



November 14, 2012

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U.S. Department of Labor on February 14, 2012, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the election of officers of American Federation of Government Employees (AFGE) Local 2241 held on November 9, 2011.¹

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election, and thus the Department will not take action to set aside the election results. A discussion of each of your allegations follows below.

You alleged that Local 2241 improperly applied candidate qualifications when it allowed Bernard Mumbles, [REDACTED] and [REDACTED] to run despite your assertion that they had criminal records. Section 504(a) of the LMRDA enumerates the types of criminal convictions that disqualify union members from running for office, and these disqualifying crimes are also set forth in Step 9 of the AFGE Election Manual. Section 504 further states that the bar on running for union office extends for 13 years after the conviction or end of imprisonment, whichever is later. The investigation found that, at the time of the election, none of the candidates you listed had a disqualifying criminal conviction. Accordingly, there was no violation of the LMRDA as to this allegation.

You further alleged that Local 2241 violated the LMRDA when it did not list candidates for office in the order nominated, but rather listed the incumbent candidate for each office first on the ballot. Section 401(c) of the LMRDA requires that unions provide

¹ Labor organizations composed entirely of governmental employees are governed generally by the Civil Service Reform Act of 1978 ("CSRA"), rather than the LMRDA. However, federal regulation provides that elections of officers in labor organizations subject to the CSRA shall be governed by the standards set forth in sections 401(a)-(g) of the LMRDA. 29 C.F.R. § 458.29. For simplicity, all references in this Statement of Reasons will be to the LMRDA and its sections, where appropriate.

adequate safeguards to insure a fair election and, in this regard, the Department's regulations allow candidates' names to be listed on the ballot in any reasonable manner permitted by the union's constitution and bylaws. 29 CFR § 452.112. The Local 2241 constitution and bylaws are silent regarding how names must be placed on the ballot; it was only the nomination/election notice that stated that candidates "will appear on the ballot in the order nominated."

The investigation found that during the nominations meeting it was agreed that the candidates would be listed in the order nominated, but that the Election Committee (EC) later decided to order the candidates on the ballot with the incumbents listed first. When National Representative [REDACTED] who was helping to oversee the election, was alerted to this change there was not enough time to reprint all the ballots prior to the election, and doing so would have cost over \$1,000. Although the EC decision was contrary to the nomination/election notice, it was not contrary to the constitution and bylaws, which was silent on the issue of ballot order. Even assuming a violation occurred, there is no evidence that the order of candidates had any effect on the outcome of the election, as all candidates were clearly listed and members were able to vote for the candidate of their choice. Accordingly, the Department cannot take any legal action to set aside the results.

You further alleged that the union failed to follow its bylaws when the incumbent President eliminated the Second Vice President position without approval from the Executive Board prior to the nominations meeting. A violation of a union's constitution and bylaws regarding the conduct of an election also constitutes a violation of the LMRDA. 29 U.S.C. § 481(e).

The investigation found that President Humbles sent a notice to members on February 7, 2011, asking them to review the bylaws and advising that they could vote on changes to the bylaws at the March 9, 2011 membership meeting. Among the proposed bylaw amendments was one changing the title of the Second Vice President position to Health Administration Center (HAC) Vice President. Over 50% of the membership approved this change to the bylaws at the March 9, 2011 membership meeting, and it was signed as approved by President Humbles that day. The Department found no evidence that the bylaws were further changed between March 9, 2011 and the close of nominations for the 2011 election. In sum, there is no evidence that the bylaws were approved improperly, and thus there is no violation of the LMRDA with regard to this allegation.

You further alleged that Local 2241 violated the LMRDA when it failed to follow its constitution and bylaws with regard to the formation of the EC and the supervision of the election. Specifically, you asserted that friends of the incumbent candidate for President were chosen to serve on the EC before others could volunteer, and that an AFGE National Representative unaffiliated with Local 2241 oversaw the election. As

stated in the previous paragraph, a violation of a union's constitution and bylaws regarding the conduct of an election also constitutes a violation of the LMRDA.

