



November 22, 2022



Dear [REDACTED]:

This letter revises and supersedes my letter to you dated September 21, 2022.¹ This Statement of Reasons is in response to your February 1, 2021, complaint filed with the United States Department of Labor ("Department") alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act") occurred in connection with the election of officers held by District 10 (District 10 or the union) of the American Federation of Government Employees (AFGE), on October 3, 2020. The Department conducted an investigation of your allegations and found several violations, but none of them affected the outcome of the election.

Violations That Did Not Affect the Outcome of the Election

Credentialing of Delegates

You alleged that the Credentials Committee improperly seated local union delegates who had not properly registered and refused to seat others. Specifically, you alleged that delegates who supported your opponent, incumbent National Vice President (NVP) Cheryl Eliano, were seated without having timely submitted the required documents while delegates who were not supporting her, but who timely submitted the required documents, were only seated upon the approval of the Caucus. You also alleged that many locals were permitted to vote their full voting strength or cast their votes by proxy without satisfying the requirements to do so. These allegations implicate Section 401(f) of the LMRDA, which provides that indirect elections, such as the AFGE District 10 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). They also implicate Section 401(c)'s requirement that a union provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c).

¹ The only change to the original letter revises the statutory reference in the first paragraph.

The investigation revealed that AFGE mailed District 10 local presidents the 2020 instructions for the Caucus Credentials and a package with their local's voting/ delegate strength, instructions for delegate elections, official credential forms for the 2020 District Caucus, and a checklist and instructions for completing credentials. The notice and instructions explained that, to fully credential a local delegation, the Credentials Committee must have proof that the delegates were elected and proof that a membership meeting (with notice) was held to approve the number of delegates. According to the Credentials Committee's checklist, locals were required to provide: bylaws, a copy of the dated notice of nominations, a dated notice of election, and the election results or meeting minutes establishing their election. For additional delegates besides those who serve by virtue of their office, locals needed to provide: a copy of the dated notice to the membership that a delegate nomination and election meeting would occur and a copy of the meeting minutes showing that the membership nominated and elected additional delegates, voted to authorize the existing delegates to cast the voting strength of the local, or nominated and elected a proxy delegate. The credential forms for each delegate and supporting documents were due to the District Office no later than 30 days prior to the Caucus, i.e., September 3, 2020 (because the original May Caucus date was postponed due to the COVID-19 pandemic).

The investigation revealed that when the Credentials Committee met two days prior to the Caucus and started to review the credential folders (one for each local), it discovered that many of the locals had not included all the required information. It identified which ones were "good, bad, and fixable" and contacted various locals to obtain missing information that would complete the deficient packets. Although you have alleged that this was a violation, the investigation revealed that it is the union's standard practice to allow locals who have made a good faith effort to register on time to submit any additional paperwork necessary to perfect their credentials after the deadline for registration.

Nonetheless, notwithstanding this practice, the investigation found that the union improperly seated delegates or wrongly allowed some delegates to vote their local's full complement of votes. The Department's investigation found that these violations affected the following locals: Local 252, Local 1040, Local 1633, Local 1745, Local 2062, Local 2142, Local 2437, Local 2504, and Local 2836. These violations may have affected a maximum of 6,004 votes. Because the margin of victory for NVP was 11,272 votes (according to the Department's ballot recount), the union's failure to properly seat delegates could not have affected the outcome of the election.

Denial of the Right to Vote

You alleged that the membership of Local 2437 was denied the right to vote when Vice President [REDACTED] was not permitted to cast his vote on their behalf. Section 401(e) provides that every member is entitled to the right to vote. 29 U.S.C. § 481(e). The

investigation found that the membership elected ██████ to the office of Vice President, which also serves as a delegate at the Caucus. While Local 2437 President Don Burrell claimed that the local held a meeting in March 2020 and voted to send only him to the Caucus to cast the local's votes, there is no evidence that ██████ or the local membership received notice of this meeting. In August, Burrell was ill and unable to attend the Caucus, so the local's board voted to assign its votes to a proxy, Local 1822 President Derrick Mathis. Mathis did not pre-register as a proxy, however, and Local 2437 was marked as a no-show.

