



December 8, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your May 23, 2011 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers conducted by the American Federation of Government Employees (AFGE) Local 2209 on January 25, 2011 (regular election) and February 22, 2011 (runoff election). Section 458.29 of the Department's regulations makes the LMRDA applicable to federal-sector labor organizations subject to the requirements of the Civil Service Reform Act of 1978 (CSRA), such as AFGE Local 2209. *See* 29 C.F.R. § 458.29.<sup>1</sup>

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

You alleged that Local 2209 violated section 401(c) of the Act when it denied your request for an extension of the local election committee's (LEC) deadline for submitting campaign mailings. Section 401(c) requires that the union comply with candidates' reasonable requests to distribute campaign literature. The LEC required that all candidates submit their campaign literature for mailing by 5:00 p.m. on January 3, 2011. All candidates were notified of this deadline at the December 8, 2010 candidates' meeting, which you attended, and also received notification of the deadline in the election rules, which were distributed on December 10, 2010.

In addition, the investigation revealed that on December 28, 2010 the LEC sent an email to all candidates reminding them of the January 3, 2011 deadline and on January 2, 2011 LEC alternate Jacqueline Smith called you and informed you that the deadline was January 3, 2011.

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<sup>1</sup> All references in this Statement of Reasons will be to the LMRDA and its sections. In each instance, however, the reference should be understood as "the Act [or section of the Act] insofar as made applicable to elections of federal-sector unions by 29 C.F.R. § 458.29."

You were not prepared for a complete campaign mailing on January 3, 2011 and you requested an extension of time. The LEC denied your request for an extension because the LEC members had already requested and received leave to work on candidates' campaign mailings on January 3rd and were scheduled to prepare and mail all ballots on January 5th. The AFGC Election Manual, Step 13, provides that "in a mail ballot election, the election committee must mail any campaign literature before, not during or after the mailing of the ballot." Here, the LEC notified all candidates of the deadline for mailing campaign literature; the LEC requested and received approved leave for January 3rd's campaign literature mailing and January 5th's ballot mailing; and the LEC was required to mail campaign literature prior to mailing the ballots, all of which make your request for an unspecified extension of time unreasonable. Moreover, despite not mailing your campaign literature, you were able to hand out campaign literature at worksites. Accordingly, there was no violation of the LMRDA.

You also alleged that Local 2209 failed to provide adequate safeguards to insure a fair election, as required by section 401(c) of the Act, when incumbent President Cole rented an election post office box and retained keys to this PO Box for an unknown period of time. Section 401(c) requires that unions provide adequate safeguards to insure a fair election. In particular, you have alleged that it is your belief that Cole wanted access to the PO box to possibly corrupt the election.

The investigation found that Cole rented the PO box on October 12, 2010, at which time two keys were issued. On or about October 26, 2010, Cole transferred the PO box keys to the LEC and LEC members [REDACTED] and [REDACTED] emptied any mail that had been delivered to the PO box. Prior to mailing the nominations notice, the entire LEC went to the post office to confirm that the PO box was empty. Following the visit to the post office, the LEC secured access to the PO box by placing the two keys in a sealed envelope, signed across the seal. Before retrieving the ballots, LEC Member [REDACTED] opened the sealed envelope in front of the LEC and observers and there was no evidence that the keys had been tampered with. During its investigation, the Department conducted a ballot reconciliation and determined that all ballots prepared by the LEC were accounted for or retained in the union's records. There was no violation of the LMRDA.

You alleged that members were denied the right to vote in the election because the union failed to mail ballots to all members in good standing and because some members received ballots too late to vote in the election, in violation of section 401(e) of the Act. Section 401(e) provides that the union mail the notice of election to the last known home address of each member and that all members in good standing are entitled to vote in the election. During the course of the investigation, you provided the names of nine members who you stated did not receive ballots in the election. The Department investigated the voting status of each of the nine members that you

identified and found that two of the nine members stated that they requested duplicate ballots from the union and did not receive them, leaving these two members unable to vote. But, seven of the nine members that you identified either voted in the election or stated to the Department that they chose not to vote in the election. The investigation also revealed that Local 2209 made at least six attempts to update its membership mailing list throughout the four months prior to the election. In fact, a mere 1.8% of ballots mailed to the membership were returned undelivered.

With respect to the two members who stated that they did not receive requested duplicate ballots, the union's election records could not confirm whether the two actually requested these ballots. However, the union has an obligation to maintain such records, *i.e.* a list of members requesting duplicate ballots. *See* 29 U.S.C. § 481(e). Assuming that these two members properly requested duplicate ballots in time to vote, the union's failure to send these ballots would violate the LMRDA.

In order for the Department to seek a new election, it must find that a violation of the Act may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Here, even if the union violated the LMRDA by failing to send two requested duplicate ballots, this would only affect two votes in the election. Because the smallest margin of victory was nine votes (Recording Secretary), this violation could not have affected the outcome of the election.

