



June 9, 2011

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]

This Statement of Reasons is in response to your complaints filed on February 15 and 22, 2011, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, as made applicable to federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the American Federation of Government Employees (AFGE) Council 53 election held on November 9, 2010.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA.

You both submitted the same allegation to the Department. You alleged that candidates for the office of president and treasurer were retirees and therefore ineligible to run for office. Your allegation is based on your interpretation of the language in the union's constitution that a candidate must be a Veterans Affairs "employee." The applicable language of Article X, Section 3, states the following:

To be qualified as a candidate for Council office, the candidate must be a member in good standing of a constituent local, must have been a member for one year of an AFGE local, immediately preceding the closing of the nomination process, and must not be a member in any labor organization not affiliated with the AFL-CIO. *Any Veterans Affairs employee who is a member of a constituent local shall be eligible to be nominated as a candidate and to hold office in this Council.* (emphasis added).

Section 401(e) of the Act provides, among other things, that every member in good standing shall be eligible to be a candidate and to hold office subject to “reasonable qualifications uniformly imposed” and that covered elections shall be conducted in accordance with the constitution and bylaws of the union in so far as they are not inconsistent with the provisions of the Act. The Department accepts “the interpretation consistently placed on a union’s constitution by the responsible union official or governing body [...] unless the interpretation is clearly unreasonable.” 29 C.F.R. § 452.3.

Union members are current employees and retirees of the U.S. Department of Veterans Affairs (VA). The union also accepts non-VA employees and retirees as members. The union has interpreted the stated provision to exclude non-VA employee members from office, but not to exclude VA retirees. Retirees may maintain membership in the union and pay full dues. Because the applicable constitutional clause is unclear and does not specifically reference retirees, the Department reviewed the history of the clause and the union’s past practice concerning retirees to determine if the union’s interpretation of the provision was clearly unreasonable.

The Department found that the clause was added in 1985 during the union’s convention. Upon interviewing a union member in attendance at the 1985 convention, the Department found that the eligibility of non-VA members serving as officers was debated at some length due to the concern that members could be represented by officers who had never worked for the VA. The member present at the convention stated to the Department that the clause was added to exclude non-VA employees from running for and holding office. At the time, the issue of retired VA employees’ eligibility for office was also discussed on the floor. It was decided that both current and retired VA employees were eligible to run for office. Under the union’s interpretation of the provision, approximately 2,600 retired VA employee members of the union are considered eligible to run for and hold office.

The union also has a clear past practice of allowing all VA retirees to serve as officers for over the past 25 years. From as early as the first election after the rule was drafted, the union has allowed retirees to serve as officers. For example, ██████████ Council President during the 1985 convention, retired in 1987 while serving as president and was then re-elected in 1989. No protests were ever filed for his re-election and his eligibility was not questioned. President Alma Lee and Treasurer Dorothy Jefferson are in fact retirees. However, both officers have served as officers from 2001 to the present while retired and did so without challenge to their eligibility. Thus, the Department has determined that the union’s interpretation of the qualifications for nomination and candidacy are sufficiently reasonable. Therefore, there is no violation of the Act.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act. Accordingly, we are closing our file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John Gage, National President
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