



June 19, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor on February 10, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (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, occurred in connection with the election of union officers conducted by the American Federation of Government Employees (AFGE) Local 916, on October 7, 2010.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that 390 blank absentee ballots were mailed directly to the Schmidt slate's post office box and not to the members who requested the absentee ballots. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. The Department's review of the election records showed that 390 absentee ballot request cards indicated that the voters requested that their absentee ballots be mailed directly to the Schmidt slate's post office box. The union complied with such requests and blank absentee ballots were mailed to the Schmidt slate's post office box. As a result, the Schmidt slate members received blank absentee ballots, distributed such ballots to voters, and collected sealed envelopes from voters that contained their voted absentee ballots, without any accounting of the number of ballots in their possession at any given time. Thus, adequate safeguards were lacking during the election, in violation of the LMRDA.

However, the evidence does not provide an adequate basis for finding probable cause to believe that this violation may have affected the outcome of the election. During the investigation, the Department mailed surveys to 400 members, including the 390 members whose absentee ballots were mailed to the Schmidt slate's post office box. None of those surveyed indicated that a member of the Schmidt slate voted the member's absentee ballot.

The Department's review of the voted absentee ballots did not disclose any evidence of ballot irregularities. Specifically, none of the voted absentee ballots contained suspicious markings or indentations indicating that they were marked in stacks or on top of one another. The absentee ballots did not contain a pattern of erasures for an opposition slate and corresponding votes for the Schmidt slate or any other slate. Nor was there any subtle difference in the paper, printing watermark or color indicating that absentee ballots may have been duplicated or photocopied. Further, the investigation disclosed that 14 voters gave their sealed ballot envelopes containing their voted absentee ballots to Schmidt slate members for mailing to the election committee. The investigation did not disclose, however, that the ballot collection was widespread. In any event, the smallest vote margin for any race was 230 votes. Thus, these 14 votes did not affect the outcome of the election. Under these circumstances, there is not an adequate basis for concluding that a violation occurred that may have affected the outcome of the election.

You alleged that the union violated the secret ballot requirement by allowing candidates to handle absentee ballots and because a person could see how a ballot was marked by holding the envelopes bearing the ballot up to the light. The ballot secrecy provision of section 401(e) of the LMRDA requires local unions, such as Local 916, to elect officers by secret ballot. A secret ballot under the LMRDA is "the expression by ballot . . . of a [person's] choice [of candidates] cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." See 29 C.F.R. § 452.97. The investigation disclosed that 14 voters gave their sealed ballot envelopes containing their voted absentee ballots to Schmidt slate members to mail to the election committee. However, the investigation did not disclose that Schmidt slate members opened the sealed envelopes and ascertained how members voted. Thus, Schmidt slate members did not identify the 14 voters with their choice of candidates. Further, a double envelope system was used for the return of the voted absentee ballots. The investigation did not disclose that a person could see how a ballot was marked by holding the double envelopes containing the ballot up to the light. Fourteen votes would not have affected the outcome of the election. The LMRDA was not violated.

You alleged that approximately 80 signatures on voted absentee ballot outer envelopes did not match the signatures on the absentee ballot requests cards for the same voters. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. During the investigation, the Department compared all the signatures on the absentee ballot request cards with the signatures on the absentee ballot envelopes for the same voters. The signatures on the envelopes and on the cards for 20 voters appeared to be dissimilar. However, all such voters when interviewed by the Department verified that the voters themselves had written their signatures on both the envelopes and the cards. The LMRDA was not violated.

You alleged that observers were prohibited from challenging voted ballots at the ballot count and tally. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. The adequate safeguards provision includes the right of candidates to have observers at the polls and the counting of the ballots. Therefore, unions may not place improper restrictions on observer activities. *See, e.g.,* 29 C.F.R. § 452.107. Observers are entitled to witness the counting of the ballots and the vote tally and, as appropriate, challenge individual ballots to ascertain whether unauthorized persons voted in the election.

