



September 2, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor on April 4, 2014 alleging 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 the Civil Service Reform Act of 1978 (CSRA), occurred in connection with the runoff election of officers conducted by the American Federation of Government Employees (AFGE), Local 2209 on January 22, 2014.

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

You alleged that Election Committee Chair [REDACTED] improperly used a union member list to call members who had not voted in the initial election to encourage them to vote. You alleged that [REDACTED] took this action to aid your opponent in the runoff, incumbent President Tinita Cole. The action you describe, encouraging members to vote does not, without more, violate the LMRDA. There was no evidence that [REDACTED] campaigned for Cole or against any other candidates in making the calls. In interviews with the Department, none of the members contacted by [REDACTED] said that [REDACTED] instructed them to vote for a candidate in the runoff. Accordingly, there was no violation.

You made a number of allegations concerning [REDACTED] and Cole improperly campaigning to new members. You alleged that [REDACTED] attended a new employee forum on January 15, 2014 – a week prior to the runoff election – and passed out ballots to new members, instructing them to vote for Cole. You alleged that Cole had new members come to her union office after the January 15 new employee forum and campaigned to them.

The investigation revealed conflicting evidence as to [REDACTED] and Cole's campaigning to new members. In any event, if Cole and [REDACTED] improperly campaigned to new

members on Cole's behalf, the violation had no effect on the outcome of the runoff election. Five new members joined Local 2209 between January 3 and January 22, the date of the runoff. Only two of these new members voted. Cole's margin of victory was four votes. Thus, if a violation occurred, it would not have affected the outcome of the election.

You alleged that Cole campaigned and passed out ballots at an employer work site while on union time. Again, Section 401(g) sets out that "[n]o moneys received by any labor organization . . . [or] employer shall be contributed or applied to promote the candidacy" of a union election candidate. The investigation which included interviews with employees revealed no evidence of Cole campaigning at the work site. There was no violation.

You alleged that ██████ lacked impartiality and administered the election in a way that favored Cole and violated election rules. Section 401(c) of the LMRDA prohibits disparate treatment of candidates and requires safeguards to ensure a fair election. You did not specifically allege any prohibited conduct aside from those discussed elsewhere in this Statement of Reasons. The Department interviewed ██████ and Election ██████ ██████ and reviewed the circumstances under which ██████ became Election Committee Chair. No evidence gathered by the Department's investigation suggested that ██████, who said she is friends with Cole, improperly held her position or carried out her duties in a prohibited way. Accordingly, there was no violation.

You alleged that ██████ improperly counted two to three ballots that were not in secret ballot envelopes in violation of election rules. Section 401(c) of the LMRDA requires that local union elections be conducted by secret ballot. Department regulations promulgated under this provision provide in relevant part that "secrecy may be assured by the use of a double envelope system for the return of the voted ballots with the necessary identification appearing only on the outer envelope." 29 C.F.R. § 452.97(a).

The investigation included interviews with Election Committee members and a review of the runoff's tally certification sheet. The investigation revealed that enough ballots to alter the runoff's outcome were returned to the union outside of secret ballot envelopes. Election officials, however, treated these as challenged ballots and set them aside for later decision as to their inclusion in the tally. While ballot instructions advised that such ballots submitted without secrecy envelopes would not be counted, the LMRDA, Department regulations, and AFGE election rules do not mandate such an approach and would allow for counting ballots, if secrecy can be preserved. Counting the ballots allows eligible members to vote in the election and increases the voter franchise, in keeping with principles underlying the LMRDA.

When deciding what to do with the challenged ballots, [REDACTED] decided to count the ballots. No other election officials objected to her decision. The investigation revealed that secrecy was preserved by intermingling the challenged ballots with other uncounted ballots. In turn, the decision enfranchised voters whose error did not violate the LMRDA, or AFGE election rules. Accordingly, there was no violation.

Finally, you alleged that [REDACTED] counted six ballots containing marks and erasures that should have been voided under election rules. The AFGE Election Manual indicates that ballots should be counted if (i) voter intent is clear and (ii) the marks on the ballot do not identify the voter. Under these rules, erasures and cross-outs on ballots are allowable provided the voter's intent is clear and voter secrecy is not compromised.

The Department's investigation included interviews with [REDACTED], [REDACTED], other Election Committee members, AFGE district officials, as well as a review of any ballots with cross-outs or erasures. The investigation found that two ballots counted by the Election Committee contained cross-outs or erasures. Voter intent was clear on both ballots. Neither ballot identified the voter. The Department confirmed the official count certified by the Election Committee. The Election Committee followed the AFGE Election Manual in counting these ballots. Therefore, there was no violation.

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: J. David Cox, National President  
American Federation of Government Employees  
80 F Street, N.W.  
Washington, D.C. 20001

Tinita Cole, President  
American Federation of Government Employees Local 2209  
P.O. Box 306  
Dayton, OH 45417

Christopher B. Wilkinson  
Associate Solicitor for Civil Rights and Labor-Management