



June 11, 2009

Dear |||:

This Statement of Reasons is in response to your complaint dated January 17, 2008, to the Department of Labor (Department) alleging that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. §§ 481-484, as made applicable to 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, was violated in connection with the regularly scheduled election of officers conducted on October 16, 2007 by Local 987 (local or Local 987), American Federation of Government Employees (National).

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 of the Act occurred or that there was no violation of the Act that may have affected the outcome of the election.

You alleged that the local president selected a nominations chair without the requisite quorum of twenty-five members. Section 401(e) of the Act, 29 U.S.C § 481(e), provides that a union must conduct an election of union officers in accordance with its constitution and bylaws. *See* 29 C.F.R. § 452.2. The investigation disclosed that Appendix A, Part I, section 3(c) of the AFGE Constitution provides that no quorum is required in connection with nominations and elections. In that the AFGE Constitution requires no quorum in election-related matters, the local president was not precluded under the constitution from selecting the nominations chair. Neither the AFGE Constitution nor the Act was violated.

You alleged that the local president used the local's post office box to receive absentee nomination requests, in violation of the AFGE Election Rules (election rules), which require the rental of a separate post office box to hold election-related materials. Section 401(c), of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. Thus, a union's conduct of its election of officers is circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110. The election rules recommend, in

relevant part, that the election committee rent a separate post office box to hold all election-related material.

However, the investigation revealed that at the time that the absentee nominations request was in effect, no election committee had yet been established, and a separate box had not been rented. Once the committee was in place, the committee rented a box for election related materials. The delay in renting the box did not affect the outcome of the election. Prior to the renting of the box for election related materials, there was no occasion for the union to have access to voted or returned ballots such that the integrity of the ballot tally was compromised. Moreover, the National does not consider the election rules to be binding. Rather, the election rules are a resource to assist locals in conducting elections. They are not part of the union's constitution and bylaws such that the union would be in violation of the Act's requirement that unions follow the constitution and bylaws when conducting an election. 29 U.S.C. §481(e). The Act was not violated.

You alleged that members were confused as to which post office box they should use to return voted absentee ballots and which to use for the receipt of the requests for absentee ballots. Section 401(c), of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation disclosed that the election notice that was mailed to each member provided one address for the post office box the local used for the return of the voted absentee ballots and a totally different address for the post office box the local used for the receipt of the absentee ballot requests. The Act was not violated.

You alleged that the election committee chair informed only the | | | | | slate and its observers of the date and time for collecting absentee ballots from the post office but not your observers. Section 401(c) of the LMRDA provides that each candidate must be permitted to have an observer at the polls and at the counting of the ballots; that right encompasses every phase and level of the counting and tallying process, including the collection of ballots. *See* 29 C.F.R. § 452.107. The investigation disclosed that one of your observers was present at the union hall when the election committee made the announcement that two election committee members were leaving for the post office to retrieve the ballots for tallying and that other observers for your slate were present at the post office when the election committee members collected the ballots for tallying. The Act was not violated.

You alleged that certain members who requested an absentee ballot did not receive one and did not vote. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires unions to provide eligible members with a reasonable opportunity to vote. The investigation disclosed that the union failed to mail absentee ballots to three eligible members who requested them and that these three members did not vote in the election. Thus, the Act

was violated when the union failed to provide these members with absentee ballots. However, the investigation disclosed that the smallest vote margin for any contested race exceeded three votes. Thus, no violation of the Act occurred that may have affected the outcome of the election.

You alleged that |||||’s use of the union's mailing address on the envelopes bearing his campaign literature amounted to use of union funds to promote candidacy. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy of any person. The investigation disclosed that the company that prepared |||||’s campaign mailing used the union's address as his return address. However, neither the union's name nor the union’s emblem appeared on the envelopes. The mere use of the union’s post office box on a campaign envelope would not itself be a violation.

You alleged that ||||| received a discount from the caterer he used for campaign purposes in exchange for providing the caterer with Local 987 business. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits employer-financed campaigning. 29 C.F.R. § 452.78. The investigation disclosed that the catering service charged ||||| the same price that it charges its other customers for food purchased in bulk. The Department’s review of |||||’s receipt for such food corroborated that ||||| paid the caterer the regular price and not a discount price for the food. The Act was not violated.