You also alleged that President Cole violated local bylaws when she declared that all 15 members that were nominated would serve as members of the LEC in violation of Section 401(e). Section 401(e) requires that the union conduct its election in accordance with its constitution and bylaws. In particular, you alleged that Cole violated the bylaws when members at the nomination meeting did not vote to elect each member of the LEC.

The Local 2209 Constitution, dated February 22, 2006 states in Section 17, that "An Election Committee shall be elected by majority vote by local members present and voting at a meeting preceding the start of the nomination procedure."

First, it is not clear that the 2006 Constitution is controlling. The Department found that AFGE District Representative Chon Jung and others in the AFGE International do not recognize the 2006 Constitution as valid because it was not approved by AFGE. Further, during its investigation, the Department reviewed the meeting minutes from the October 14, 2010 meeting at issue. The meeting minutes revealed that Cole opened nominations for the LEC and numerous members began making nominations. After 13 nominations were accepted, you made a motion to close nominations. According to witness statements and the meeting minutes, your motion was suspended because two members were waiting to make their nominations. Once these two members made

their nominations, your motion was addressed and approved by the membership. According to the meeting minutes, the members present at the meeting then voted to approve a motion by Recording Secretary Curry to accept all those nominated to the LEC. Following this meeting, AFGE District Representative Jung suggested that the LEC be reduced to five members with three alternates and the LEC agreed. On October 26, 2010, the LEC met and conducted a random drawing from all 15 names, to establish the five members who would become the LEC and the three alternates.

It is unclear whether the 2006 Bylaws requiring that the LEC be "elected" were controlling and whether the local's procedures at the October 14th meeting satisfied those requirements. But, even assuming that there was a violation of the bylaws, there is no evidence that the process of "drawing" the LEC from the 15 nominees had any effect on the outcome of the election. Accordingly, there was no violation that may have affected the outcome of the election.

You also alleged that President Cole failed to comply with the Local 2209 Constitution when she attended the October 26, 2010 LEC meeting in violation of section 401(e) of the LMRDA. As previously stated, section 401(e) requires that the union conduct its election in compliance with its constitution and bylaws. In particular, the AFGE National Constitution and the AFGE Election Manual both state that no member of the LEC may be an incumbent or candidate for an office for which the election is being conducted. See Appendix A, Section 2(b); AFGE Election Manual. The investigation found that Cole attended some portion of the October 26, 2010 LEC meeting. However, Cole's attendance is not relevant to this constitutional provision because this provision only precludes incumbents and candidates from serving on the LEC. There is no evidence that Cole was a member of the LEC, nor did you allege that she was a member of the LEC in your complaint. Accordingly, there was no violation of the LMRDA.

You also alleged that Local 2209 failed to provide adequate safeguards to insure a fair election in violation of section 401(c) of the Act when the union selected LEC Chairperson Elmore to attend the November 2010 Triennial National VA Council Convention as an alternate delegate. Section 401(c) prohibits disparate candidate treatment and imposes a general rule of fairness. You specifically alleged that you believed that President Cole arranged for LEC Chairperson Elmore to attend the Convention at the union's expense in order to bias the LEC. The investigation found that Cole did not select Elmore to attend the Convention as an alternate delegate and that Elmore decided to attend at her own expense. The Department examined Local 2209's financial records and determined that no money was paid for Elmore to attend this Convention. There is no evidence that the LEC was biased during the conduct of Local 2209's officer election. Accordingly, there was no violation of the LMRDA.

You alleged that Local 2209 violated its constitution and bylaws when it decided to conduct the election by mail ballot rather than polling place election, in violation of section 401(e). Section 401(e) requires that the union conduct its election in compliance with its constitution and bylaws. In particular you alleged that Appendix A of the Local 2209 Constitution and Bylaws requires a manual ballot election, i.e. a polling place election. During its investigation, the Department found various versions of the Local 2209 Bylaws. You provided a copy of the 2006 Bylaws which has an Appendix A, but no requirement for a polling place election therein. President Cole provided a copy of the 2006 Bylaws which did not include Appendix A or any requirement for a specific election method. Moreover, the Department's investigation revealed that Local 2209 has a past practice of conducting elections by mail ballot. Accordingly, there is no indication that the LEC's decision to hold a mail ballot election constituted a violation of the bylaws or the LMRDA.

In addition to the allegations discussed above, you also raised allegations which would not constitute violations of Title IV of the LMRDA. Because these allegations were outside the scope of Title IV, they were not subject to the investigation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox, Chief  
Division of Enforcement, OLMS

cc: John Gage, National President  
American Federation of Government Employees  
80F Street, NW  
Washington, DC 20001

Tinita Cole, President  
AFGE Local 2209  
4100 West Third Street, Bldg. 302  
Dayton, OH 45417

Christopher B. Wilkinson  
Associate Solicitor for Civil Rights and Labor-Management