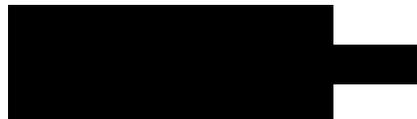




December 15, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your October 15, 2009 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the triennial election of national officers of the American Federation of Government Employees (AFGE), completed on August 26, 2009.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that no violation occurred.

You alleged that the credentials committee at the AFGE National Election unfairly restricted your local union (AFGE Local 2145) to 1/8 of the local's voting strength in violation of the LMRDA. 29 U.S.C. § 481.

The Department's investigation revealed that in February 2009, AFGE National Secretary/Treasurer issued a memorandum to all local presidents discussing local unions' delegate voting strength. The memorandum stated that "if a local is entitled to more than one delegate, the voting strength is divided equally among those properly elected delegates participating in the National Convention" (emphasis added). See AFGE Memo section 1(b) (Feb. 2009). However, "if the local has not elected its full complement of delegates and does not take any action at a properly noticed nomination and/or election meeting to authorize the existing delegates to cast the local's full membership strength, the participating delegates can vote only their proportional share of the local's allotment." See AFGE Memo section 1(b)(iii) (Feb. 2009).

In order to become a “properly elected delegate,” the AFGE National Constitution requires that a notice of election be mailed to each member’s last known home address not less than 15 days prior to the date of the election. *See* AFGE National Constitution, Appendix A, Section 3(a)(4).

During its investigation, the Department determined that Local 2145 held its election of delegates on June 18, 2009, and that Local 2145 emailed notice of the delegate election on June 8, 2009. The fact that Local 2145’s notice of delegate election was emailed to the membership ten days prior to the election violates the AFGE National Convention, *supra*.

The Department’s investigation revealed that Local 2145 was to elect seven of its eight delegates at this June 18, 2009 election. These seven delegates were not properly elected because of Local 2145’s notice violation. Accordingly, Local 2145 was properly restricted to 1/8 its voting strength at the AFGE National Election.

You further alleged that Local 2145 held a meeting that followed the delegate election in order to authorize you to vote Local 2145’s full voting strength. As stated above, the February 2009 Memorandum, also discussed the mandatory procedures for authorizing a portion of a local’s delegates to vote the local’s full membership strength. *See* AFGE Memo section 1(b)(iii) *supra*.

During the investigation, you did not provide any evidence to support the claim that a subsequent meeting was held and that the membership voted to authorize you to vote the full membership strength. Specifically, you failed to provide the meeting minutes or meeting notice related to this subsequent membership meeting.

Based on its investigation, the Department determined that Local 2145 improperly elected seven of its eight delegates and did not hold a subsequent meeting with a membership vote authorizing you to vote Local 2145’s full voting strength. Accordingly, Local 2145 was properly limited to 1/8 its voting strength at the National Election and there is no violation of the Act.

In addition to the allegation discussed above, the Department notes that you also raised multiple allegations which were not properly raised in your internal union protest, and therefore, are not properly before the Department for investigation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John Gage, President
American Federation of Government Employees
80 F. Street, N.W.
Washington, DC 20001

Katherine Bissell
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December 15, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your November 2, 2009 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the triennial election of national officers of the American Federation of Government Employees (AFGE), completed on August 26, 2009.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that no violation occurred.

You alleged that the wife of incumbent president John Gage attended the AFGE National Convention and gave a nominating speech for her husband who ran for AFGE National President. You allege that Gage's challenger, [REDACTED], was treated unfairly because he was not allowed a nominating speech. During its investigation, the Department reviewed video of the speech, which lasted approximately five minutes. During the speech, the wives of incumbent officers John Gage (President) and J. David Cox (Secretary-Treasurer) spoke together and offered humorous off-handed remarks about their husbands. After a thorough review of the speech, the Department determined that Gage's wife did not give a nominating speech; rather, the two wives introduced the incumbent officers on the first day of the convention. Gage's wife does not mention the upcoming election nor does she make any statements that may be deemed as promoting Gage's candidacy, which one would expect in a nominating

speech. Accordingly [REDACTED] was not treated unfairly and there was no violation of the LMRDA.