You alleged that the newspaper editor for the local's newspaper did not treat your slate equally with respect to the use of the newspaper for campaign purposes. A candidate may not use a union newspaper to assist the candidate in campaigning unless such assistance is available to all candidates. *See* 29 C.F.R. §§ 452.74-75. The investigation disclosed that during the candidates’ meeting, the election chair advised candidates about placing ads in the local’s newspaper. The investigation further disclosed that although two candidates made inquiries about placing ads, neither pursued the issue beyond the initial inquiry. One of the candidates, who ran on your slate, indicated an unwillingness to pay for an ad. Investigation revealed that ||||| paid for his ads with personal, not union, funds. There was no unequal treatment and no violation.

You alleged that on election day, October 16, 2007, someone told you that members of |||||’s slate used the local's telephones to call members to ask them to vote. Your allegation, even if true, would not constitute a violation of the Act because you did not allege and the investigation did not disclose that the local’s telephones were used to solicit members’ votes for a particular candidate or slate. The investigation disclosed that the individuals who placed the telephone calls only encouraged members to vote in the election. The Act was not violated.

You alleged that ||| | | | gained an unfair advantage when he did not inform other candidates of the dates and times of new employee orientation (NEO) sessions. You further alleged that ||| | | | provided the information on NEO sessions to candidates on his slate so that his slate members could solicit votes from new members. The investigation did not substantiate your allegations. The investigation disclosed that at the NEO sessions ||| | | | made a presentation encouraging new employees to join the union and distributed the \$100.00 the union gives to each new employee who becomes a union member. ||| | | | then campaigned to new members after the NEO sessions. The investigation further disclosed that you received emails informing you of the date and time of NEO meetings. The union took no action to prevent you from campaigning after these meetings. In any event, only eight of the 230 members registered to attend the NEO meetings actually voted in the election. All offices were won by more than eight votes. Thus, had a violation occurred, the outcome of the election would not have been affected.

You alleged that the election committee used different colored ballots for the offices of vice president for maintenance and vice president for non-appropriated funds and that some of the ballots did not contain the office of vice president for maintenance. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires unions to provide eligible members with a reasonable opportunity to vote. In order to comply with this requirement, a union must do more than afford each member the mere right to cast a ballot; each member must be provided the opportunity to cast a meaningful vote. The investigation disclosed that the ballots used in the election contained the general offices and one of the three vice president offices that was representative of a particular craft. The ballots were printed in three different colors to distinguish one craft from the other crafts. Members received the color ballot that contained the vice presidential office for which they were entitled to vote. The investigation disclosed that, during polling, the election committee chair ran out of ballots for the maintenance craft and printed more of such ballots. The investigation also disclosed that 24 such voted ballots did not contain any position for vice president maintenance. None of the voters indicated on the ballot in writing their choice of candidate for that office. Thus, the Act was violated in that the members who voted these ballots were denied an opportunity to cast meaningful ballots for the vice president maintenance race. The union's action also violated section 401(c) of the LMRDA, 29 U.S.C. §481(c), which requires unions to provide adequate safeguards to insure a fair election. However, the vote margin for the vice president for maintenance race was 46 votes. Thus, there was no violation that may have affected the outcome of the election.

You alleged that after the polls were closed, you saw your opponent ||| | | |, and ||| | | |, unsuccessful candidate for trustee, as well as ||| | | |, successful candidate for vice president for maintenance, enter the polling area where they may have had access to ballots. The investigation disclosed that ||| | | | entered the union hall with ||| | | |

and placed water bottles in the union's storage room; ||||| was required to walk through the polling area to get to the storage room and was escorted while in that area by the election committee chair at all times. While ||||| and ||||| were in the union hall, the ballots were in the possession of the election committee in a conference room at the opposite end of the hall from the storage room and observers were present. The investigation further disclosed that although ||||| attempted to enter the polling area, she was told to leave and did not have access to the ballots. The Act was not violated.

You alleged that National President John Gage exceeded his authority under the AFGE Constitution by overturning NVP Flowers' decision to rerun Local 987's election. The investigation disclosed that the NVP's decision to overturn the election was based on your internal protest. The National President reversed that decision because your internal protest was procedurally defective, and the issue supporting the NVP's decision had not been properly raised in your internal protest. The investigation disclosed that Appendix A, Part III, section 5 of the AFGE Constitution authorizes the National President to overturn a decision of a NVP. The National President did not exceed his authority under the constitution.

For the reasons set forth above, it is concluded that no violation of the Act occurred that may have affected the outcome of the election. Accordingly, 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
80 F Street, N.W.
Washington, D.C. 20001

Tom Scott, President
AFGE Local 987
1764 Watson Boulevard
Warner Robins, Georgia 31093