



January 12, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your March 29, 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) occurred in connection with the December 2, 2010 general election and January 14, 2011 run-off election of union officers held by Local Union 1546 of the American Federation of Government Employees (AFGE).

The Department of Labor conducted an investigation of each of your allegations and of a complaint filed by Local 1546 member [REDACTED]. As a result of the investigation, the Department concluded that violations of Section 401(e) of the LMRDA alleged by [REDACTED] occurred and had an effect on the outcome of the elections for the offices of 1st Vice-President and Treasurer. On July 28, 2011, AFGE and Local 1546 agreed to conduct a new election for these offices, under the supervision of the Secretary of Labor. The supervised election was held on October 20, 2011; it complied with the requirements of the LMRDA and the AFGE constitution and bylaws, and there were no post-election protests. The elected officers were installed on October 27, 2011.

The investigation of your complaint did not reveal any violations of the LMRDA that might have affected the outcome of the elections. This statement of reasons responds to your request that the Department explain how the Department resolved the allegations in your complaint.

You alleged that Local 1546 President Frank Payan interfered with your right to have an observer at the general and run-off elections. Section 401(c) of the LMRDA provides that “[a]dequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.” The investigation determined that AFGE assigned District 12 Representative [REDACTED] to provide election assistance and observe both the general and run-off elections. During each election, [REDACTED] visited both polling sites on election day. The investigation determined that in each election, all candidates were allowed to have an observer at both polling sites. The investigation found that for the run-off election you acted as your own observer at the Tracy site and you had another member act as your observer at the Sharpe site. The investigation did not find violations of election

safeguards at either polling site. To the extent your complaint relates to the observer provided by AFGE, neither the LMRDA nor the union's constitution and bylaws require AFGE to provide any observers for the election, and the union was not required to provide a separate observer for each polling site, as you claimed. There was no violation of the LMRDA.

You alleged that Local 1546 President Frank Payan improperly influenced or campaigned to Election Chairman [REDACTED] during private meetings in President Payan's office. The investigation revealed that President Payan met with [REDACTED] in his capacity as a union safety representative. The investigation found that Payan and [REDACTED] discussed safety issues and there is no indication that they discussed the election. Therefore, there was no use of union or employer funds to promote any candidate and no violation of Section 401(g) of the LMRDA.

You alleged that, the day before the run-off election, blank ballots were provided to supporters of President Payan from Warehouse 56 (Tracy Depot), so that they could stuff the ballot boxes. The Department's investigation determined that some members were given absentee ballot *request forms*, but the forms were not used and no *ballots* were provided. Additionally, observers at both polling sites saw that the ballot boxes were empty before voting began. Therefore, there was no violation of Section 401(c) of the LMRDA which requires adequate safeguards to ensure a fair election.

You further alleged that the election committee improperly shredded sign-in sheets from the general election and used new (blank) member sign-in sheets for the run-off election. Section 401(e) of the LMRDA requires that election records be preserved for one year. The investigation found that the sign-in sheets for the general election were maintained with those election records and were not shredded. Because he needed to maintain the original sheets with the election records, Election Chairperson [REDACTED] printed new, blank sign-in sheets for the run-off election, which contained a title and date at the top of each page. There was no violation of the LMRDA.

You also alleged that President Payan's campaign materials contained false information about you and were libelous. Section 401(c) of the LMRDA requires unions to comply with all reasonable requests by a candidate for the distribution of campaign literature and the LMRDA does not regulate the contents of campaign material. 29 C.F.R. § 452.70. Accordingly, even if all the facts in your allegation are true, there is no violation of the LMRDA.

You further alleged that Payan should not have been eligible to run for office because union funds went missing while he was President of Local 1546. However, during the investigation, you agreed that competency was not an eligibility requirement and you withdrew this protest. Furthermore, the Department's investigation determined that

Payan was a member in good standing, and he met all the union's candidate eligibility requirements. There was no violation of the union's constitution and bylaws or Section 401(e) of the LMRDA.

