



May 13, 2013

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]

This Statement of Reasons is in response to the complaints that you filed with the U.S. Department of Labor on February 11 and 19, 2013, respectively, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the delegate election of officers conducted by the American Federation of Government Employees (AFGE) Council 169 on October 13, 2012. 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 Council 169. *See* 29 C.F.R. § 458.29.¹

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

You alleged that the election officials could not account for all of the ballots printed in the election, including unused, sample, challenged, spoiled, and voided ballots. You also alleged that the total number of votes that the Election Committee posted did not add up to the total number of eligible votes.

Section 401(c) of the LMRDA provides that "adequate safeguards to insure a fair election shall be provided." With this requirement, "[a] labor organization's wide discretion regarding the conduct of its elections is . . . circumscribed by a general rule of fairness." 29 C.F.R. § 452.110. In addition, in order for a violation to be actionable there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2); *see also* 29 C.F.R. § 452.5.

¹ 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."

The investigation found that the Election Committee printed color-coded ballots representing denominations of 100, 50, 20, 10, 5, and 1 vote. The Committee did not keep a record of the number of ballots printed. At the election, delegates reportedly checked in and the union verified their eligibility to vote. The delegates received their portion of their local's votes and placed their votes in the ballot boxes. The investigation revealed differing accounts concerning whether Election Official [REDACTED] distributed the correct number of ballots. For example, according to Election Official [REDACTED] Local 987 Delegate [REDACTED] stated to the Committee that he did not receive the correct amount of ballots. [REDACTED], however, indicated that he never received more ballots than he was supposed to and that he does not know of anyone who received unwarranted ballots. Accounts are consistent that the ballot boxes remained in plain view during the entire voting and tally process.

The Department's records review revealed that in the race for Vice President of DDC West, [REDACTED] received 410 votes and [REDACTED] received 42 votes. In total, 452 votes were cast for this race, whereas the total number of eligible votes was 440 (12 extra votes). The investigation determined that the Committee did not notice this error after the tally. The distribution of more ballots than eligible votes violated the LMRDA. However, the 12 extra votes would not have affected the outcome of this race, which had a margin of 368 votes.

Additionally, the investigation determined that, at some point during the voting process, the Committee ran out of 1 denomination ballots and made extra copies of ballots. The Committee could not determine how many extra ballots were made, but those extra ballots were made on white paper, whereas the original ballots were printed on colored paper. The election records contained three white ballots (totaling three votes) counted toward the President, Executive Vice President, and Secretary races; and 23 white ballots (totaling 23 votes) counted toward the rerun of the Vice President of Miscellaneous (VPM) race. Even if the copying of additional ballots violated the LMRDA, the number could not have affected the outcome of the election, where the margin of victory in each race exceeded the number of white ballots.

The Department's investigation also found that the Election Committee over-reported the number of votes cast in the President and Secretary races by 81 votes, when compared with the Department's records review. In addition, fewer votes than the number of eligible votes were cast in the races for President, Executive Vice President, and Secretary. The number of eligible votes was 3,947, and the number of cast votes was 3,662, a difference of 285 votes. The margins of victory were 1,346 votes for President, 1,096 votes for Executive Vice President, and 1,901 votes for Secretary. It is unclear why the Committee over-reported the number of votes or why fewer votes were cast than eligible, but these differences would not have affected the outcome.

In sum, the Department's investigation revealed numerous problems that occurred as a result of the Committee's handling of the ballots and its failure to maintain unused, spoiled, or voided ballots. While these are violations of the adequate safeguards provision, the investigation did not establish probable cause that this violation may have affected the outcome of the election. 29 C.F.R. § 458.65(a). The Department found no evidence of ballot fraud or tampering. The ballot box remained in full view of the Committee and observers for the duration of the voting process. The ballots were subsequently tallied in the same room where voting occurred. The investigation also isolated the suspect white-colored ballots and demonstrated that these ballots would not have affected the outcome, given the large margins. Additionally, Complainant [REDACTED] observer, [REDACTED], indicated during the investigation that observers had adequate opportunities to observe the election process. Some errors in ballot distribution and vote counts may have occurred, but no evidence supports widespread problems that would have affected the large margins. Accordingly, the Department has concluded that there is no probable cause to believe that the violations of section 401(c) may have affected the outcome of the election.

You also alleged that the election committee unlawfully denied observers an adequate opportunity to observe the voting process, the ballot tally, and the recount. Section 401(c) of the Act provides that candidates are entitled to have an observer at the polls and at the counting of the ballots.

During its investigation, the Department received conflicting accounts among the election officials and observers. In particular, accounts differ regarding whether the VPM ballots were removed from the election room for a recount, and whether observers were permitted to observe all parts of the election. [REDACTED] observer, [REDACTED], however, indicated that observers had adequate opportunities to observe the voting process and ballot tally. The weight of the evidence does not establish that a violation occurred, but even if VPM ballots were removed in violation of the LMRDA, the union remedied the violation by rerunning the affected race for VPM. The Department confirmed the rerun election results by recounting the margins during its records review. If an observer violation occurred, it was remedied.

Finally, you alleged that Complainant [REDACTED] as the AFGE Local 1546 delegate, was improperly denied the opportunity to cast Local 1546's delegate votes. You asserted that he was properly elected as an alternate delegate in 2003, and thus eligible to cast those votes. The AFGE National Constitution states that delegates to council meetings "must be elected by secret ballot of the members on whose behalf they will serve as delegates." Appendix A, Section 6(a) (2012). According to AFGE National President J.

David Cox, the maximum term of office under the AFGE National Constitution and the Department's regulation, 29 C.F.R § 452.23, is three years.²

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." See 29 C.F.R. § 452.3. Here, the Election Committee and President Cox's interpretation is not clearly unreasonable. Additionally, the investigation revealed that the union has been consistent in its interpretation, rejecting votes of delegates from locals that did not satisfy constitutional requirements to be seated at the 2009 National Convention. The investigation confirmed that you were elected as an alternate delegate in 2003, more than three years ago. Accordingly, the Election Committee properly did not allow you to cast votes for Local 1546 because you were not properly elected to be an alternate delegate. There is no violation.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA that affected the outcome of the election occurred, and we have closed the file in this matter.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

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² Section 452.23 of the Department's regulations provides that officers of local labor organizations must be elected "not less often than every three years."