The investigation further revealed that ██████ declared his candidacy for the office of NVP and planned to attend the District 10 Caucus by virtue of his elected officer position at his own expense. It also found that on several occasions, from August to October 2020, ██████ requested information about the Caucus, but AFGE officials, including Burrell and Eliano, did not provide details of its location, dates, or when registration would take place. On September 3, 2020, AFGE General Counsel John Thompson wrote to ██████, explaining that where a local has registered for a Caucus, a duly-elected delegate need only present himself at check-in to be seated, regardless of whether the local has submitted a credential form. ██████ arrived on Friday, October 2, 2020, the day before the Caucus election, after registration had closed. Based on past practice, ██████ believed he could check-in on Saturday morning. However, he was not seated as a delegate the next day by the election chair because he had missed the registration. This denial of the membership's right to vote, which resulted from the failure of AFGE officials to provide ██████ with the registration information, constituted a violation of the Act. However, even if ██████ had been entitled to cast the local's entire voting strength, 2868 votes, those votes could not have affected the outcome of the election, which was decided by 11,272 votes.

Improper Use of Union Funds

You alleged that Charles Barclay, President of Local 1945, the home local of AFGE National President Everett Kelly, used union funds to promote your opponent's candidacy at the District 10 Caucus. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in a covered election. 29 U.S.C. § 481(g). Furthermore, Appendix A, Part I, Section 4(b) of the AFGE Constitution also prohibits the use of AFGE funds or resources to promote the candidacy of any candidate in an election.

The investigation confirmed that Barclay was a member of a local from District 5, not District 10, and his local's membership authorized payment for his travel expenses, including lodging for four nights. While the Executive Board meeting minutes stated that Barclay would attend "to assist the district with setup, assembly, and any other duties he chose to participate in during the Caucus," Barclay admitted to campaigning in support of NVP Eliano to some of the delegates on October 3 by the 10th floor

elevators from approximately 8:30 or 9:00 a.m. until approximately 10:30 a.m. while the polls were open. Barclay was not a delegate, but union funds were used so that he could attend the Caucus. The investigation revealed no evidence that Local 1945 authorized Barclay's campaign activities; accordingly, those activities violated Section 401(g) and the union's constitution. However, the investigation did not establish the violation affected the outcome of the election. The Department interviewed 56 of the 59 voting delegates and found that 10 saw Barclay campaigning. Only one delegate stated that Barclay campaigned directly to her asking, "Can Ms. Eliano count on your vote?" This delegate's 905 votes, together with the 691 votes of the three other delegates that the Department was not able to interview, totaled 1,596 votes that could have been affected by this violation. The violation did not affect the outcome as the closest margin was decided by 11,272 votes.

Allegations That Did Not Establish Violations

You alleged that District 10 staff members Walter Greeley and Sam Boles were improperly appointed as Sergeants-at-Arms (because they were not delegates) and campaigned for Eliano. Section 401(g) of the Act prohibits the use of union funds for the promotion of any person's candidacy in a covered election. 29 U.S.C. § 481(g). As discussed above, a union is required to follow its constitution and bylaws, insofar as they are consistent with the LMRDA. Under the election rules, only delegates are eligible to be appointed as Sergeant-at-Arms. The investigation revealed that the NVP appointed delegates, Mike King and [REDACTED], to serve as Sergeants-at-Arms. It also revealed that Boles borrowed King's yellow Sergeant-at-Arms jacket at some point because he was cold. Both Boles and Greeley stated that they did not campaign, which was substantiated by witnesses. Accordingly, there was no violation.

You alleged that the Credentials Committee failed to follow its rules when it denied your request to have a person of your choice, [REDACTED], on the Credentials Committee. Under Rule 9(b) of the 2020 Amended Caucus rules, you were required to notify the District 10 NVP of your candidacy in writing at least ten days prior to the Caucus date, which was October 1-3, 2020. However, you submitted your request on September 28, 2020, after the cut-off date. Accordingly, the union's denial of your request was not unreasonable, and there was no violation. Further, the union informed you that, as an alternative, [REDACTED] could act as your observer while the Credentials Committee was reviewing delegate packages. [REDACTED] did participate as an observer. You also alleged that Daphne Jackson was improperly appointed to the Credentials Committee because you allege that she was not a delegate. The investigation showed that Jackson, elected as Executive Vice President of Local 1633, was a delegate ex officio and had pre-registered as a delegate. Due to the COVID-19 pandemic, Local 1633 held a special election to allow the President to carry all votes to the Caucus. Even though he carried the local's votes, Jackson was still a delegate by virtue of her position and therefore entitled to work on the Credentials Committee. The union's actions with

regard to both [REDACTED] and Jackson were consistent with the union's governing documents. There was no violation.

