



August 20, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on April 15, 2010 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959¹, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of Local 1364 of the American Federation of Government Employees, AFL-CIO completed on October 30, 2009 and November 17, 2009.

The Department conducted an investigation of your allegations. As a result of this investigation, the Department has concluded, with respect to each of your specific allegations that no violations of the Act occurred that had an effect on the outcome of the election. The specific allegations you raised, and the Department's findings and conclusions, are discussed in further detail below.

You alleged that proper notice of the runoff election was not sent. The LMRDA provides that notice of elections shall be mailed to each member at his or her last known home address not less than 15 days prior to the election. 29 U.S.C. § 481(e); *see also* Local 1364 Constitution, Art. IV, Sec. 5(d). The Department's investigation into this allegation found that the election notice sent out on October 13, 2009 for the October 30, 2009 election set a date for a run-off election, if necessary, of November 3, 2009. After the October 30 election, when it was determined by Local 1364 that a run-off election was necessary, Local 1364 determined that more time would be needed to prepare for the run-off election. The run-off election was scheduled for November 17, 2009. Local 1364 members were informed of the date by e-mail on November 9, 2009. This did not

¹ Labor organizations composed entirely of federal 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.

provide 15 days notice, nor was the notice sent by mail to the members' home addresses. Therefore, the notice was in violation of the LMRDA.

However, Section 402(c)(2) of the LMRDA provides that an election will only be set aside where the violation "may have affected the outcome of an election." 29 U.S.C. § 482(c)(2). You admitted that union members were notified of the correct date of the run-off election by e-mail and that you were not aware of anyone who did not have the opportunity to vote because of lack of notice of the run-off election. The Department's subsequent investigation found that only seven members on the dues check-off list reported that they did not receive the e-mail notice of the run-off election, and of these seven, only one was eligible to vote but did not. While there was a tie in one race in the run-off election, one of the candidates in that race subsequently conceded, because he won another race. The other three races were won by more than one vote. Thus, a vote by the one eligible member who did not receive the notice would not have had an effect on the outcome of the election, and the Department will not seek to set aside the results.

You further alleged that Local 1364's Constitution was not followed because the then-President of the union, [REDACTED], conducted certain aspects of the election (such as sending the notice and setting the dates for elections) that should have been conducted by the Local 1364 Election Committee. Section 401(e) provides that the election shall be conducted in accordance with the union's constitution and bylaws, so long as they are consistent with the LMRDA. In this case, Local 1364's Constitution provides that an elected Election Committee shall conduct the election. Local 1364 Constitution, Art. IV, Sec. 4. The Department's investigation found that [REDACTED], and not the Election Committee, mailed the nomination, election and run-off notices and set the dates for the elections. This is in violation of Local 1364's Constitution, and therefore a violation of the LMRDA. However, as with the first allegation, there is no evidence that this violation "may have affected the outcome" of the original election or the run-off election. The Department's investigation determined that all candidates who wanted to run for office were listed on the October 13, 2009 notice, [REDACTED]'s name was not on any of the notices (other than as a candidate, listed with all other candidates), and there was no other evidence to suggest that [REDACTED]'s actions were biased in any way toward any candidate for office. As there is no evidence that the outcome of the election was affected, the Department will not set aside the results.

You further alleged that Local 1364 Constitution was not followed because [REDACTED] decided who would serve on the Election Committee, and this decision was not voted on by the membership. The Local 1364 Constitution requires that the membership "shall elect an Election Committee to conduct the election." The Department's investigation found that at a membership meeting, [REDACTED] asked for three volunteers to serve on the Election Committee, in accordance with past practice. After three people

had volunteered, ██████ asked if there were any objections, and none were put forward. To the extent that the volunteer process utilized did not constitute an "election," the Constitution, and therefore the LMRDA, was violated. However, there is no evidence that any deviation from the Constitution had any effect on the outcome of the election. Accordingly, the Department will not seek to set aside the result.

Finally, you alleged that the revised Roberts Rules of Order were not followed during the course of the nominations meeting, and "as a result, many violations were made." There was no further detail provided to the union regarding this allegation. The Local 1364 Bylaws require that the union follow Roberts Rules of Order. To the extent that Robert's Rules of Order were not expressly followed during the nominations meeting, there is no indication that it had any effect on the outcome of the election. Accordingly, there was no violation that may have affected the outcome of the election.

To the extent that you alleged other violations during the course of the Department's investigation, these allegations were not raised in your initial complaint to the union. The Department may only take legal action as to matters "which may fairly be deemed to be within the scope of the member's internal protest and those which investigation discloses he could not have been aware of." 29 CFR § 452.136(b-1).

For the reasons set forth above, it is concluded that there were no violations of the LMRDA that may have 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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