



July 10, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on October 13, 2022, alleging that the American Federation of Government Employees (AFGE), Council 220, violated Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-83, 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, when it decided to conduct a union-ordered rerun of its June 18, 2022 election of officers.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the Act. Following is an explanation of this conclusion.

You alleged that AFGE Council 220 improperly ordered a rerun of the June 18, 2022 election for the position of Council 220 Secretary. Section 402(a) of the LMRDA requires that a union member exhaust internal union remedies before filing a Title IV complaint with the Department. 29 U.S.C. § 482(a). This requirement was included in the LMRDA to give unions a chance to correct election problems and deficiencies themselves, thereby preserving a maximum amount of independence and encouraging responsible self-governance. In furtherance of this legislative objective, the Department accords a certain degree of deference to a union's decision to hold a new election in response to internal union election protests. The Department will not seek to reverse a union's remedial decision to hold a new election unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith; or the decision is otherwise contrary to the principles of union democracy embodied in the LMRDA and holding a new election was unreasonable. Here, the Department's review of the record evidence, the union's constitution and bylaws, and its application of such standards, did not substantiate any such findings.

The Department's investigation found that after receiving protests related to the June 18, 2022 election, Council 220 conducted an investigation and found that the delegate for Local 3369 (Edwin Osorio) improperly cast more votes in the Council 220 election than he was entitled to cast. Council 220's constitution, Article IX, Section 5, provides that voting in Council 220 elections shall be on a proportionate basis, as provided for in Article IV, Section 4(a), of its constitution. Article IV, Section 4, provides that representation in Council 220 shall be by delegates, selected in accordance with the member local's constitution and the AFGE National Constitution. Local 3369's constitution, Article IX, Section 1, provides that its council delegates must be elected in accordance with the AFGE National Constitution, Articles VI and VIII, and Appendix A, Part 1, Section 6. Local 3369's constitution, Article IX, Section 1, provides that Local 3369's president, if elected to that office, shall serve as a council delegate. The AFGE National Constitution, Article VI, Section 1, provides that delegates from locals shall have one vote for each member. Article VI, Section 2, states that locals with 751-1,000 members are entitled to seven delegates. In contrast, the Council 220 constitution, Article IV, Section 4(a) provides that locals with 401 or more Field Operations members are entitled to five delegates. The AFGE National Constitution, Appendix A, Section 6(a), provides that council delegates must be elected by secret ballot of the members on whose behalf they will serve as delegates. Delegates, alternate delegates, and proxy delegates must be elected by name and by plurality vote. Section 6(c) provides that members must be allowed "to determine the number of delegates, up to the full entitlement."

Based on the applicable constitutions and bylaws, AFGE determined that Local 3369 was entitled to seven delegates and 963 votes. However, AFGE found that Local 3369 failed to properly hold a delegate election. AFGE found that Local 3369 issued an improper notice relating to the nomination of delegates. Local 3369 mailed a notice dated May 11, 2020 for a June 25, 2020 membership meeting. This notice did not meet the requirements outlined in Appendix A, Part 1, Section 3 of the AFGE National Constitution because it did not state that nominations would take place during the June 25 meeting, it did not specify a method for making absentee nominations, it did not state the offices to be filled, and it incorrectly stated that the Local would be appointing delegates. Therefore, AFGE concluded that Osorio was the only properly elected delegate by virtue of his election as Local 3369 president.

AFGE then determined that Osorio was only entitled to vote one seventh (1/7) of the voting strength of the Local in the Council 220 election, or 138 of the local's 963 votes. For Osorio to have been entitled to cast more votes, AFGE determined that authorization from Local 3369's membership was required. Local 3369 had attempted to achieve this when it mailed a notice dated May 5, 2022, for a special meeting on May 13, 2022, to vote on giving Osorio the full voting strength of the Local. However, this notice was untimely because it was not sent ten (10) days prior to the meeting as required by Appendix A. Because a proper delegate election was not held, Osorio, a

delegate by virtue of his office as President, was only entitled to vote one seventh of the Local's voting strength. Instead, Osorio was improperly permitted to vote the full strength of Local 3369 in the Council 220 election. He cast 825 more votes than he was entitled to cast. This affected the Council 220 races for President (decided by a margin of 619 votes) and Secretary (decided by a margin of 648 votes). AFGE therefore determined that based on this allegation alone, Council 220 correctly ordered a rerun election for the positions of President and Secretary.

You asserted that the union should not have ordered a rerun of the Council 220 President position which you won because, in your view, the Credentials Committee properly certified the delegates and voting strengths of the locals participating in the election, including the 893 votes you allege Local 3369 was entitled to. You also alleged that there was no violation of the law that could have affected the outcome of the Secretary election. Further, you alleged that the union's decision was illogical and unsupported by the facts. You asserted that nothing in the union's constitution or bylaws prevents Osorio from voting the local's full voting strength once he is properly seated as a delegate by virtue of his election to the office of local president. Section 401(e) of the LMRDA requires unions to conduct elections in accordance with their constitutions and bylaws. 29 U.S.C. § 481(e). The Department will accept the interpretation consistently placed on a union's constitution by the responsible union official or governing body unless it is clearly unreasonable. 29 C.F.R. § 452.3.

On the facts of this case, Council 220's decision to order a new election for President was not unreasonable, in bad faith, or contrary to LMRDA principles. The standard applicable in deciding whether a new election is required, i.e., the finding of a violation that may have affected the outcome of the election, is not applicable to a union's decision to conduct a new election. The LMRDA envisions providing unions an opportunity to correct election problems and deficiencies before complaints are filed with the Department, thereby preserving a maximum amount of independence, and encouraging responsible self-government. The union's decision that Osario was limited to one seventh of his local's 963 votes was not unreasonable in light of potentially conflicting provisions in the AFGE National and Council 220 constitutions. Nor was it unreasonable for the union to read its governing documents to require a membership vote with proper notice in order to authorize Osario to cast more than one seventh of the votes. The union's rationale for ordering a rerun would still apply if Local 3369 had only been entitled to 893 votes, as you alleged. Even assuming those facts, Osario still overvoted by at least 714 votes which was more than the 619-vote margin in the President's race. Therefore, the Department will not seek to reverse the union's decision to order a new election. The LMRDA was not violated.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA and I have closed the file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director of OLMS

within 15 days of service of this notice of dismissal. 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).

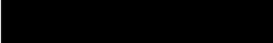
Sincerely,



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