You also alleged that the union discriminated against you by not granting your request to observe the work of the Credentials Committee yourself, but allowing your opponent, Eliano, to observe and even participate in the Credentials Committee's review of the delegate packages. You alleged that while the union offered to permit [REDACTED] to act as your observer, it then interfered with his role by asking him to perform Credentials Committee work and yelling at him while he was serving as your observer. These allegations implicate Section 401(c), which provides a candidate the right to have an observer during the election, as well as the requirements that a union provide adequate safeguards to ensure a fair election and prohibit disparate candidate treatment. *See* 29 U.S.C. § 481(c).

The investigation revealed that when [REDACTED] attended the first credentials meeting in his role as your observer on Tuesday evening, September 29, the committee asked him to help with the review of credentialing packets until other committee members arrived. He agreed and worked on the Credentials Committee until October 1, when he was released. [REDACTED] thus chose to work on the Credentials Committee (consistent with your original request to choose a member of the Credentials Committee). Moreover, by serving on the Credentials Committee, he necessarily saw the credentialing process, but there was no interference in your right to have an observer. While [REDACTED] stated that Eliano and [REDACTED] discussed packets with problems in private and that they tampered with the packets, he could provide no evidence that Eliano received favorable treatment. Accordingly, there was no violation with respect to your right to have an observer, nor did the investigation reveal evidence of disparate candidate treatment in violation of the Act.

You made several other allegations that implicate Section 401(c)'s requirement that a union must provide candidates with similar opportunities to campaign. 29 U.S.C. § 481(c). You alleged that District 10 Caucus candidates were not notified that they could request AFGE to send out campaign emails at candidates' expense, but Eliano had this information as the incumbent. You stated that you declared your candidacy in October 2019, but that on September 8, 2020, AFGE National Secretary-Treasurer Arla Bentley emailed you a copy of a memorandum to all declared candidates, dated April 17, 2020, that described the procedure for requesting the distribution of campaign emails. After learning of the option, you had sufficient time to send campaign email; however, you did not make a request. No other candidate made a request either. There was no violation.

You also alleged that the list of delegates you received prior to the election did not contain addresses or phone numbers, which limited your ability to campaign on the same basis as your opponent, Eliano. You asserted that several delegates among your

supporters were “upset” that Eliano had contacted them, but you had not. Appendix A, Part II, Section 4(b) of the AFGE Constitution states, in part, “All declared candidates for national offices covered by this Part will be provided upon timely request the following information: (1) a complete list of the names, business, home addresses, and business telephone numbers of the presidents, treasurers, and delegate(s) of each local participating in the election....” The investigation indicates that you received an officer list after you declared your candidacy, which included the officers’ home addresses and telephone numbers, for the purpose of campaigning. These officers were delegates by virtue of their office. On September 8, 2020, you requested an updated pre-registered delegate list from District 10, which District 10 administrative staff person Simmons sent to you the following day. You noticed that this list included each delegate’s local but did not include addresses or telephone numbers, which meant that, for those delegates who were not delegates by virtue of their office, you did not have addresses or telephone numbers. The investigation revealed that all candidates were provided with the same officer list and, in particular, that Eliano did not request or receive a delegate list from Simmons. Thus, the same lists were available to all candidates and no candidate was provided an unfair advantage. There was no violation.

Relatedly, you alleged that you were denied access to a list of local leaders that would have indicated which locals were in trusteeship, thereby hurting your ability to campaign. Specifically, you alleged that Locals 1047, 1929, and 3553 did not appear on the officer list as under trusteeship, but they submitted registered delegates. The investigation revealed that the list you were provided showed eight locals in trusteeship, or with AFGE officials as acting officers, including Locals 1047 and 3553, which both sent delegates. Local 1929 was placed under trusteeship in August 2020 after the officer list was compiled. Further, it revealed that locals under trusteeship are free to participate in Caucus elections if they have elected delegates. With respect to Local 3553, the officer list identified Ann Fisher as the Trustee; with respect to Local 1047, the list showed Fredericka Dantzler as the President, who was a delegate by virtue of her office, and Ann Fisher as Acting Treasurer. Dantzler served as a delegate and was authorized to carry the voting strength of the local. The officer list also included the officers of Local 1929. Thus, you were not denied access to information about these locals. There was no violation.

