



November 20, 2012

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 21, 2012 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) insofar as made applicable to the elections of 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 election of officers of Local 2063, the American Federation of Government Employees (AFGE), conducted on November 15, 2011.

You alleged that the union violated § 401(e) by failing to provide union members with a reasonable opportunity to nominate candidates. Specifically, you alleged that the door to the October 18, 2011 nomination meeting was locked shortly after the meeting commenced at 4:30 p.m., which resulted in members being unable to participate in the nomination process. You also take issue with the fact that the union allowed Title 38 Vice President [REDACTED] into the meeting after the meeting began while turning away others.

Section 401(e) of the LMRDA requires that "[i]n any election...which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates." With respect to the admittance of Vice President [REDACTED] the investigation revealed conflicting evidence as to whether [REDACTED] arrived prior to the locking of the door.

With respect to the union locking the door and not answering knocks for admittance thereafter, the Department concluded that this practice could be viewed as unreasonable and under different circumstances could lead to an actionable violation of section 401(e) of the LMRDA. The union did not inform members prior to the meeting that the doors would be locked and that there would be no admittance after 4:30 p.m. Further, it is not clear that the union's hurried barring of the door took into consideration the time members' work days ended and the time it would then

reasonably take members to arrive at the meeting. These factors point toward the union's actions unreasonably denying members the opportunity to nominate.

However, the investigation revealed that prior to the nominations meeting the union provided members an opportunity to nominate candidates via an absentee nomination process. Further, the investigation did not reveal that any one was prevented from nominating or being nominated because of the union's refusal to admit members arriving after the designated meeting time. Under these circumstances, any violation of the LMRDA had no effect on the outcome of the election and would not provide a basis for litigation by the Department. *See* 29 U.S.C. § 482(c) (providing that an election may only be overturned where a violation of the law may have affected the outcome of an election).

You alleged that the local election officials failed to ensure that union members voted in secret. Section 401(b) of the LMRDA provides that every local labor organization shall elect its officers by secret ballot vote of the members in good standing. Upon review, the investigation determined that two members voted at the sign-in table rather than at the partitioned voting stations and that others could have seen how the members marked their ballots. The local election officials did not invalidate these votes. These incidents constituted a violation of the secret ballot requirement. However, the investigation revealed only two instances where ballot secrecy was compromised. The smallest margin of victory in the election was four votes. The two tainted ballots would not have affected the outcome of the election and would not provide a basis for litigation by the Department.

In addition, you alleged that the secrecy of the election was compromised when a union member who voted by absentee ballot physically dropped off her ballot at the polling place on the day of the election, and Local Election Official [REDACTED] attached a hand-written note to the ballot and envelope, identifying the member who dropped off the ballot. This occurred and violated the secret ballot requirement. However, even when this tainted ballot is added to the two previously mentioned, the total is not enough to have affected the outcome of any race in the election as the smallest margin of victory was four.

You alleged that the local election officials improperly counted the ballots. You stated that there were 132 ballots cast even though there were only 131 names listed on the voter sign-in sheet. Upon review, the Department concluded that the single vote discrepancy occurred because the union member who dropped off her absentee ballot did not sign the voter sign-in sheet. The investigation did not reveal any evidence of ballot fraud or tampering. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

You alleged that on the day of the election, union election officials prohibited an individual from joining the union and thereby becoming eligible to vote. You did not provide and the investigation did not find any evidence to support this allegation. Therefore, there is no proof that a violation of §401(e) occurred.

You alleged that your opponent for 3rd Vice-President, Michelle Smith, used the union printer to make 900 campaign flyers. Section 401(g) of the LMRDA prohibits the use of union resources to promote a candidate. The investigation of this claim revealed that Smith printed her campaign flyers on her personal printer and the printer of her cousin who is not an employer. Therefore, no violation of the LMRDA occurred.

Likewise, you alleged that local officers used union resources to promote Ms. Smith's candidacy in violation of section 401(g) by sending an official email to the union members stating that if they voted they would receive a burrito at the polling station and by providing the burritos on the day of the election. Upon investigation, the Department found that the email at issue did not endorse any candidate and that the burritos were given to all voting union members regardless of which candidate they supported. As a result, union funds were not used to support a candidate. Therefore, there was no violation of the LMRDA.

You alleged that local election officials initially prevented you and Ms. Smith from sitting at the voter sign-in table. You sought to sit there in order to verify whether members were eligible to vote. Section 401(c) of the LMRDA states that: "[a]dequate safeguards to ensure a fair election shall be provided including the right of any candidate to have an observer at the polls and at the counting of ballots." In the course of its investigation, the Department learned that you and Ms. Smith were permitted to sit at the sign-in table immediately after you raised this issue with the election officials. Consequently, the Department determined that no violation of § 401(c) of the LMRDA occurred because, upon notice, the election officials immediately remedied the practice, and the investigation did not establish that members who were ineligible to vote had participated in the election.

You alleged that the local election officials allowed one member to vote in the election without showing photo identification. Upon review, the Department uncovered evidence that the local election officials who were present personally knew this member and that the member was indeed eligible and was allowed to vote. Union officials immediately remedied this practice and required all members to show identification before voting. There was no violation that would provide a basis for litigation by the Department.

Further, you alleged that the local union election officials violated the LMRDA by giving possession of the election records to the Secretary/Treasurer and permitting the

Secretary/Treasurer to send out an email officially announcing the results of the election to the membership in violation of the AFGE constitution and bylaws. The Department determined that, although the local election officials may have deviated from the exact constitutional requirements, these actions would have no effect on the outcome of the election.

In addition, you alleged that Ms. Smith violated the LMRDA by speaking and walking around the polling site during the election which violated AFGE's Rules for Observers. The investigation conducted by the Department found no evidence that Ms. Smith campaigned in the polling site.

You also alleged that [REDACTED] favored Ms. Smith at the election site when she introduced Smith as the 3rd vice-president and introduced you as a retiree. The Department did not find any evidence that [REDACTED] made these statements. Even if this incident did occur, stating Ms. Smith's office does not, in and of itself, promote candidacy or show favored treatment nor would stating that you are a retiree, in and of itself, denigrate your candidacy. There was no violation of the LMRDA.

Additionally you alleged that there was a typo in the nomination and election notices concerning the term of office, stating that it would commence on November 2014. Further, you alleged that not all of the election committee members were present for the nomination meeting which should render it invalid. Neither of these incidents violates the LMRDA.

You also alleged that the election officers invalidated two challenged ballots on the day of the election four hours before the polls closed. The Department found that the election officers should have invalidated these ballots. As a result, there was no violation that would have affected the outcome of the election, and no basis for litigation by the Department.

For the reasons set forth above, the Department of Labor has 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: Mr. Steve Rael, President
AFGE, Local Union 2063
P.O. Box 8923
Albuquerque, NM 87198

Mr. J. David Cox, National President
AFGE
80 F Street, NW
Washington, DC 20001-1583

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