



April 15, 2021

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on January 16, 2021, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481 – 483, occurred in connection with the election of union officers through a caucus held by AFGE District 6 on September 13, 2020. The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations, there is no violation that occurred that would have affected the outcome of the election.

You alleged that the union might have failed to provide adequate notice to local leaders for the District 6 caucus to elect certain national officer positions. You alleged that because there was a “lack of observability”, you could not verify whether all locals received the necessary information about the caucus, especially in light of changes implemented due to the COVID-19 pandemic. Section 401(f) of the LMRDA provides that indirect elections, such as the AFGE District 6 caucus, must be carried out “in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of [the LMRDA].” 29 U.S.C. § 481(f).

The Department’s investigation found that AFGE District 6 complied with its election rules when the District Manager sent out caucus calls to all local leaders by mail. Rule 2 of the AFGE 2020 Amended District Caucus Election Rules provides that the Caucus Call must be sent by mail. None of the mailers returned as undeliverable. The District Manager also sent out the Caucus Call to all local leaders via email. Once the National Executive Council decided that because of COVID-19 the district caucuses must be postponed, the District Manager notified the local leaders via email. Once a new date was set, the District Manager complied with the election rules by mailing an updated Caucus Call, including the AFGE 2020 Amended District Caucus Election Rules, and emailing the same to all local leaders. The District Manager sent several additional emails to all local leaders to remind them about the caucus dates and registration deadlines, and to offer assistance with their delegate elections. Additionally, the dates

of the caucus were posted on the AFGE website calendar beginning in June 2020 and in the union's newsletter, The Government Standard.

According to the union's internal rules, outlined in AFGE Constitution Appendix B Article VI Sec. 5 and the AFGE Election Manual Step 13, local leaders are responsible for updating their contact information. The Department's investigation found that the District Manager used the contact information available to her via the myAFGE database or otherwise provided to her by local leaders for sending the caucus information and additional emails to the District 6 local leadership. Additionally, the Department's investigation found that 25 locals participated in the 2020 caucus, whereas 21 locals participated in the 2017 caucus. Four locals that participated in 2017 did not participate in 2020, but eight locals that had not participated in 2017 did participate in 2020. The District Manager complied with the caucus notice rules in her communications to the locals and made a good faith effort to keep leaders informed during the pandemic by sending additional emails and offering assistance. There was no violation.

You also included in this allegation that the union violated the LMRDA by not providing "declared candidates with updated lists and/or mailing labels when district caucuses began to be rescheduled." Additionally, you allege that two locals were missing from the delegates list you received from the District Manager. Section 401(c) of the LMRDA requires unions to comply with all reasonable requests by candidates to distribute campaign literature and to provide bona fide candidates with the same opportunities for campaign literature distribution upon request. 29 U.S.C. § 481(c). The AFGE Constitution Appendix A, Part II, Sec. 4(b) provides that upon a timely request, declared candidates for indirect elections will be furnished with a complete list of the presidents, treasurers, and delegates of each local participating in the caucus, one set of mailing labels, and a list of locals' voting strengths. Additional sets of mailing labels are provided for a fee upon request.

The investigation found that upon declaring your candidacy in March 2020, you received the voting strength information and local leader lists from the national union. Furthermore, as locals registered for the caucus, the District Manager provided you with multiple updated lists of registered delegates. On September 3, 2020 the District Manager emailed the last updated delegates list to all candidates. Two days prior to the caucus, Local 3840 submitted their credentials. Local 622 was not included in the delegate list, but their elected proxy was. The union's internal election rules allow locals to elect a proxy to carry the local's votes and allow locals who submit their credentials late to be seated at the caucus. Because the final local did not submit its credentials until just before the caucus, the District Manager did not have the opportunity to send out another updated delegate list. Moreover, the LMRDA and the union's internal rules are clear that a candidate must request additional lists or method for distributing campaign

literature, which you did not do. The union complied with the LMRDA and with its internal rules in this regard. However, one delegate from local 4071, who carried 85 votes, was inadvertently left off the delegate lists provided to all candidates. To the extent that this clerical error constitutes a violation, it had no effect on the outcome of the only contested race, which was decided by a 4,496 vote margin.

Similarly, you alleged another violation of Section 401(c) of the LMRDA because you did not receive a memorandum from the AFGE General Counsel regarding processes for distributing campaign literature via email. As stated previously, Section 401(c) provides that upon request, unions must provide candidates with the same opportunities for campaign literature distribution. Specifically, the law states that “whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate... similar distribution *at the request* of any other bona fide candidate shall be made.” 29 U.S.C. § 481(c) (emphasis added). The union’s election manual Step 13 also details circumstances for candidates to campaign via email, upon their request, and dictates that candidates must be treated equally in this regard.

