



September 3, 2021

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on February 2, 2021, alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), as made applicable to elections of federal-sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act, 5 U.S.C. § 7120. You alleged that violations occurred in connection with the regularly scheduled election of union officers conducted by Local 12 of the American Federation of Government Employees (AFGE) on September 25, 2020.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that no violation occurred that may have affected the outcome of the election.

You first alleged that the nomination notice was not timely sent and that, as a result, you were unable to nominate yourself or others by the September 9, 2020, nomination meeting. You stated that you did not receive the email notice about nominations that other members said they received, and that you did not receive the nomination notice by postal mail until hours after the nomination meeting was held. You alleged that the nomination notice was untimely under Appendix A to the AFGE Constitution, which states that notice of nominations must be given at least ten days prior to the date set for nominations.

Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws. It also requires that a "reasonable opportunity . . . be given for the nomination of candidates." 29 U.S.C. § 481(e). Accordingly, notice must be "timely [and] reasonably calculated to inform" members of how and for which offices nominations will proceed. 29 C.F.R. § 452.56.

The investigation disclosed that Local 12 used a variety of methods to notify members about nominations. First, the Local 12 president sent an email to the membership on behalf of the election committee on August 31, 2020, attaching the nomination meeting notice. The investigation confirmed that the nomination notice was emailed to you at your dol.gov email address. Second, the election committee

chair mailed the nomination notice to members, including you, on August 31, 2020. Third, the nomination notice was posted on the union's website, also on August 31, 2020. Local 12 provided these notices nine days prior to the date set for nominations, which was one day short of the ten-day requirement prescribed in Appendix A, part I, section 3(a) of the AFGE Constitution. However, this violation did not affect the outcome of the election because members still had a reasonable opportunity to nominate or be nominated. There was no violation of the LMRDA that could have affected the outcome of the election.

Next, you alleged that the election committee deviated from Local 12's past practice by requiring the nominating member to contact the nominated member who would then contact the election committee to accept their nomination. You alleged that past practice was for the election committee to contact the nominated candidates to confirm their interest in running. You further stated that Appendix A to the AFGE Constitution requires that, if nominations are conducted at a meeting, members who are absent from the meeting must be provided with alternative means for making and accepting nominations. You identified [REDACTED], Linda Hale, and Scott Paris as members affected by this alleged violation.

As noted above, section 401(e) of the LMRDA requires that members be given a reasonable opportunity for the nomination of candidates. 29 U.S.C. § 481(e). A union may employ any method for nomination of candidates that will provide a reasonable opportunity to make nominations. 29 C.F.R. § 452.57(a). Whether a particular procedure satisfies the requirements of Title IV depends on the particular facts of the case. 29 C.F.R. § 452.57(b).

The Department's investigation established that Local 12 held its nominations via a Zoom meeting from 12:00 to 1:00 p.m. on September 9, 2020. The nomination notice that was disseminated on August 31, 2020, as described above, included the following information:

A nominee must accept a nomination at the nomination meeting, but a nominee who is absent from the nomination meeting may tender acceptance in writing. A written acceptance must be received by the Election Committee -- either in a sealed envelope (addressed to AFGE Local 12 Election Committee, P.O. Box 1212, Washington, D.C. 20013) or by e-mail (to [REDACTED]) no later than **10:00 am, Wednesday, September 9, 2020**. A lone letter of acceptance is a self-nomination. Self-nominations are permissible. Seconds are not required for a nomination. The member making the nomination has the responsibility of informing the nominee of his or

her nomination. Nominations may also be made in writing to election committee chairperson, [REDACTED] [REDACTED] Written nominations should include your name and contact address.

Information, nominee[s] name and position[s] nominated for, and the nominee[s] contact information. All written nominations must be received by the election committee **no later than 10:00 am on September 9, 2020.**

The Department's investigation revealed conflicting testimony about Local 12's past practice with regard to the election committee's contacting nominees after the nomination meeting to confirm their interest in running. The Department's investigation established that the union's constitution and bylaws do not require the election committee to do so. To the contrary, Step 7 of the AFGE Election Manual states that "[t]he member making the nomination has the responsibility of informing the nominee of his or her nomination." Consistent with that direction, Local 12's nomination notice expressly stated that it was the responsibility of the member making the nomination to inform the nominee of the nomination. The investigation further established that Local 12 provided the alternative means for making and accepting nominations for members who were absent from the nomination meeting described in the nomination notice.