The investigation disclosed that, during the ballot count, observers attempted to challenge absentee ballots because the signature on the outer absentee ballot envelope and the signature on the absentee ballot request card for the same voter appeared to be dissimilar. However, the election committee refused to permit the observers to challenge such ballots. As a result, observers were not able to ascertain whether unauthorized persons voted in the election. The union's prohibition on observers challenging the absentee ballots was an improper restriction on observer activities. Such restriction violated the adequate safeguards provision of the LMRDA. However, this violation did not affect the outcome of the election. During the investigation, the Department compared all the signatures on the absentee ballot request cards with the signatures on the absentee ballot envelopes for the same voters. The signatures on the envelopes and on the cards for 20 voters appeared to be dissimilar. However, when interviewed by the Department, the voters stated that the voters themselves had written their signatures on both the envelopes and the cards. Thus, no violation occurred that may have affected the outcome of the election.

You alleged that the Schmidt slate used AFGE letterhead, a union copier, union supplies and union office staff to prepare a letter that was handed out to members and included in the absentee ballot packages that the Schmidt slate distributed to members. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election.

The investigation disclosed that Local 916 president, James Schmidt used union staff, union supplies and AFGE letterhead to prepare a letter that was addressed and mailed only to the AFGE 9th District local presidents. In the letter, Schmidt denied that he intended to run for AFGE 9th District National Vice President. The Schmidt letter was precipitated by a previous letter that had been mailed to these union officials by an unknown source stating that Schmidt would run for AFGE 9th District National Vice President. The first letter indicated that Schmidt was its author and appeared to contain his signature. Schmidt stated during the investigation that he did not write the first letter and that the signature on the letter was a forgery. The investigation showed that, although the Schmidt letter was mailed only to the AFGE 9th District local presidents,

the Schmidt letter surfaced and certain union stewards hand delivered the letter to members and posted it around the work site. Schmidt does not know how the stewards obtained copies of the letter. He did not instruct or authorize the stewards to distribute the letter to members. In any event, the Schmidt letter did not solicit members' votes in connection with the impending election of Local 916 officers. Nor did it identify the names of Schmidt's opponents in the election. Thus, any union resources used in the preparation and mailing of the letter did not promote Schmidt's candidacy for Local 916 president. Further, the investigation showed that the Schmidt letter was not included in the absentee ballot packages. The LMRDA was not violated.

You alleged that the Schmidt slate members distributed a letter to the membership that endorsed their candidacy and that the slate claimed it was written by a member of the U.S. Congress. You believe that members reading the letter could have been persuaded to vote for the Schmidt slate. The LMRDA does not regulate the manner in which candidates may choose to conduct their campaigns or the strategy used during such campaigns. The LMRDA was not violated.

Finally, you alleged that the absentee ballot packages that the Schmidt slate distributed to members included campaign literature, information on how to obtain partisan materials, and absentee ballot request cards. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. Section 401(g) of the LMRDA prohibits the use of union resources to assist candidates in their campaigns. During the investigation, you stated that the members who you alleged received absentee ballot packages from the Schmidt slate refused to provide you with their names. During the investigation, Schmidt slate members who distributed absentee ballot packages to members stated that the packages did not contain any campaign materials, information on how to obtain partisan materials, or absentee ballot request cards. In any event, candidates and their supporters were not prohibited from distributing absentee ballot request cards to members by hand or prohibited from including them in the absentee ballot packages. The LMRDA was not violated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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

James Schmidt, President
AFGE Local 916
4444 S. Douglas Blvd.
Oklahoma City, OK 73150

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

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343



June 19, 2012

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED], [REDACTED], and Messrs. [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor in February 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (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, occurred in connection with the election of officers conducted by the American Federation of Government Employees (AFGE) Local 916, on October 7, 2010.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the procedures for challenging ballots were inadequate. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. The adequate safeguards provision of section 401(c) includes the right of candidates to have observers at the polls and the counting of the ballots. Therefore, unions may not place improper restrictions on observer activities. *See, e.g.,* 29 C.F.R. § 452.107. Observers are entitled to witness the counting of the ballots and the vote tally and, as appropriate, challenge individual ballots to ascertain whether unauthorized persons voted in the election.

The investigation disclosed that, during the ballot count, observers attempted to challenge absentee ballots because the signature on the outer envelope of the voted absentee ballot and the signature on the absentee ballot request card for the same voter appeared to be dissimilar. However, the election committee refused to permit the observers to challenge such ballots. As a result, observers were unable to ascertain whether unauthorized persons voted in the election. The union's prohibition on observers challenging the absentee ballots was an improper restriction on observer activities. Such restriction violated the adequate safeguards provision of the LMRDA. However, this violation did not affect the outcome of the election. During the investigation, the Department compared all the signatures on the absentee ballot request cards with the signatures on the absentee ballot envelopes for the same voters. The signatures on the envelopes and on the cards for 20 voters appeared to be dissimilar. However, when interviewed by the Department, the voters stated that the voters themselves had written their signatures on both the envelopes and the cards. Thus, no violation occurred that may have affected the outcome of the election.