The Department’s investigation found that neither you nor your opponent requested distribution of campaign literature via email. Candidates who request the option to campaign via email are provided with the memo detailing the fees and processes. Although your opponent did receive a courtesy copy of the memorandum regarding email campaigning processes at a National Executive Council meeting, he did not take any steps to campaign by email. Had your opponent requested to campaign via email, the union would have been obligated to provide you the same campaigning opportunities upon your request. Because neither you nor your opponent requested the option to campaign via email, the union was not under a legal obligation to provide further instructions to either candidate on the processes for campaigning via email. The Department’s investigation found that you campaigned by sending campaign literature by mail, by posting on social media platforms, and by holding zoom meetings prior to the caucus. At the caucus you campaigned using posters and t-shirts and by giving a speech. Your opponent campaigned by sending campaign literature by mail prior to the caucus. At the caucus he put up a poster, distributed candy, and gave a speech. There was no violation.

You also alleged that the union violated the LMRDA by holding an in-person caucus during the COVID-19 pandemic and requiring “all delegates to physically participate in-person, while providing no alternative means or exceptions.” Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Due to the pandemic, the union’s National Executive Council postponed the window for holding caucuses until restrictions on in-person gatherings had been somewhat relaxed, and provided Districts with the option to hold virtual caucuses. The

Department's investigation found that four districts held virtual caucuses and seven held in-person caucuses. The Department was unable to ascertain one district's method for holding its caucus. Additionally, the union's internal election rules provided every local with the option of designating a proxy for its delegates.

The union took the following steps to modify the in-person caucus in light of the pandemic: 1) moved the caucus location out of downtown Indianapolis; 2) held the caucus after Indiana allowed for gatherings of up to 250 people; 3) purchased 100 masks and hand sanitizer for delegates; and 4) cancelled unnecessary gatherings, such as an originally scheduled training. Additionally, the union notified locals of their option to assign their delegates to a proxy. One local elected a proxy for its delegates. Twenty-five locals participated in the caucus, which is four more than participated in the 2017 caucus. Thirty-two locals did not participate in the caucus. Of those, 28 locals responded to the Department's inquiries. The evidence gathered by the Department's investigation did not find that any local contacted the District and expressed concerns about the District's COVID-19 precautions for the caucus and then decided not to attend because of the District's caucus arrangements. One local contacted the District Manager to inquire about precautions, but that local ultimately did not participate in the caucus because their leadership was deployed at the time. Additionally the investigation did not find evidence that any of the delegates that attended the caucus contacted the District Manager or election officials with concerns about the precautions during the caucus. Finally, there was no evidence that any delegates left the caucus due to COVID-19 concerns. Considering the evolving nature of the pandemic and its effects on communities across the country at any given time, the safeguards needed to ensure a fair election in light of the pandemic might vary. The investigation found no violation of the adequate safeguards mandate because there was no evidence that locals contacted the district to request additional precautions, there was no evidence that any local contacted the District regarding its precautions and then decided not to attend because it viewed those precautions as insufficient, and no delegates left the caucus due to insufficient precautions.

Additionally, you alleged that the union failed to ensure adequate safeguards for a fair election in violation of section 401(c) because the announced vote tally did not correspond with the total voting strength reported for locals at the caucus. In your original protest to the union, you alleged that it was possible that not all delegates present at the caucus were given the opportunity to vote because the election committee initially reported that less than the total possible votes had been cast. The Department's investigation found that all delegates present at the caucus signed off on receipt of their ballots upon entering the polling location to cast their ballots. Moreover, as you note in your complaint to the Department, the evidence presented from the election committee showed that instead of a shortage of ballots cast, there were 150 surplus votes cast.

The Department's investigation found that the election committee took multiple steps to ensure that the accurate number of ballots were distributed to each delegate. The committee first verified that the ballot box was empty before opening the polls. Then one committee member called out the number of ballots a delegate should receive when the delegate entered the polling room, a second committee member counted out the ballots, and a third committee member recounted the ballots before giving them to the delegate. Additionally, upon receiving the ballots, each delegate signed their name on a form to confirm receipt of their ballots before proceeding to the polling stations and ballot box. Polls remained open until all delegates on the registration sheet had received their ballots and voted. Once all delegates had voted, the election committee sealed the ballot box and took it to the designated conference room for vote tallying. The election committee worked together to count the votes and found a 150-vote surplus. The committee recounted the ballots several times, but was unable to rectify the 150-vote surplus. The investigation found no evidence of tampering or fraud. But, to the extent that this 150-vote discrepancy was an adequate safeguards violation, it had no effect on the outcome of the election where the margin between candidates was 4,496 votes.

You also raised an allegation that the union violated its constitution by postponing the district caucuses beyond the dates specified in the AFGE Constitution. However, you raised this allegation for the first time in your complaint to the Department. The LMRDA requires that members must exhaust available remedies within the union before the member can properly raise an allegation to the Department in an election complaint. 29 U.S.C. § 482. Although you mention the caucus timeline in your earlier protests to the union, you only mention the postponement because you question why other similar exceptions were not made for local union elections, not because any such postponement violated the AFGE Constitution. Because your specific allegation was not properly exhausted internally, it is outside the scope of DOL's investigation and is not addressed.

For the reasons set forth above, the Department of Labor concludes that no violation of the LMRDA occurred that could have affected the outcome of the election. Accordingly, our office has closed the file on this matter.

Sincerely,

[Redacted]  
Tracy L. Shanker  
Chief, Division of Enforcement

cc: Dr. Everett Kelley, President

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