



July 9, 2009

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your March 5, 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), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Local 2142, (Local 2142 or Local), American Federation of Government Employees (AFGE), completed on November 20, 2008.

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 that may have affected the outcome of the election.

You alleged that Local 2142 violated section 401(e) of the LMRDA by improperly voiding the entire ballot of Local 2142 members in good standing. 29 U.S.C. § 481(e). In particular, you alleged that Local 2142 improperly voided the entire ballot when a member voted for both a slate and an individual candidate and the member's voting intent was not clear for that particular position. Section 401(e) requires that each member in good standing shall be entitled to vote in the union election. *Id.* Further, the Department's regulations provide that an entire ballot may not be voided because of a mistake made in voting for one of the offices on the ballot. 29 C.F.R. § 452.116. The AFGE Election Manual restates this rule, requiring that when a voter's intent is unclear for a given position, only the vote for that position should be voided and not the entire ballot. *See* AFGE Election Manual, Step 23, Substep 4. According to the AFGE Election Manual, an entire ballot should only be voided when the ballot contains identifying information. *See* AFGE Election Manual, Step 23, Substep 5.

The Department found that Local 2142 violated section 401(e) of the LMRDA by improperly voiding 43 ballots in their entirety, where only the vote for one position was unclear. The Department also found that 10 ballots contained identifying information and should have been voided. These errors violated the Act.

Section 402(c) of the LMRDA provides that an election may only be overturned where a violation of the law may have affected the outcome of an election. The Department recounted the ballots using the correct standards and found that none of the outcomes of the positions in the election changed as a result of the recount. Thus, although Local 2142 violated section 401(e), the violation did not affect the outcome of the election

You also alleged that Local 2142 violated section 401(e) of the LMRDA by counting ballots cast by retired members, who you believed to be ineligible to vote in union elections. 29 U.S.C. § 481(e). The Department's regulations provide that unions may, but are not required to, restrict voting by retired members. Article III, Section 1(c), of the AFGE National Constitution states that any person who at the time of being separated without prejudice from employment in the U.S. government was a member in good standing of any local is eligible to continue membership with full voting rights. As such, Local 2142 properly implemented this constitutional provision by counting the retired members' ballots and there is no violation of the LMRDA.

You alleged that Local 2142 violated section 401(c) of the LMRDA, which prohibits disparate treatment of candidates for union office. 29 U.S.C. § 481(c). Specifically, you alleged that Local 2142 denied your request for a copy of the membership list to make campaign mailings. The Department's investigation revealed that you did receive a mailing list of the membership, which included all working and retired members. Further, you stated that you chose not to send out a campaign mailing due to the cost involved with the mailing. In fact, the Department found that no candidate made a campaign mailing. Accordingly, there is no violation of the LMRDA.

In addition to the allegations discussed above, the Department notes that you also raised multiple allegations which were not 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.

You may request a review of the decision to dismiss your complaint by filing a request for review within 15 days of receipt of this letter. The request should be filed with Acting Assistant Secretary Shelby Hallmark at the following address:

Shelby Hallmark, Acting Assistant Secretary
U.S. Department of Labor
Employment Standards Administration
200 Constitution Avenue N.W.
Room S-2321
Washington D.C. 20210

Please note that the review is limited to whether the decision to dismiss your complaint was arbitrary and capricious.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement
Office of Labor-Management Standards

cc: Mr. Rogelio Flores
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San Antonio, TX 78213

Mr. John Gage, National President
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Mr. Jose Gonzales
AFGE Local 2142
308 Crecy Street
Stop 50, Building 129
Corpus Christi, TX 78419

Katherine Bissell, Associate Solicitor for Civil Rights and Labor-Management