



February 6, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on July 17, 2013, alleging that violations of the election provisions of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA) as made applicable to the 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 on April 11, 2013, by Local 2145, American Federation of Government Employees (AFGE).

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your allegations, that there were no violations that may have affected the outcome of the election.

You alleged that incumbent presidential candidate Jennifer Marshall had possession of the ballots prior to the election. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided to all members. Pursuant to this provision, a labor organization's wide range of discretion regarding the conduct of the election is circumscribed by a general rule of fairness. 29 CFR §452.110. Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed.

The Department's investigation established that AFGE Local 2145 Election Committee Chair [REDACTED] had ballots printed at Staples. AFGE Local 2145 President Jennifer Marshall was present at Staples with [REDACTED] when the ballots were ordered because, as president of Local 2145, she had the local's credit card to pay for the printing of the ballots. Both [REDACTED] and Marshall deny that Marshall touched or had possession of the ballots at any time. There was no contrary evidence provided by the complainant or revealed by the investigation. There was no violation.

You alleged that members were denied the opportunity to vote due to the polls not opening on time. Section 401(e) of the LMRDA provides that every member in good

standing shall have the right to vote for or otherwise support the candidate of his choice.

The investigation revealed that the election notice stated that the election was to begin at 8:00 a.m. and end at 4:30 p.m. However, the investigation established that the polls did not open until approximately 8:30 a.m. because a locksmith had to be called to open Marshall's office to obtain the ballot box. The investigation also revealed that there were approximately 20 to 40 people in line at 8:00 a.m. and that at least half of these individuals left before the union opened the polls. The local's failure to open the polls on time was a violation of section 401(e) of the LMRDA. This violation may have affected as many as 20 votes. This did not have an effect on the outcome of the election because the closet margin of victory was 48 votes for the office of chief steward. There was no violation that would provide a basis for litigation by the Secretary.

You alleged that candidate [REDACTED] acted as an election teller and counted voted ballots when one of the official tellers left prior to the conclusion of the tally. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided by the union.

The investigation established that election committee member [REDACTED] was one of three election committee members serving as tellers for the ballot tally and that [REDACTED] left before the conclusion of the tally. However, the Department's investigation did not reveal any evidence that candidate [REDACTED] served as a teller in [REDACTED] stead. There may have been some confusion in this regard as prior to [REDACTED] departure from the tally, [REDACTED] had been monitoring [REDACTED] tallying and pointing out mistakes.

The Department's review of the election records confirmed that [REDACTED] tally sheet was not used for the final tally. [REDACTED] tally sheet was voided since it was incomplete. Furthermore, the Department recounted the ballots. The Department's recount of the office you sought, president, confirmed the union's tally with a one vote difference that did not change the effect of that race. There was no violation.

You alleged that AFGE Local 2145 President Jennifer Marshall kept the ballots in her office after the ballot tally and that the election committee chair was in the office "fixing them to match the voter turnout." Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided by the union.

The investigation established that after the tally, the election committee chair placed the locked ballot box in the president's office. However, the investigation revealed that the election committee chair purchased a new lock for the ballot box so that he would be the only one with the combination. The investigation did not reveal any evidence that Marshall had access to the locked ballot box prior to the election committee chair

changing the lock. Marshall was on sick leave for several days after the election and was not at the office. The Department's recount of the ballots verified the union's tally which had been conducted in the presence of observers, with the one vote difference mentioned above. In addition, an examination of the voted ballots failed to reveal similar markings, use of a similar writing instrument or any pattern consistent with ballot fraud. There was no violation.

You alleged that voted absentee ballots and returned undeliverable ballots were returned to the election committee chairperson's home address rather than a post office box. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided by the union.

The investigation revealed that the AFGE Election Manual provides that "for mail ballot elections and absentee ballots it is mandatory to utilize a restricted access post office box." The investigation confirmed that these ballots were returned to the election committee chairperson's home rather than a restricted access post office box in violation of the union's constitution and the adequate safeguards provision. The evidence revealed that this election was the election committee chairperson's first and that he was unaware of the requirement to use a post office box rather than his home address.

The investigation established that the election committee chair brought the absentee ballots with him to the local on the day of the tally. Of the 31 requests for absentee ballots, 26 were returned by the April 8, 2013 deadline and all 26 were included in the tally. The investigation did not reveal any evidence that any absentee ballots had been opened and resealed or that the ballots and return envelopes had any unique identifiable markings or other indicia of their having been voted by the same individual. There was no actionable violation.

For the reasons set forth above, the Department has concluded that there was no violation of 29 C.F.R. § 458.29 that may have affected the election outcome, and I have closed the file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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