



July 11, 2013

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your October 10, 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), as made applicable to federal sector unions by 29 C.F.R. §458.29 and the Civil Service Reform Act of 1978, occurred in connection with the November 16, 2011 election of union officers held by Local Union 476 of the American Federation of Government Employees (AFGE). Your complaint concerns the decision of the union to rerun the office of president which you won in the November 16, 2011 election.

The Department of Labor conducted an investigation of each of your allegations. The investigation of your complaint did not reveal any violations of the LMRDA with respect to the union's decision to rerun the office of president.

On April 26, 2012, in response to an appeal from [REDACTED] ([REDACTED]), AFGE National Vice President (NVP) Dwight Bowman ordered a rerun of the election for the office of Local 476 president. NVP Bowman ordered the rerun because he concurred with AFGE National Representative Rusty Hassan's investigative findings and recommendation of a rerun. NVP Bowman attached Mr. Hassan's Investigative Report on [the Local] 476 Election to his letter ordering the rerun.

Mr. Hassan found that your November 16, 2011 email to union members on the day of the election was improper. He determined there were several instances of campaigning in the email where you touted your accomplishments as the incumbent president. You sent the campaign email from your government email address to all members of Local 476 at their government email addresses in violation of rule six ("Campaign Restrictions") of Local 476's election and campaign rules. One of the other candidates for president was disadvantaged in campaigning and in the election not only because she complied with the rule and did not use government email but also because she had no opportunity to respond to your email which was sent on election day. [REDACTED]

was also disadvantaged because he had no opportunity to respond to your email because it was sent on the day of the election. Your campaign email may have influenced the vote of any or all of the union members sent the email. This violation may have had an effect on the outcome of the election. On September 21, 2012, NVP Bowman informed you that National President Cox agreed with his decision to rerun the election.

Your complaint to the Department alleged that AFGE's decision to rerun the election violates the terms of the AFGE Constitution. Specifically, you alleged that [REDACTED] appeal to the NVP was untimely and that NVP Bowman's decision was issued late. Even if these allegations are true, they are not violations of Title IV of the LMRDA. The law favors the union's addressing members' protests over the union's strict adherence to procedural requirements. Under the LMRDA, the union waives procedural defects when it addresses the merits of a member's protest. Furthermore, because you did not properly protest these matters internally, these allegations are not properly before the Department. *See* 29 U.S.C. §§ 482 (a); 29 C.F.R. § 452.135(a).

You also alleged that the NVP was required to dismiss [REDACTED] appeal if no violation occurred that affected the outcome of the election. The provision of the AFGE Constitution that you referenced states, "If it is found that no violation has occurred, or if a violation has occurred which did not affect the outcome of the election, the National Vice President ...shall dismiss the appeal. If it is found that a violation has occurred which may have affected the outcome of the election, the [NVP] shall order a new or rerun election." Appendix A, Part III, Section 4. You argue that the AFGE Constitution required NVP Bowman to dismiss the appeal since there was no showing that your improper campaign email persuaded over 150 members to shift their votes from Mr. Christie to you. The plain language of the AFGE Constitution does not support your claim that NVP Bowman was required to dismiss the appeal unless it was proved that your improper campaign email caused 150 members to shift their votes to you. The "may have affected the outcome" provision in the AFGE Constitution replicates an enforcement provision of the LMRDA, 29 U.S.C. §482(c)(2). Although the LMRDA requires a finding that a violation "may have affected the outcome of an election" before the election will be set aside and a rerun ordered, the standard is a liberal one that is met if the number of voters possibly affected is greater than the winning margin. *See, e.g., Marshall v. American Postal Workers Union, AFL-CIO*, 486 F.Supp. 79 (D.D.C. Mar. 11, 1980). That a violation had an effect on the outcome of an election does not have to be probable, merely possible. *Id.* The Department found that the determinations in the AFGE investigation and report, which NVP Bowman relied upon, were reasonable.

None of your allegations of "irregularities at the National AFGE level" (basis for appeal no. 4 in your complaint) were included in you protests to the union. Because you did

not properly protest these matters internally, these allegations are not properly before the Department. *See* 29 U.S.C. §§ 482 (a); 29 C.F.R. § 452.135(a).

For the reasons set forth above, the Department of Labor concluded that AFGE's decision to order a rerun of the election for the office of Local 476 President did not violate the LMRDA or the Civil Service Reform Act.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. J. David Cox, Sr., National President
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