You alleged that, when members of the Schmidt slate distributed blank absentee ballots to voters, they asked the voters to mark their ballots in front them and told the voters to vote for the Schmidt slate. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. Thus, the conduct of a union officer election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation disclosed that two members voluntarily voted their absentee ballots in the presence of a member of the Schmidt slate after the voters had been given a ballot by a slate member instead of voting in the privacy of their home. However, the members stated during the investigation that they voted for the candidates of their choice. In addition, the Schmidt slate member did not observe how the members voted. Further, the person who allegedly witnessed Schmidt slate members soliciting members' votes

while distributing absentee ballots stated during the investigation that he never witnessed any such activity. The LMRDA was not violated.

You alleged that voted absentee ballots other than those retrieved from the post office were included in the ballot count. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. The investigation disclosed that this allegation was based on an assertion by one of the candidates/observers on your slate who witnessed the ballot retrieval from the post office and the ballot count at the union hall. This allegation was not substantiated by the investigation.

The investigation disclosed that voters were required to mail back their voted absentee ballots to the designated post office box no later than October 7, 2010, in order to be counted. The voted absentee ballots were retrieved from the post office for the first time on October 7. At that time, the election chairman picked up a single tray of voted absentee ballots from the post office in the presence of observers. After the election chairman exited the post office with the one tray of absentee ballots, observers watched the election chairman as he placed that tray of ballots inside the camper/covered bed of a pick-up truck. The camper was not accessible from inside the truck. The election chairman then transported the absentee ballots in the pick-up truck from the post office to the union hall. Observers followed the chairman from the post office to the union hall in their vehicles. The investigation showed that, when the chairman arrived at the union hall, he opened the camper for the first time since leaving the post office. Observers then witnessed him remove the one tray of absentee ballots from the camper and deliver the ballots to the tally room for counting. Other than one candidate/observer on your slate, none of the candidates/observers on the other two slates who witnessed the ballot retrieval and the ballot count stated during the investigation that absentee ballots other than those retrieved from the post office were included in the ballot count. Nor did such candidates/observers state that they saw additional blank or voted absentee ballots in the tally room prior to, during, or after the ballot count. The LMRDA was not violated.

You alleged that the election chairman used a list provided by the Schmidt slate to verify the names of those who requested absentee ballots. The investigation disclosed that the election chairman created a list containing the names of those members who had submitted a request for an absentee ballot. The original list remained locked in a file cabinet located in the election chairman's office during the verification process. The office secretary made two copies of the list, which were used to verify the names of those who had requested absentee ballots. In addition, the election chairman reviewed the names on the Schmidt slate's absentee ballot request list to ensure that such names also were on the union's lists. During that review, you may have believed that the election chairman was using the Schmidt list to verify the names of those who

requested absentee ballots. However, the investigation disclosed that only the union's lists were used in that verification process. The LMRDA was not violated.

Finally, you alleged that only candidates could serve as observers of certain aspects of the election; non-candidates were prohibited from serving as observers for candidates during the ballot count and vote tally. Section 401(e) of the LMRDA requires a union to conduct its election of union officers in accordance with its constitution and bylaws. Section 5(f) of the AFGE constitution provides, "[e]ach candidate shall be afforded an opportunity to have a reasonable number of observers who are members present throughout the election procedure, including the tally of the ballots." The investigation disclosed that the election chairman orally informed all candidates that non-candidates would be prohibited from serving as observers during the ballot count and vote tally. Neither section 5(f) of the AFGE constitution nor any other provision of the constitution contains such a restriction. Thus, the AFGE constitution was violated when members who were not candidates were prohibited from serving as observers at the ballot count and vote tally. However, the candidates were permitted to serve as their own observers during this phase of the election. Thus, no violation occurred that may have affected the outcome of the election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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

James Schmidt, President
AFGE Local 916
4444 S. Douglas Blvd.
Oklahoma City, OK 73150

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