



February 25, 2009



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("The Department") on September 22, 2008, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959¹, as amended ("LMRDA" or "the Act"), 29 U.S.C. §§ 481-484, as made applicable to the elections of federal sector unions by 29 C.F.R. §§ 458.29 and the Civil Service Reform Act, 5 U.S.C. §§7120, occurred in connection with the election of officers of Local 1411 of the American Federation of Government Employees, AFL-CIO ("Local 1411") completed on September 3, 2008.

The 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.

The several allegations that you raised concern two distinct issues: (1) the amendment of the Bylaws of Local 1411 on August 7, 2008, prohibiting retirees from running for elective office; and (2) the nominations and election notice mailed to Local 1411 members on or about July 24, 2008. These issues are discussed in turn below.

The Department's investigation found that the American Federation of Government Employees ("AFGE") put Local 1411 under an "expedited trusteeship" in early 2007, removing all officers and placing a trustee, National Representative Arvin Byrd, in control of Local 1411. During this trusteeship, Byrd proposed a number of amendments to Local 1411's Bylaws, including an amendment that would prevent retirees from

¹ Labor organizations comprised entirely of 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.

holding elected office. Byrd submitted the proposed amendments to the AFGE National Union on June 6, 2008. A final draft was in existence on or about July 10, 2008, and the final draft was approved by AFGE on August 7, 2008.

You alleged that the substance of the Bylaw preventing retirees from holding local union office violates the LMRDA, as it “deprives the membership of elected officials who posses [sic] much needed and highly desirable professional expertise.” The LMRDA provides that “every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . *reasonable qualifications uniformly imposed*). 29 U.S.C. § 481(e) (emphasis added). Under the LMRDA, it would ordinarily be reasonable for a union to require candidates to be employed at the trade. *See* 29 C.F.R. §452.41. A prohibition on retirees holding union office is not uncommon in union practices.

Here, the Department’s investigation found that Local 1411’s decision to bar retirees from holding union office was reasonable in light of the needs and interests of the union. First, Local 1411 decided to bar retirees because they are not on-site, so they may not be as aware of the issues facing their members. Indeed, it was determined that a retiree’s ability to service the membership may be compromised by their restricted access to the employer, Department of Defense (“DOD”), facilities.²

Similarly, because the bargaining process does not directly affect retirees, it was believed that active members would be more effective advocates at the bargaining table. Lastly, due to the collective bargaining agreement between Local 1411 and the DOD, if retirees were permitted to hold office, any officer salaries would have to be paid by the local rather than the Department of Defense, potentially creating a significant additional expense for the local. The Department’s investigation also found that the bar on retirees running for office was uniformly imposed. [REDACTED] and yourself were the only retirees nominated for elected office, and both of you were subsequently prevented from running. Accordingly, there was no violation of the LMRDA as to this allegation.

You also alleged that you were unlawfully prevented from running for office because the bylaw provision preventing retirees from running for office was not formally approved by AFGE until August 7, 2008, approximately ten days after you submitted your nomination on July 28, 2008. While the Department’s investigation confirmed that your nomination pre-dated the final approval of the Bylaw in question, the Bylaw was approved and in effect prior to the end of the nomination period (which ended August 12, 2008) and prior to the election that took place on September 3, 2008. Accordingly, the notification to you that you were ineligible to run for office – which

² Indeed, one of the other changes made during the trusteeship was to move union meetings off employer property to allow retirees without the proper security credentials to attend such meetings.

was sent to you on August 18, 2008, after the close of the nomination period – was proper in light of the approved Bylaw. There was no violation of the LMRDA as to this allegation.

Finally, you alleged that the Bylaw preventing retirees from running for office was invalid because it was created and approved without the review, input and/or vote of the union membership; it was not disseminated to the membership after its passage; and it otherwise was not in accordance with the AFGE National Constitution. The Department's investigation determined that your allegations were without merit.

As stated above, Local 1411 was put under an "expedited trusteeship" in early 2007, and remained in trusteeship as of August 7, 2008, when the Bylaw in question was approved. As such, Local 1411 had no autonomy during this period, and instead was governed by a trustee per the provisions in the AFGE National Constitution. Article IX, Section 5(b)(3) of the AFGE National Constitution explicitly provides that the trustee must get the membership's approval for expenditures over \$250, but does not mandate that any other local matters be determined by vote of the membership.

With regard to your allegation that Local 1411 failed to disseminate the Bylaws, Article XI, Section 4 of the Standard Local Constitution (which was operative prior to August 7, 2008) provides that copies of the Bylaws "shall be available *upon request* . . ." (emphasis added). The Bylaws approved on August 7, 2008, and effective thereafter, contain no provisions requiring dissemination of the Bylaws to Local 1411 members. In any event, the Department's investigation found no evidence that Local 1411 failed to provide copies of the Bylaws to members in good standing that requested them.

Lastly, regarding your allegation that the Bylaw prohibiting retirees from running for office was not in accordance with Appendix A, Part I, Section 1(e) of the AFGE National Constitution, the investigation revealed that this portion of the National Constitution only provides minimum qualifications that an officer must meet in order to be a candidate for office. Local unions are free to promulgate additional qualifications, as long as they are reasonable and uniformly imposed, as required by the LMRDA.

You alleged that the Nomination and Election notice was not mailed to all members of Local 1411. You identify [REDACTED] as one of the individuals who did not receive this notice. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that "a reasonable opportunity shall be given for the nomination of candidates," To meet this requirement the labor organization must give timely notice reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. 29 C.F.R. §452.56.

The requirements for notice of nominations are distinguishable from those for notice of election. The LMRDA provides that notice of election must be mailed to each member at his/her last known home address at least 15 days prior to the election. 29 U.S.C. § 481(e). Further, Appendix A, Part I, Section 3(a)(4) of the AFGE National Constitution provides that such notice "must be mailed to each member at his or her last known home address not less than 15 days prior to the date of the election."

The Department's investigation found that the Nomination and Election notice was mailed to the address on file for all 525 members of Local 1411 on or about July 24, 2008, over 30 days prior to the September 3, 2008 election. The Department's investigation further found that Local 1411 properly maintained its address list inasmuch as of the 525 notices mailed, only 5, or less than 1 percent of notices mailed, were returned as undeliverable. The notice mailed to [REDACTED] was one of the five returned as undeliverable.

[REDACTED] was interviewed as part of the Department's investigation, and she stated that she contacted the union, provided the union with her correct address and subsequently received a ballot package. She also stated that she did not intend to nominate anyone for the September 3, 2008 election. In light of these facts, Local 1411's mailing of the nomination and election notice abided by the relevant AFGE National Constitution provisions and the LMRDA. Accordingly, there was no violation.

You also alleged that Local 1411's adoption of the Bylaw preventing retirees from running for office violates the "Retention of Existing Rights" section of Title I of the LMRDA. *See* 29 U.S.C. § 413. As previously explained, the adoption and application of the Bylaw did not violate the union officer election provisions of Title IV of the LMRDA. Consequently, this allegation would not provide a basis for action under Title IV to overturn the instant election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA, and I have closed the file on this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

cc: John Gage, National President
American Federation of Government Employees, AFL-CIO
80 F Street N.W.
Washington, D.C. 20001

Zippore Early, President
AFGE Local 1411
P.O. Box 269006
Indianapolis, Indiana 46226