In addition, you alleged that the union unfairly limited your campaigning at the Caucus in order to give an advantage to Eliano. The investigation revealed that you were told that you could only put up your campaign posters by the elevator on the 10th floor. However, you preferred other places where they would have been more visible to delegates. Witnesses confirmed you were asked to move your signs further from the check-in area, but they also confirmed that Eliano was not allowed to have signs any closer to the check-in area than yours. Accordingly, the union did not provide more favorable treatment to a particular candidate regarding the placement of campaign posters. There was no violation.

You alleged that the union denied seating your supporter, ██████, as a delegate, resulting in ██████ not being available to second your motions. As discussed above, a union is required to follow its constitution and bylaws, insofar as they are consistent with the LMRDA. The investigation revealed that the Credentials Committee changed its procedures due to the pandemic. Rather than provide delegates with copies of their credentials or badges, delegates were asked to take a picture of their credentials using cell phones. ██████ was elected as an alternate delegate from Local 2341, but he did not complete the registration process and accordingly was not seated as a delegate. ██████ stated that Credentials Committee Chair ██████ and Eliano assured him that he was checked in as a delegate, but they deny that they said this. ██████ only learned that he was not registered after registration was closed and the Caucus had already taken votes on those delegates that had not been credentialed. The Department confirmed that ██████ was not checked in as a delegate, though it was not clear why he was unsure of his status. While the Credentials Committee procedures could have been more transparent, even if this constituted a violation, the evidence does not show that not seating ██████ as a delegate may have affected the outcome of the election. You were able to nominate yourself for office and other supporters could have seconded your motions.

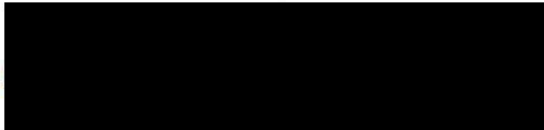
You alleged that candidates were not afforded the opportunity to appoint someone to the Election Committee because all members were selected by majority vote of the Caucus, in violation of Rule 10(1) of the 2020 Amended District Caucus Rules. Rule 10 provides that the Caucus assembly selects an election chair elected by majority vote and that each candidate may select one person to serve on the Election Committee. Further, any additional members of the Election Committee shall be elected by majority vote of the Caucus delegates. The investigation revealed that Election Chair Darby opened the floor for nominations of the Election Committee members, accepted nominations from the floor, and the body approved the five committee members. At least six people, who were interviewed, stated that every delegate had an opportunity to nominate a member to the Election Committee, even candidates who were delegates. You stated that you tried to nominate ██████, but he was not a qualified delegate. The investigation established that the election chair handled the nominations in accordance with the rules by affording every delegate an opportunity to select a qualified member to the committee. There was no violation.

You also allege that the union failed to follow its constitution and bylaws by allowing Daphne Jackson to serve on the Election Committee because she was not a registered delegate. The investigation revealed, however, that Jackson was fully qualified to serve on both the Election Committee and the Credentials Committee because she was a delegate ex officio. Jackson's participation on the committees did not violate Caucus rules. Accordingly, there was no violation.

You alleged that the union violated the LMRDA by holding an in-person caucus during the pandemic because it suppressed turnout. Section 401(e) provides that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). The investigation found that the District postponed the election from May 2020 until October 3, 2020. The union's internal rules provided every local with the option of designating a proxy to cast their votes and locals could send fewer delegates to carry the votes of the entire local. The investigation revealed no evidence that any locals did not participate in the Caucus because of the risk associated with holding the Caucus at a hotel during the pandemic. One witness, Local 252 President Sheria Smith, stated that she had concerns about holding the Caucus in-person during the pandemic, but she still attended the Caucus. There was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file regarding this matter.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Everett Kelley, National President
American Federation of Government Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001



Associate Solicitor for Civil Rights and Labor-Management