However, the nomination notice quoted above continued with the following paragraph (emphasis added):

*Nominees can accept/decline nominations verbally at the meeting or in writing to the election chairperson. Nominees not present during the nomination meeting will be notified by the election committee of their nomination immediately after the nomination meeting.*

The Department's investigation established that, contrary to this statement in the nomination notice, the election committee did not notify nominees who were absent from the nomination meeting immediately after the nomination meeting. During the investigation, the election committee chairperson acknowledged that, in the challenged election, the only notification the election committee provided to nominees was the announcement of the election results. To the extent that the statement in the nomination notice led members who were absent from the nomination meeting to miss the opportunity to accept their nominations, the process did not afford members a reasonable opportunity to nominate or be nominated for office, in violation of the LMRDA.

However, the Department's investigation revealed no evidence that the misleading wording of the nomination notice prevented any member who was absent from the meeting and was nominated during the meeting from accepting the nomination. The Department's investigation included specifically reviewing the nominations of Hale, Paris, and [REDACTED]. The investigation confirmed that they did not meet the description of members who could have been affected by the violation (that is, members who were absent from the meeting *and* were nominated by another member at the meeting *and* would have accepted their nomination if the election committee had contacted them immediately after the nomination meeting as described in the nomination notice). First, the investigation established that Hale was not absent from the meeting; she was listening to the nomination meeting while it occurred and therefore could have accepted the nomination during the meeting. Second, the investigation established that Paris was not nominated by another member at the meeting; he nominated himself by email prior to the meeting. Finally, the investigation established that [REDACTED] was nominated by email prior to the meeting (and also accepted his nomination by email prior to the meeting, though past the deadline for receiving written acceptances); the investigation did not establish that [REDACTED] was nominated by another member at the meeting. Accordingly, the investigation did not establish that a violation occurred that may have affected the outcome of the election.

Next, you alleged that the Local 12 president improperly acted as a de facto election committee member when she emailed election-related notices and election results to members. Section 401(c) of the LMRDA requires that adequate safeguards be provided to ensure a fair election. 29 U.S.C. § 481(c). In addition, section 401(e) of the LMRDA requires officer elections to be conducted in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e). Appendix A, part 1, section 2(b) of the AFGE Constitution prohibits incumbent officers and candidates from serving as members of the election committee.

The investigation did not establish that the local president served as an election committee member. The investigation established that the president sent two election-related emails to members, one to distribute the nomination notice and the other to distribute the election results. The investigation revealed that, in past elections, a union staff member distributed election-related correspondence. However, in the present election, staff members were not available to do so, and the election committee did not have access to the email database. The investigation established that the president's emails contained only the content dictated by the election committee chairperson and were sent on behalf of the election committee. Moreover, it is not a violation of the LMRDA for a union president to email election-

related correspondence to members as long as it does not contain campaign material. There was no violation of the LMRDA.

Finally, you alleged that the election committee did not have the minimum number of members required by the union's constitution and bylaws. As noted above, section 401(c) of the LMRDA requires adequate safeguards to ensure a fair election, and section 401(e) requires officer elections to be conducted in accordance with the union's constitution and bylaws. 29 U.S.C. §§ 481(c), (e). Appendix A, part I, section 2(a) of the AFGE Constitution requires at least three members on the election committee (and if more, an odd number). Section 4(b) of the Local 12 bylaws requires an election committee of at least five members to be elected by majority vote.

The Department's investigation established that Local 12 originally elected an election committee with the required number of members and thereafter continually attempted to maintain the proper number of members on the committee. The Department's investigation disclosed that Local 12 held a special election committee nomination meeting on June 9, 2020; five of the members nominated were then elected to the election committee by a Zoom poll at the June 25, 2020, membership meeting. Subsequently, some members resigned from the committee or became ineligible to serve on it. The executive board then asked for additional election committee volunteers at the August 27, 2020, membership meeting, resulting in additional members being added to the committee. Again, however, members resigned or became ineligible to serve. The executive board then sought unsuccessfully to recruit more members to the election committee at the membership meeting on September 24, 2020. The election process concluded with nominations on September 25, 2020. The investigation did not reveal any actions by the election committee to favor one candidate over another or any evidence that the election committee was unable to conduct any aspect of the election. There was no violation of the LMRDA.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director within 15 days of service of this notice of dismissal. A copy of your request must be served on the Chief, Division of Enforcement (DOE), and the union, and a statement of service must be filed with the Director. The request for review must contain a complete statement of facts and the reasons upon which your request is based. *See* 29 C.F.R. § 458.64(c); *see also* 29 C.F.R. § 458.59.

Sincerely,

[REDACTED]

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Chief, Division of Enforcement

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