



June 13, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on March 2, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 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 election of officers for Local 1304 of the American Federation of Government Employees, AFL-CIO (AFGE), completed on November 9, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the Act that affected the outcome of the election.

You allege that the incumbent president, [REDACTED], used the Local's resources to campaign. Specifically, you allege that Warren posted campaign statements on the Local's Facebook page. Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate, 29 U.S.C. § 481(c), and Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds or resources to promote the candidacy of any person in an election. The Act, however, does not prohibit a union from publishing impartial election information or sponsoring a debate at which all candidates are afforded equal opportunity to express their views. 29 C.F.R. § 452.74.

The Department's investigation revealed that [REDACTED], on his own initiative, created a Facebook group page titled "AFGE Local 1304" on December 12, 2009, in order to improve communication with the Local's membership. No local funds were used to create the Facebook page but [REDACTED] used the local's logo as an identifying image on the page. The Facebook page is a "closed group page." Access to the group was restricted to local members and required approval of an administrator of the Facebook group ([REDACTED] or the local treasurer). The Department found no evidence that any member or candidate was denied access to the Facebook group. The evidence revealed

that you have been a member of the Facebook group since August or September 2010. Once a person was a member of the Facebook group, he or she could post comments on the “wall” of the Facebook group page and send electronic messages to other members of the group. On October 19, 2010, ██████ sent a campaign message to all the members of the Facebook group in response to a campaign mailing you had sent the membership. A few days later, you posted a campaign-related message directed at ██████ on the Facebook wall. Thus, the evidence shows that, even if the Facebook group page is a local resource, it functioned as a virtual open forum for ongoing debate, similar to a permissible traditional union hall candidate debate. There was no violation of the Act.

You also allege that the Local failed to maintain an accurate membership list resulting in eligible members being denied the right to vote. Section 401(e) of the Act provides that every member in good standing is entitled to one vote and that those votes be counted. 29 U.S.C. § 481(e). And, Section 401(c) of the Act provides, among other things, that “adequate safeguards to insure a fair election shall be provided.” 29 U.S.C. § 481(c). Further, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2).

In this case, the investigation disclosed that AFGE maintains and regularly updates the local’s membership list, flagging members whose mail is returned undeliverable. Local 1304 has access to the AFGE database and the local treasurer created the mailing lists used for the election from the AFGE database. The treasurer also contacted every member whose address was flagged on the AFGE list and regularly checked the AFGE lists to ensure new members were added and former members were dropped. He also obtained a good address for every returned nomination notice. Moreover, prior to the election, the election committee chairman sent an email to all the members using the employer’s email system instructing members who had not received a ballot to contact an election committee member. Nevertheless, the investigation found that two eligible members did not receive ballots. To the extent that the failure of these two members to receive ballots is a violation of Act, it had no effect on the outcome of the election.

In addition, the investigation found that the election committee did not check eligibility until after the tally because it did not have a list at the time. As a result, the votes of three members who were not in good standing were counted. This constitutes a violation of the Act. However, it also had no effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John Gage, National President
American Federation of Government Employees
80 F Street NW
Washington, DC 20001-1583

Greg Warren, President
AFGE Local 1304
PO Box 158
Greenville, Illinois 62246

Beverly Dankowitz, Acting Associate Solicitor for Civil Rights and Labor-
Management