



July 9, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("The Department") on March 20, 2009 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA" or "the Act"), 29 U.S.C. §§481-484, occurred in connection with the election of officers of Local 2879 of the American Federation of Government Employees, AFL-CIO ("Local 2879") completed on November 8, 2008. 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.

The Department of Labor conducted an investigation of your allegations. As a result of this investigation, the Department of Labor has concluded, with respect to each of your specific allegations, that Local 2879's handling of the election did not result in any violations of the Act. The specific allegations you raised are discussed separately below.

You alleged that Local 2879's Election Committee failed to comply with the AFGE National Constitution when Election Committee member [REDACTED] requested a list of the membership from the National AFGE Secretary-Treasurer rather than the local. The AFGE National Constitution states that "the treasurer or secretary-treasurer shall furnish to the Election Committee the names and addresses of all members" AFGE Nat'l Const. Appx. A, Part I, Sec. 5(b). However, there is no prohibition preventing the local Election Committee from acquiring a local's membership list from the AFGE National. Notwithstanding this, the Department's investigation found that [REDACTED] did request a membership list from Local 2879 Secretary-Treasurer Shelly Jordan on September 28, 2008, and only after this request did [REDACTED] also request a membership list

from the AFGE National. ██████ did so out of a concern that the local's membership list was not accurate. In sum, ██████'s actions as to this allegation were not in violation of the AFGE National Constitution, and thus were not in violation of the LMRDA.

You further alleged that ██████ misrepresented ██████ as the Chairperson of the local Election Committee when ██████ requested the membership list from the AFGE National. The Department's investigation established that ██████ was the first person nominated for the Local 2879 Election Committee. On October 2, 2008 when ██████ contacted the AFGE National for the membership list, the Election Committee had not yet had its first meeting, and thus, per Roberts Rules of Order, ██████ assumed the position of interim chair on the basis of being nominated first. Thus, ██████'s representation to the AFGE National on October 2, 2008 was accurate. On October 5, 2008, after the Election Committee had its first meeting and determined who would fill the various officer positions, ██████ again contacted the AFGE National and identified ██████, properly, as the Election Committee Secretary. Accordingly, there was no violation as to this allegation.

You further alleged that the Election Committee violated the National Constitution when it initially failed to certify the results of the November 8, 2008 election and prepare a post-election report. The Department's investigation found that you sent a letter on or about November 16, 2008 to the Local 2879 Election Committee protesting its failure to certify the election. On November 23, 2008, the Election Committee did certify the results of the election. During the course of the Department's investigation, you stated that you considered this allegation resolved. Thus, the Department will take no action regarding this allegation.

You further alleged that the Election Committee provided a membership list to ██████, a candidate for the office of President, based on the fact that you received campaign literature with ██████'s home address as the return address, as well as ██████'s handwriting on the envelope. The campaign rules drafted and circulated by Local 2879 stated that "[c]ampaign literature must be provided to the election committee in sealed stamped envelopes which are ready for mailing." AFGE Local 2879 Election and Campaign Rules, ¶ 9. The rules further state that "candidates must provide [A]very labels for each mailing to cover the cost of the address labels" and that "[Election Committee member] ██████ will print the labels at no cost to the local..." *Id.* There is no prohibition, either in the election rules or under the Act, against putting the candidate's home address as the return mailing address on envelopes containing campaign literature. The Department's investigation found that ██████ prepared ██████ campaign literature according to the Local's election rules and brought the postage-paid envelopes and mailing address labels to Election Committee member ██████, so that the labels could be printed on ██████'s computer, affixed to the envelopes, and sent out. However, at the time ██████ presented the envelopes and labels to ██████, ██████ was ill and unable to print labels. Given the large number of envelopes and the impending deadline for sending out campaign literature, ██████ asked ██████ if ██████ would help address the envelopes by hand. ██████ was not given a list and was not allowed to copy

any portion of the list for [REDACTED] own records; the addresses were merely written on the envelopes and subsequently put in the mail. *See* 29 C.F.R. §452.71. There is also no evidence of discrimination or differential treatment among the candidates in this regard. There was no violation of the LMRDA.