However, the investigation found that, at the nomination meeting, it was National Representative [REDACTED] and not President Humbles, who called for volunteers to serve on the EC. Because [REDACTED] was not a member of Local 2241, he had no knowledge of the candidate affiliation of any of the volunteers. [REDACTED] stated that he chose nine individuals and two alternates at random. This comported with Local 2241's Bylaws, which required that an odd number of members, and no fewer than three, serve on the EC. Accordingly, there was no violation of the LMRDA as to this allegation.

You further alleged that the union violated the LMRDA's requirement to provide adequate safeguards when members were allowed to campaign at the polls and/or while on paid union time. Specifically, you asserted that: (1) EC Member [REDACTED] wore a Mason shirt to the polls to show support for candidate Humbles, who was also a Mason; (2) [REDACTED] and NR [REDACTED] took members into the union office and campaigned to them on the day of the election while on paid union time; and (3) [REDACTED] was in the doorway of a polling place campaigning to members before they voted. In general, the LMRDA prohibits unions from contributing to campaigns, including in the form of allowing individuals to campaign while on paid union time. 29 U.S.C. § 481(g). However, campaigning that is incidental to regular union business is not a violation of the LMRDA. 29 CFR § 452.76.

With regard to the first allegation, the Department found that [REDACTED] did wear a Mason shirt to the polls but that he attended a different Masonic temple than Humbles and , the shirt had no reference to Humbles. [REDACTED] did not wear the shirt in support of any candidate. This activity does not constitute "campaigning" under the LMRDA, and therefore does not constitute a violation of the LMRDA.

As to the second and third allegations, the investigation found that [REDACTED] was a union steward, and thus she was available to people throughout the election day to address various issues such as insurance, work hours, and changes in working conditions. [REDACTED] stated that while she worked for part of the day, she also took leave from work in order to observe voting at the HAC polling site, and that at no time did she campaign, tell members how to vote, or escort members into the polling site. NR [REDACTED] stated that he did not see anyone campaigning at or near polling sites at the HAC facility. Accordingly, there is no evidence that [REDACTED] unlawfully campaigned, and her actions do not constitute a violation of the LMRDA.

You further alleged that incumbent candidates distributed campaign materials on the clock in the workplace, and that this constituted an improper use of employer funds, a lack of adequate safeguards, and disparate candidate treatment, thus violating the

LMRDA. Specifically, you alleged that Humbles passed out his campaign flyers at the Veterans Administration Medical Center (VAMC) and at the HAC, and that there was unequal access to the bulletin boards used to post campaign literature and the ability to mail literature.

The LMRDA prohibits campaigning while on paid union time, *see* 29 U.S.C. § 481(g) and 29 CFR § 452.78(a), as well as disparate candidate treatment regarding the opportunity to campaign, *see* 29 U.S.C. § 481(c) and 29 CFR § 452.79. As to the first allegation, the investigation found no specific evidence of campaign distribution on paid employer time. It found that incumbent candidate Humbles handed out campaign flyers around the canteen and at the break rooms at the HAC, VAMC, and Fort Logan National Cemetery (FLNC) locations either during his lunch break or after work. Accordingly, there was no evidence of a violation of the LMRDA as to this allegation.

Regarding the allegation of disparate candidate treatment regarding campaign literature, the investigation found that literature for both slates was being posted and taken down throughout the campaign. To the extent that there was any violation of the right to campaign, the evidence suggested that these violations were offsetting, and there is no evidence this activity affected the outcome of the election. Finally, regarding mailing campaign literature, you stated during the investigation that your slate opted not to do a mailing through the EC because you did not trust the EC to do the mailing properly, and instead you did the mailing using your personal equipment. It is undisputed that you had the option to use the EC to do the mailing, however, and thus there is no evidence of disparate candidate treatment and no violation of the LMRDA.

