the investigation that the NR arrived at the union hall around 9:55 a.m. Therefore, the ballot box may have been out of the observers' view for five to 15 minutes. As a best practice, the union should have permitted observers to observe the chain of custody of the ballot box once the ballots arrived at the union hall for counting. This is particularly true since observers were not allowed to enter the building until 10:00 a.m. However, the Department reviewed the ballots and other election records and found no suspicious markings on the ballots, or indentations on ballots indicating

that they had been marked in stacks or on top of one another. Also, there was no pattern of erasures for one candidate and corresponding votes for the same opponent, or the frequent use of an unusually colored pen or pencil. Further, there was no evidence of tally irregularities or other election improprieties. The LMRDA was not violated.

You further alleged that your observer was not allowed to properly observe all phases of the vote tally. You alleged that your observer was not allowed to see ballots as the votes were being called out or how the votes were being recorded, totaled, and reported on the tally sheets. The adequate safeguards provision of section 401(c) of the LMRDA includes the right of candidates to have observers at the counting of the ballots and tallying of the votes. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the election. During the investigation you stated that you and your observer tried to get closer to the area where the votes were being tallied but an election official told you to stand at least 20 feet from that area. You also stated that the individuals counting the ballots (counters) were not calling out the votes loud enough for the observers to hear. An election official stated during the investigation that after you complained that your observer could not adequately observe the ballot count and vote tally, he was permitted to stand about two feet from the counters. Further, the Department recounted the votes for the contested races and found no change in the election outcome. The LMRDA was not violated.

Lastly, in your protest to the union, you alleged that during the nominations meeting a nominee accepted nominations for two offices. The AFGE's internal union protest and appeal procedures are set forth in Appendix A, Part III, Sections 2-5 of the AFGE constitution. These provisions specify that, in local officer elections, an election protest may be made to the local election committee prior to, during, or within ten days after the election. The election committee must attempt to resolve the protest or render a decision on the protest within 15 days after receipt of the protest. After the election committee has issued its decision or in absence of such a decision, the complainant may file an appeal with the respective National Vice President (NVP) within 15 days after the date the election committee's decision becomes due. The NVP's decision is due within 30 days after receipt of the appeal and is final.

The investigation disclosed that you protested this issue to the election committee by email on January 3, 2023. You obtained an adverse decision from the election committee by email on January 11, 2023. In order to file a timely appeal with the NVP, you were required to file an appeal within 15 days after obtaining the January 11 decision from the election committee, or no later than January 26, 2023. You did not appeal the January 11 decision to the NVP until January 31, 2023, or 20 days after you obtained that decision. Thus, your appeal to the NVP is untimely. Significantly, the

NVP did not address this allegation on the merits or procedurally in his decision dismissing your remaining allegations. Therefore, you failed to exhaust the internal appeal procedures within the timelines prescribed in the AFGE constitution prior to filing your complaint with the Department, as required by Title IV of the LMRDA. 29 U.S.C. § 482(a); 29 C.F.R. § 458.63. Consequently, your complaint to the Department on this issue does not comply with the LMRDA's exhaustion requirements, and, therefore, is dismissed.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA and I have closed the file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director of OLMS within 15 days of service of this notice of dismissal. The request for review must contain a complete statement of facts and the reasons upon which your request is based. *See* 29 C.F.R. § 458.64(c).

Sincerely,



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