You also alleged that union funds were used to promote incumbent president Gage's candidacy because AFGE partially paid the expenses of AFL-CIO President, Richard Trumka, who delivered the keynote speech at AFGE's National Convention and in doing so spoke in support of Gage in violation of Section 401(g) of the LMRDA. Section 401(g) prohibits the use of union funds to promote any candidate for union office. AFGE also has a provision in its National Constitution stating that "no monetary or other resources of [AFGE] or any employer shall be contributed or applied to promote the candidacy of any candidate in an election." AFGE National Constitution, Appendix A, Part 1, Section 4(b). On October 1, 2009, the AFGE National Union issued a final decision relating to your internal union complaint finding that Richard Trumka's speech at the National Convention constituted a violation of section 401(g) of the LMRDA, as well as the corollary section of the AFGE National Constitution.

As the exclusive authority relating to investigating, prosecuting, and remedying violations of Title IV of the LMRDA, the Department is not bound by AFGE's October 1, 2009 finding, and thus, completed its own investigation into this allegation that you raised in your complaint to the Department. See *Calhoon v. Harvey*, 379 U.S. 134, 140 (1964); see also *Alexander-Scott v. Fox*, 2009 WL 3380670, at *1 (N.D. Ill. Oct. 20, 2009) (the LMRDA relies upon the Secretary's special knowledge and discretion in determining both the probable violation of the LMRDA and the probable effect on the outcome of the election), citing, *Dunlop v. Bachowski*, 421 U.S. 560, 571 (1975).

During its investigation, the Department reviewed video of Trumka's speech at AFGE's National Convention, which lasted approximately twenty-five minutes. For less than one minute, at the beginning of his remarks, Trumka does make laudatory remarks about incumbent president John Gage, as well as other incumbent officers. During his speech, Trumka makes no reference to the election and does not make any negative statements pertaining to [REDACTED] or any other candidates for office.

In order to ascertain whether or not such a communication constitutes promotion of a candidate in violation of Section 401(g), the Department evaluates the timing, tone, and content of the particular communication. *Chao v. North Jersey Area Local Postal Workers Union*, 211 F.Supp.2d 543, 551 (D.N.J. 2002), quoting, *Donovan v. Metropolitan District Council of Carpenters*, 797 F.2d 140, 145 (3d Cir. 1986); see also *Donovan v. National Alliance of Postal and Federal Employees*, 566 F.Supp. 529, 532 (D.D.C. 1983). First, the Department reviewed the overall content of Trumka's speech and determined that approximately twenty-four minutes of his twenty-five minute speech were spent addressing his general views on the direction of organized labor. When considered as a whole, the

content of this speech related to the future of organized labor, and not the endorsement of Gage's candidacy, as Trumka never mentions the election and spends less than one minute discussing Gage's role as a union leader. Second, the Department reviewed the overall tone of Trumka's speech and determined that the tone was to rally support and optimism for the future of the labor movement, and not to promote Gage's candidacy. Trumka's speech typified a keynote speech that one would expect to be delivered at a union's national convention. Trumka briefly made laudatory remarks about Gage and other incumbent officers, but did not endorse Gage's candidacy. Third, the Department reviewed the timing of Trumka's speech and determined that since he spoke at the National Convention, two days prior to the election of officers, the timing is the only factor that weighs in favor of a finding that Trumka's speech could be viewed as campaigning. However, the Department's investigation revealed that state and regional AFL-CIO leaders have routinely spoken at past AFGE National Conventions, and therefore, even the timing is less problematic as AFGE members should be accustomed to having union leaders speak at the National Convention. Accordingly, the overall tone, content, and timing of Trumka's speech did not endorse or promote Gage's candidacy for re-election, and therefore, there was no violation of the LMRDA.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John Gage, President,
American Federation of Government Employees
80 F. Street, N.W.
Washington, DC 20001

Katherine Bissell
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