You made several related allegations regarding improper voting, either by ineligible voters or eligible voters casting more than one vote. Specifically, you asserted that the EC did not verify voter eligibility of all members at the HAC polling place, that this allowed some members at that location to vote twice, and that the EC allowed a retired member to vote after he paid his dues on the day of the election. You also alleged that the union gave ten or more new HAC members \$100 each to join the union and allowed them to vote after they paid dues.

The LMRDA provides that each member in good standing shall be entitled to one vote. 29 U.S.C. § 481(e). Further, Item #12 of the Local 2241 Election and Campaign Rules state that any member whose signed dues withholding form is accepted by a local officer is eligible to vote in the election.

The investigation and review of election records determined that the EC members at the HAC checked the identification of all members seeking to vote, including the officers. If a voter did not have identification, they were told to retrieve identification and return in order to vote. Once checked in, the EC members placed a check mark on the voter

eligibility list to prevent a member from attempting to vote more than once. The Department's recount of the ballots was nearly identical to the union's count, and the small differences did not affect the outcome of any race.

Regarding your allegation about the retired member permitted to vote, the investigation found a receipt in the election records indicating that retired member [REDACTED] paid \$26 in cash to bring his dues up to date prior to voting on the day of the election. However, such payments are permissible under the Local 2241 Bylaws and Election and Campaign Rules. Accordingly, there was no violation of the LMRDA as to this allegation.

You further alleged that the union violated the LMRDA's provisions regarding adequate election safeguards and disparate candidate treatment when a voter asked an EC member at the polling place who the current president was, and the EC member told the voter to "look at the top of the ballot."

The investigation found that one EC member was asked by a voter who the incumbent president was, and out of an abundance of caution so as to not appear to be campaigning by stating a candidate's name, the EC member told the voter that the incumbent was the person at the top of the list. Further, the investigation found that one of the candidates, [REDACTED], told voters during the campaign that if they voted for one member of the slate they had to vote for the entire slate, but this was merely a campaign tactic in an effort to elect an entire slate. [REDACTED] had no role in the oversight of the election beyond her status as a candidate. The actions of these individuals did not violate the LMRDA and, even if they had, there is no evidence that these actions affected the outcome of the election.

You further alleged that some of Local 2241's post-election conduct violated the LMRDA, when the union failed to report the number of printed, voted, challenged and absentee ballots, and also that the EC failed to disclose the storage location of election records to candidates.

Regarding the first of these two allegations, the LMRDA requires that the results of the election must be published, and that the reporting of results should account for all ballots cast. 29 U.S.C. § 481(e); 29 CFR § 452.108. The investigation found that the EC announced and posted the results of the election and completed the standard AFGE ballot tally certification, which set forth the results of all of the ballots cast in the election. The EC did not provide a breakdown to anyone of the exact number of printed, challenged, and absentee ballots, but this breakdown is not required by the LMRDA or union bylaws. Therefore, no violation occurred.

Regarding the second of your two allegations, while the LMRDA requires that unions preserve all election records for one year, *see* 29 U.S.C. § 481(e), neither the LMRDA nor Local 2241 bylaws require that the location of these records be disclosed. The investigation determined that the applicable records were stored by EC Chair [REDACTED] in his work area, and they were turned over to OLMS from a locked box during the course of the investigation. Accordingly, no violation occurred.

You further alleged that Local 2241 failed to elect officers by secret ballot when an EC member at the HAC looked at voted ballots and placed them into the ballot box. While the LMRDA provides that local union elections must take place by secret ballot, 29 U.S.C. § 481(b), the investigation found no evidence that this provision was violated, or that the outcome of the election was affected in any way. Specifically, the Department found that one member attempted to place her ballot in the box, but was unable to get it into the slot. EC Member [REDACTED] helped the voter place the ballot into the box, but she did not unfold the ballot so she could not see how the member voted. Further, while the HAC location used a glass ballot box, the EC covered up the outside of the box with paper so nobody could see the ballots inside the box.