You further alleged that Election Committee members [REDACTED] and [REDACTED] were biased against you, alleging that [REDACTED] had made disparaging remarks about you during the election process and eventually filed a post-election protest against you, and that [REDACTED] had said that the local “needed new blood.” The Department’s investigation found that, assuming these allegations are true, there was no evidence that such actions affected the election process in any way. Accordingly, there was no violation as to this allegation.

You further alleged that Election Committee member [REDACTED] hand delivered a replacement ballot to union member [REDACTED], and that hand delivery was not offered to other individuals seeking replacement ballots. The Department’s investigation found that [REDACTED] processed successfully all the duplicate ballot requests she received. However, [REDACTED] made [REDACTED] request for a replacement ballot a few days before the deadline for voting. Mindful of the deadline and wanting to ensure that Porter received the replacement ballot in time to participate in the election, [REDACTED] discussed how to handle [REDACTED]’s request with you. You suggested that [REDACTED] hand deliver the ballot to [REDACTED], and you arranged with [REDACTED] for [REDACTED] to pick up the replacement ballot from [REDACTED]. The Election Committee honored all requests for duplicate ballots. No request for a duplicate was received later than Porter’s. The union’s action in hand-delivering this one ballot does not provide a basis for litigation by the Department.

Finally, you alleged that the Election Committee’s decision to overturn and re-run the November 8, 2008 election based on an article about you in the Council 147 Newsletter that appeared shortly before the election was improper. In general, the Department accords a degree of deference to decisions on internal union election protests providing for the conduct of a new election. The Department will not seek to reverse a union’s decision to hold a new election, even if the evidence could be viewed as insufficient to support a decision by the Department to sue to overturn the original election, unless it is apparent that (1) the decision was based on the application of a rule that violates the LMRDA; (2) the decision was made in bad faith; or (3) the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable.

In this matter, the Department found no evidence that the decision to hold a new election either violated the LMRDA, was made in bad faith, or is otherwise contrary to the principles of union democracy. Rather, the Department finds the Local’s conclusion that the newsletter article about you amounted to an improper endorsement and could have affected the election is reasonable and worthy of deference. When investigating whether a union publication rises to the level of an unlawful use of union funds

promoting the candidacy of a candidate, *see* 29 U.S.C. §481(g), the Department considers the timing, tone, and content of the publication. *See also* AFGE Nat'l Const. Appx. A, §4(b). Further, the AFGE Election Manual Supplement states that, while union publications may report on factual issues relating to incumbent candidates, they "may not show any preference for a candidate" and "may not criticize or praise any candidate...." AFGE Election Manual Supplement, Attachment 12, § 2 (revised 10/10/06).

The Department's investigation found that the article in question was part of the Council 147 Newsletter that was mailed to all local affiliates, including members on Local 2879, on September 30, 2008, a little over one month prior to the Local 2879 election. A previous version of the article, which was longer but more factual in tone, was published in the Council 220 Newsletter in June 2008. Both articles address the fact that April 4, 2008 was the 40 year anniversary of the beginning of your employment with the Social Security Administration ("SSA"). The fact that the article was revised and reprinted in the newsletter immediately preceding the election, and nearly six full months after your 40th anniversary with SSA, raises questions about the timing of the article. The tone and content of the article also raise questions. Specifically, the last two paragraphs of the Council 147 article are as follows:

Ms. Matthis understands the need for the agency to provide employees with opportunities and the need for diversity. She has continued to dedicate her services to the promotion of benefits for bargaining unit employees of all backgrounds.

We are honored to have someone of her caliber as part of our Council and AFGE. Thank you, Ms. Matthis for all that you do.

Council 147 Fall 2008 Newsletter at p. 2. This portion of the article goes beyond reporting on factual issues relating to the campaign, and rather appears to "praise" your work with the union. *See* AFGE Election Manual Supplement, Attachment 12, §2 (revised 10/10/06). Based on these facts, the Election Committee's conclusion that the newsletter amounted to improper use of union funds in support of a candidate was reasonable, and their decision to order a re-run of the election is worthy of deference and should be followed. Accordingly, there was no violation as to your allegation.

For the reasons set forth above, it is concluded that the Department of Labor cannot bring an action under section 402 of the LMRDA, and I have closed the file in this matter.

Sincerely,

Cynthia M. Downing

Chief, Division of Enforcement

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