



April 17, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your August 19, 2014 complaint filed with the U.S. Department of Labor 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 the Civil Service Reform Act of 1978 (CSRA), occurred in connection with the election of officers of American Federation of Government Employees (AFGE) District 14 conducted on May 17, 2014.

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 that may have affected the outcome of the election.

You alleged that AFGE National Representative Nate Nelson sent an improper campaign email and that Nelson and AFGE District 14 National Vice President Eric Bunn discussed campaign strategy while on union-paid time in the District 14 office. Section 401(g) of the LMRDA prohibits the use of labor organization funds – including union money, facilities, equipment or supplies – to promote the candidacy of any person in union officer elections.

The investigation determined the content of Nelson's email did not promote the candidacy of any person in the election, although it did criticize you. There was, however, no evidence that any delegates received Nelson's email or that Nelson sent the email to any delegates who were responsible for voting at the election. There was no violation.

You also alleged that Nelson and [REDACTED] a rank-and-file member of Local 476, prepared a campaign flyer on union-paid time and equipment in violation of Section 401(g) of the LMRDA.

However, the investigation disclosed no evidence that union-paid time or equipment were used to prepare the campaign flyer. Rather, [REDACTED] used a computer at a nearby community college to make the campaign flyer and then used a public library

near the campus library to make the copies. The investigation disclosed no evidence that Nelson was involved in the creation or distribution of the flyer. There was no violation.

You next alleged that [REDACTED] was allowed to campaign in the lower level of the hotel where the election took place despite it being against the election rules, while [REDACTED] a Local 2798 member, was not allowed to do so. You also alleged that Bunn made an unfair rule that prohibited campaigning in the lower level of the hotel and then had one of his campaign posters on the lower level. Section 401(c) provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. This provision imposes on unions a general rule of fairness in the conduct of their elections.

The investigation disclosed no evidence that [REDACTED] campaigned in the lower level of the hotel. Further, there was a sign at the bottom of the stairs that stated, "No campaigning past this point" with an arrow pointing to the right. However, campaigning was allowed to the left of the stairs in the lower level. Bunn's campaign poster was located to the left of the stairs in the lower level, where campaigning was permitted. There was no violation.

You alleged that Bunn was promoted in the union magazine, *The Government Standard*. In applying the Section 401(g) prohibition of the use union resources for campaigning to union-produced material, courts have consistently held that the tone, content, and timing of the material determines whether it in fact promotes the candidacy of a candidate.

The investigation disclosed that *The Government Standard* is a bi-monthly newsletter that is sent to all AFGE members. The May/June 2014 issue contained a brief article that addressed a recent Washington D.C. primary election. The article included quotes from Bunn regarding District 14's thoughts on the primary election and on the upcoming general elections. The article was objective, timely, and relevant to AFGE members. The article did not contain any references to the May 17, 2014 union election. There was no violation.

You also alleged that union funds were used to obtain easels from the hotel that Bunn used to hold campaign posters and that the other candidates were not informed of their right to use them. The investigation disclosed no evidence that Bunn used union funds to obtain the easels from the hotel. The invoices and contract between the Washington Court Hotel and District 14 for the May 17, 2014 election did not mention the supplying of easels. Bunn stated during the investigation that he received permission to use the hotel's easels. Neither the LMRDA nor the union's constitution and bylaws require candidates to inform other candidates of the availability of supplies provided for free by an election venue. There was no violation of the LMRDA.

You alleged that Bunn was not eligible to run for office because Local 2725 was delinquent in its dues payments to the Federation. No provision of the LMRDA

imposes a requirement of this sort on candidates. Section 401(f) of the LMRDA provides that when officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization. Article VII, Section 1 of the AFGE Constitution provides that candidates for office must have "been a member in good standing of the Federation for the three consecutive years immediately prior to the date of the nomination for the office being sought." The AFGE Constitution does not require that a member's local be current with its dues for a member to be eligible to run for office. Even if Local 2725 was delinquent in paying its dues, there would have been no violation of the LMRDA.

You next alleged that the caucus chair violated the rules by putting Bunn's name first on the ballot instead of drawing lots to determine the candidates' position on the ballot. The 2014 District Caucus Election Manual, Caucus Rule 10, provides that "[t]he candidates will determine their position on the ballot by drawing lots." However, Section 401(f) does not require that the convention be conducted in accordance with a labor organization's caucus rules. Section 401(c) provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. This provision imposes on unions a general rule of fairness in the conduct of their elections.

The investigation disclosed no evidence that the failure to follow Caucus Rule 10 was unfair to you. Even if this rule was violated, there would be no violation of the LMRDA.

You further alleged that eligible voters were not allowed to vote and their votes were improperly distributed to other delegates in their local. You stated that a delegate from Local 2782 and a delegate from Local 2 were improperly prevented from voting in the election. Caucus Rule 3(b)(2) provides:

In a situation where a local has elected its full complement of delegates, but not all delegates appear at the Caucus, those who are seated are entitled to a proportional share of the local's full entitlement of votes. If a local is entitled to more than one delegate, the voting strength is divided equally among those properly elected delegates participating in the caucus.

While, as noted above, Section 401(f) does not require that the convention be conducted in accordance with a labor organization's caucus rules, the investigation disclosed that the Local 2782 delegate's votes were redistributed according to the caucus rule. The investigation also disclosed that Bunn won the election for vice president by a margin of 4,882 votes, so the exclusion of the Local 2 delegate's 81 votes could not have affected the result of the election. There was no violation of the LMRDA that may have affected the outcome of the election.

You also alleged that the union improperly failed to seat you as a delegate at the caucus. Section 401(d) of the LMRDA provides, in relevant part, that officers of intermediate bodies shall be elected by secret ballot among the members in good standing or by labor

organization officers representative of such members who have been elected by secret ballot. The investigation disclosed that at the time of the May 17, 2014 election, you were AFGE Local 476 First Vice President. However, you were appointed, not elected by secret ballot, to this position. The union therefore properly refused to seat you as a delegate. There was no violation of the LMRDA.

You additionally alleged that the union violated Section 401(f) of the LMRDA and a caucus rule when it failed to give candidates the right to select a person to serve on the election committee. Caucus Rule 10 provides:

The members of the Election Committee shall be selected in the following manner: upon the convening of the Caucus, the Caucus will elect by majority vote a Chairperson, who will serve as Chairperson of the Election Committee. Each candidate will select one person to serve on the Election Committee. Any further members of the Election Committee shall be elected by majority vote of the Caucus.

Again, Section 401(f) does not require that the convention be conducted in accordance with a labor organization's caucus rules and you have not indicated that the failure to follow was unfair to you. There was no violation of the LMRDA.

You finally alleged that you received the delegate list and other critical information much later than Bunn. Section 401(c) provides that every national or international labor organization has a duty to refrain from discrimination in favor or against any candidate with respect to the use of lists of members. Furthermore, Article VIII, Section 2(b)(3) of the AFGE Constitution provides that all national office candidates will be provided, upon request, the names, addresses, and local affiliations of each delegate elected to the district caucus as expeditiously as the information is available.

The investigation disclosed evidence that you received the delegate list a week after the delegate credentials were due to District 14. The investigation disclosed evidence that both you and Bunn had received the delegate list around the fourth week of April 2014. There was no violation of the LMRDA.

For the reasons set forth above, it is concluded that no violation that may have affected the outcome of the election occurred. As to allegations in your complaint to the Department not addressed in this Statement of Reasons, these issues are not considered in scope because the allegations, even if true, would not have constituted violations of Title IV of the LMRDA. Accordingly, I have closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

cc: J. David Cox, Sr., National President
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