



June 11, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("Department") on March 24, 2010 alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("the Act"), 29 U.S.C. §§ 481-484, as made applicable to federal sector unions by 29 C.F.R. §458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. §7120, occurred in connection with the re-run of the biennial officer election for Local 3584, American Federation of Government Employees, AFL-CIO, ("the Local" or the "Union") completed on April 7, 2010.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation occurred.

You allege that the AFGE National Vice President's decision to re-run the original December 15, 2009 election was arbitrary and capricious and there had been no violation that affected the outcome of the election. The investigation revealed that several members filed protests concerning the December 15 election. The protests alleged that the then Local President and candidate for Treasurer improperly posted the notice of nomination meeting; that the notice of nominations did not inform members of absentee nominations procedures; and that the nominations of officers was held at the November meeting in violation of the Local's Bylaws.

The requirement set out in section 402(a) of the LMRDA, 29 U.S.C. § 482(a), that a member exhaust internal union remedies before complaining to the Department of a violation of the LMRDA, was included in the Act to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, 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 remedial 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 the decision was based on the application of a rule that violates the LMRDA, the decision was made in bad faith (for example, in order to afford losing candidates a second opportunity to win), or the decision is unreasonable or otherwise contrary to the principles of union democracy embodied in the statute. The same standards apply to federal sector unions under the Department's regulations. 29 C.F.R. §458.29.

In this case, the AFGE Constitution, Appendix A, Part III, Sec. 5, states that if a violation may have affected the outcome of the election, the National Vice-President shall order a new election. The investigation revealed that the National Vice-President had a reasonable basis for concluding that violations occurred that may have affected the outcome of the election. The allegations regarding the content of the nominations notice and the timing of the nominations constituted clear violations of the AFGE Constitution or Local's Bylaws. Appendix A, Part I, Section 3 of the Constitution provides that if nominations are to be made at a meeting, the notice shall inform members how individuals who are absent from the meeting may make and/or accept nominations. Further, Section 16 of the Local's Bylaws provides that nominations of officers shall be held during the December meeting. In addition, these two violations also constitute violations of Section 401(e) of the Act which requires that a reasonable opportunity be given for the nomination of candidates and that unions hold covered elections in accordance with their validly adopted constitution and bylaws. *See also* 29 C.F.R. § 452.2.¹

For the reasons set forth above, the Department has concluded that there is no basis for seeking to set aside the decision of the National Vice-President to rerun the December 15, 2009 election, and I have closed the file in this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Mr. Edward M. Canales, President
AFGE Local 3584

¹ The allegation regarding the former Local President's posting of the nominations meeting notice does not appear to be a violation of the Constitution or Bylaws and does not constitute a violation of the Act. Therefore, it, alone, would not have provided a sufficient basis for ordering a new election.

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