



September 19, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your May 23, 2023 complaint filed with the United States Department of Labor (Department), alleging that the American Federation of Government Employees (AFGE), AFL-CIO, Council 119 ("Council 119" or "union") violated Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 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, during the rerun election of officers conducted on February 16, 2023.

The Department investigated the complaint. As a result of the investigation, the Department has concluded, with respect to the allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that AFGE Council 119 improperly reopened nominations for the rerun election and should have conducted a runoff election instead.

Section 401(e) of the LMRDA requires unions to conduct their elections in accordance with their constitutions and bylaws, allowing unions to interpret unclear provisions of their governing documents. 29 U.S.C. § 481(e). The Department is required to accept a union's consistent interpretation of its governing documents unless it is clearly unreasonable. *See* 29 C.F.R. § 452.3. Furthermore, the LMRDA envisions providing unions an opportunity to correct election problems and deficiencies before complaints are filed with the Secretary of Labor, thereby preserving a maximum amount of independence, and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a degree of deference to decisions on internal union election protests providing for the conduct of a new election. 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 statute and holding a new election is unreasonable.

Under Appendix A, Part III, Section 4 of the AFGE Constitution, if the union finds that a violation has occurred which may have affected the outcome of the election, it will order a new or rerun election. Previously, you filed an internal election protest related to Council 119's June 2022 election, alleging that successful candidate for Executive Vice President, Jonathan White, had improperly campaigned. AFGE found your protest to be valid and determined that the race for the Executive Vice President position may have been affected. Accordingly, AFGE ordered a new election of that race to be held in February 2023, which included reopening nominations. Based on these facts, the union's decision to rerun the election was not unreasonable, in bad faith, or contrary to LMRDA principles.

AFGE's decision to reopen nominations for Executive Vice President was also not unreasonable. AFGE found that the violation may have affected the nomination process for the Executive Vice President race. Although you claim that AFGE should not have reopened nominations and instead should have conducted a "runoff" election between you and White, a runoff would not have been appropriate in this instance. According to the AFGE Election Manual, a runoff election is warranted only "when no majority vote exists for any candidate." AFGE Manual, Step 24. In the June 2022 election, White received a clear majority of the votes; the margin of victory between you and White was 142 votes.<sup>1</sup> Thus, AFGE's decision to rerun the Executive Vice President race and reopen nominations was not unreasonable and did not violate the LMRDA.

You alleged that AFGE Council 119's constitution and bylaws call for an in-person election and should not have been conducted by mail ballot. The LMRDA gives union members the right to vote for or otherwise support the candidates of their choice. 29 U.S.C. § 481(e). Section 401(f) of the LMRDA states that when officers are chosen by a convention of delegates elected by secret ballot, the convention must be conducted in accordance with their constitution and bylaws insofar as they are not inconsistent with the LMRDA. *See* 29 U.S.C. § 481(f). Article XII, Section 1 of the Council 119 Constitution similarly states that the council officers "shall be nominated and elected by secret ballot in accordance with the rules of the Convention and in accordance with Public Law 95-454 . . . ." The Constitution does not require elections to be held in person and does not prohibit mail ballot elections. The Department's investigation found that the original June 2022 election was held in person because it coincided with the National Convention. However, it is AFGE's past practice to conduct rerun elections by mail ballot. Given the geographical dispersion of the delegates, it would have been impractical to require them to vote in person for a second time. The union provided delegates an opportunity to vote by conducting a mail ballot rerun election, which is consistent with the LMRDA. There was no violation of the Act.

You alleged that the February 2023 rerun election was not held in a timely manner. The LMRDA does not prescribe a set timeframe in which a rerun election must be held. Thus, the

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<sup>1</sup> White ultimately withdrew as a candidate prior to the rerun election. Candidate David Schraffenberger was timely nominated in White's place.

Department will generally defer to the union on setting the date for a rerun election so long as it is not clearly unreasonable. The union held the original election in June 2022 and ordered a rerun election in August 2022. Six months later, AFGE conducted the rerun election on February 16, 2023. The union's timeframe for conducting the rerun election was not clearly unreasonable. There was no violation of the LMRDA.

You alleged that AFGE failed to provide a written report of the number of votes cast, ballots challenged, and ballots voted at the conclusion of the election. Section 401(e) of the Act requires, among other things, that votes cast by members shall be counted and the results published separately. 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.108. The Department's investigation revealed that the election officials tallied the ballots on February 16, 2023, and certified and emailed the results to the AFGE Council 119 delegates the next day – February 17, 2023. The Department was able to confirm the results on the tally sheets provided by the election officials. The election tally sheets did not include additional information such as number of voted ballots and voided ballots because the rerun election did not have voided ballots; all 13 delegates voted. There was no additional information to include. Accordingly, there was no violation of the Act.

You also claimed that AFGE failed to include the voting strength and total number of ballots cast in the election certification. Title IV of the LMRDA does not require that a union publish either, so even if true, this allegation would not constitute a violation of the Act. As such, this allegation was not investigated.

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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