You also alleged that the election committee was not neutral and had only two members at the Sharpe polling site, in violation of the union's constitution and bylaws. The Department's investigation determined that [REDACTED] resigned from the election committee prior to campaigning for Payan in the run-off election. The investigation found no evidence that active election committee members engaged in campaign activities. The AFGE Constitution, App. A, Part I, Sec. 2(a) requires that the election committee "consist of not less than three members, and if a larger [c]ommittee is required, it shall contain an odd number of members." The Department's investigation found that the election committee had 5 active members during the run-off election. One of the five members had to leave before the ballots were tallied. To comply with the Constitution's "odd number" requirement, another member of the election committee did not participate in the tally. The ballots were tallied by an election committee consisting of three members. Therefore, there was no violation of the union's constitution or bylaws and no violation of the LMRDA. Additionally, even if the election committee had an even number of members, there would not have been any effect on the outcome of the elections. As you admitted during the investigation, no significant issues or questions were presented to the election committee during the run-off. Finally, during its investigation, the Department recounted the ballots for the office of president in the general and run-off elections, and found no discrepancies or mistakes in the tally that could have affected the outcome.

You also alleged that officers campaigned on union time at the union office, and used union funds for an open house and a Lunch and Learn to gain support for incumbent President Payan in the run-off election. Section 401(g) of the LMRDA provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person." See also 29 C.F.R. §§ 452.76- 452.78. The Department conducted a thorough investigation of your allegations. You alleged that union officers Maggio and Ruiz made campaign phone calls from their government phones, but you did not know to whom. The investigation found no evidence that union officers made campaign phone calls on union or employer time or on union or employer phones as opposed to personal mobile phones. The investigation also determined that allegations that union officers campaigned at the union hall or at worksites on union time were unsupported and sometimes contradicted by the evidence. For example, [REDACTED] a challenger to incumbent [REDACTED] lost the election, but stated that he never saw Payan or other union officials campaigning on union time. The investigation determined that any campaigning by union officers at the union hall or worksites was incidental to regular union business and did not constitute a violation of the LMRDA. .

The Department's investigation revealed that Vice-President Lemos scheduled an open house and a "Lunch and Learn" between the first election and the run-off election. The stated purpose of the Lunch and Learn was to recruit members and the open house was to give something back to the members. Payan attended both events, but denied campaigning at either. You did not provide any evidence that campaigning occurred at the open house, and the investigation found no evidence of campaigning.

You also alleged that campaign flyers for Payan were printed using union funds and distributed at the "Lunch and Learn" event. The investigation found no evidence that union funds or equipment were used for Payan's campaign flyers. The Lunch and Learn was held in the break room, where some of your flyers were on a side table near the microwaves. The investigation found that campaign flyers for Payan may have been placed on some of the lunch tables. The Department's investigation determined that there are no attendance records for the event, but only 29 members from AAFES voted in the run-off election and worked on the day of January 11, 2011 (and were thus likely to have attended the Lunch and Learn). The Department was able to survey 28 of these members, and found that only fourteen of them attended the Lunch and Learn. Of the fourteen, twelve members recalled seeing campaign materials or hearing campaign statements in the lunch room during the event. These members did not remember if any statements or flyers supported you or Payan. Even if campaigning in violation of Section 401(g) of the LMRDA occurred at the Lunch and Learn, the violation could not have affected the outcome of the election. The margin in the run-off election for president was 44 votes and only 12 members from AAFES who voted could have been affected by any violation.

For the reasons set forth above, with respect to your complaint, the Department of Labor has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election for the office of President.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. John Gage, National President
American Federation of Government Employees (AFGE)
80 F. Street, NW
Washington, DC 20001

Mr. Frank Payan, President
American Federation of Government Employees (AFGE) Local 1546
[REDACTED]
[REDACTED]

Katherine Bissell, Associate Solicitor for Civil Rights and Labor-Management