You further alleged that the union closed the polls early at the HAC site. Specifically, you asserted that while the polls were supposed to be open until 6:00 p.m., that EC Member [REDACTED] closed the polls at 5:35 p.m. The Department found no evidence corroborating this allegation. Others present at the HAC site reported that, while EC members started packing up materials at 5:55 p.m., the polls closed at exactly 6:00 p.m., as the EC Members on-site were carefully watching the clock. Further, no member showed up to the HAC site to vote after 5:30 p.m., and no member complained or otherwise reported that they were unable to vote late in the day because the site had allegedly been closed early.

You made several allegations regarding unequal treatment of candidates and the union's failure to provide adequate safeguards pertaining to the rights of observers in the election. Specifically, you alleged that observers were unable to witness the ballot transport from the HAC polls to the tally site, observers were unable to see or hear the actual tally process, and incumbent officers intervened and were physically closer to the tally than challenging candidates. The LMRDA provides candidates the right to have observers present at the polls and the counting of ballots. 29 U.S.C. § 481(c); 29 CFR § 452.107.

With regard to the ballot transport, the investigation found that EC Member [REDACTED] transported the ballot box from the HAC site to the VAMC site for the tally. The observer watched [REDACTED] put the locked ballot box into the trunk of her car, and then Freeman drove alone in her car to the VAMC site with three other cars: EC Member [REDACTED] in front, and EC Member [REDACTED] and observer [REDACTED]

trailing behind. All four cars got to the VAMC at the same time, and they went through all traffic lights together so the cars were never separated. Everyone present then watched [REDACTED] take the locked ballot box out of her trunk and carry it into the tallying site. In short, this method of transporting the ballots ensured that adequate safeguards were taken to protect the ballot box from tampering, and thus there was no violation.

With regard to the treatment of observers, the Department found that while initially observers were located too far from the tally to see the ballots clearly, NR [REDACTED] suspended the count once the issue was raised and allowed the observers to move closer to the table so that they were seated across from election officials, giving everyone equal access to the tally. Finally, while the investigation also found that the auditorium was noisy on a few occasions, there is no evidence that this affected the count in any way. The Department's recount of the ballots affirmed that the winners declared by the union were correct. Accordingly, there was no violation that affected the outcome of the election with regard to this allegation.

Finally, you made several allegations regarding improprieties in how the union tallied election results, specifically that: (1) NR [REDACTED] changed the tally site from the HAC to the VAMC the evening before the election; (2) the EC did not use a "stack count" to maintain accuracy; (3) the tally was not held in a separate room; (4) the EC members did not have enough tally sheets; and (5) one of the EC members voided the count at the HAC site twice. With regard to the tally of votes, the LMRDA requires that candidates have a right to have observers present and that the votes shall be counted, and the results published, separately. 29 U.S.C. §§ 481(c), (e).

The investigation found no evidence that these provisions of the LMRDA, or any of the Local 2241 Bylaws, were violated. First, Item #16 of the Local 2241 Election and Campaign Rules stated that the ballot tally would take place at the VAMC; it was never scheduled to take place at the HAC. Second, while the AFGE Election Manual suggests a "stack count," it is not mandated and historically used only if there are more than 1000 ballots cast. There were fewer than 400 ballots cast in this election. Additionally, the Department recounted the ballots and found no significant differences affecting the outcome of any race.

Third, while the specific room used at the VAMC was changed from a closed room to an auditorium, this was done in an effort to allow more people to view the results thus increasing transparency. There was no requirement in Local 2241 Bylaws or Election Rules as to the specific room where the tally must take place, and the location of the tally did not affect the election results. Fourth, while extra tally sheets were needed at some point during the tally, extra copies were quickly made and supplied so the tally could be completed. This did not violate the LMRDA or union rules. Finally, there was

no evidence that anyone “voided” the count at all, let alone two times. Regardless, the recount done by the Department found no significant errors made by the union that would have affected the outcome of any individual race.

For the reasons set forth above, it is concluded that there were no violations of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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