



January 22, 2016

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor ("Department of Labor" or "Department" or "DOL") on March 24, 2015. Your complaint alleges that numerous violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA" or "the Act"), 29 U.S.C. §§ 481-484, as made applicable to the elections of federal sector unions by 29 CFR § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the November 24, 2014 election of officers for American Federation of Government Workers Local 2054 (the "local" or "Local 2054").

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that there was no violation that would provide a basis for litigation by the Department.

You allege that not all bargaining unit members within the VA hospital and in the Community Based Outreach Clinics (CBOCs) were notified of the election. Section 401(e) of the LMRDA provides that "[n]ot less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address." In addition, Appendix A, Section 3(a)(4) of the AFGE Constitution states that election notices must be mailed to each member at his or her last known home address not less than 15 days prior to the date of the election. *See also* 29 CFR 452.99. Section 401(e) of the Act and 29 CFR § 452.2 provide that elections shall be conducted in accordance with the constitution and bylaws of the labor organization. The Department's investigation, including a records review, showed that all members were mailed a nomination/election notice to the last known home address. However, 67 notices were returned as undeliverable. Of the 67 returned undeliverable notices, 16 members voted (one via absentee ballot), one member requested an absentee ballot and was mailed one but did not vote, and two were ineligible voters. The remaining 48 members did not receive additional notices in the

mail, and the election committee did not attempt to correct their addresses. Members had also been notified of the election through a notice posted on the bulletin board and general information about the election was announced in the newsletter. During the investigation, 12 of the 48 members confirmed that they were aware of the election, but chose not to vote. The failure to provide proper notice of election affected 36 members and is a violation of Title IV; however, it could not have affected the election outcome, because the smallest margin in the election was 43.

Next, you claim that union funds were used to purchase flyers and postage stamps for the opposing slate's candidates and the opposing slate's candidates were given more time to prepare campaign literature for mailing. Section 401(g) of the Act provides that "[no] moneys received by any labor organization by way of dues, assessment, or similar levy . . . shall be contributed or applied to promote the candidacy of any person in an election" However, 29 CFR § 452.73(a) provides that a union is not prohibited from assuming the cost of distributing on an equal basis campaign literature submitted to the union by the candidates" Additionally, 29 CFR § 452.67 states "[w]hen the organization or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if he requests it." Moreover, 29 CFR § 452.69 provides that "[e]ach candidate must be treated equally with respect to the expense of such distribution."

The DOL investigation revealed that, at the first candidates' meeting on October 28, 2014, the union offered all candidates the opportunity to have the union pay to mail their campaign literature and informed candidates of the November 10, 2014 deadline for having their campaign literature ready for mailing. Several candidates confirmed that they learned about the reimbursement opportunity and deadline for having their campaign literature ready for mailing at the first candidates' meeting. Moreover, multiple interviews conducted did not substantiate the allegation that there was insufficient time to prepare campaign literature. All candidates were given the same opportunity to have the union pay to mail their campaign literature and had the same deadline for producing campaign literature for mailing. There was no violation.

In addition, you allege that you and another candidate were denied the right to view the membership list. Specifically, you claim that the Election Committee Chairperson ("ECC") denied your and the other candidate's requests to view the membership list. You believed this issue affected the outcome of the election because members with inaccurate addresses on file would not receive campaign literature. Section 401(c) of the LMRDA provides that each candidate for office "has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization." The DOL investigation determined that during the first candidates' meeting on October 28, 2014, all candidates were told that they could inspect the membership list, and the

investigation did not substantiate that any candidate was denied the right to inspect the list. There was no violation.

Further, you claim that the successful candidate for First Vice President held a birthday party and referred to it as a "campaign party," and that union funds may have been used to pay for the party. Section 401(g) of the Act provides that union funds shall not be used to promote the candidacy of any person in an election. The Department's investigation revealed that no campaigning was conducted at the party and that the candidate and President paid \$300 out of their own funds to rent a hall for the party. The investigation did not support that union funds were spent on the party. There was no violation.

Next, you allege that the incumbent candidates asked voters outside of the polling place whom they had voted for and told members they should not vote for certain candidates. You claim these candidates were campaigning on union time. Section 401(g) of the Act provides that union funds shall not be used to promote the candidacy of any person in an election. The DOL investigation determined that several winning candidates were on annual leave on election day and that campaigning took place in allowable areas by candidates who were not on official union time. There was no violation.

In addition, you claim that the ECC informed attendees at a November 10, 2014 meeting that 74 returned absentee ballots had been received and claim that these ballots may have been voted by persons who were ineligible to vote. Section 401(c) of the LMRDA provides that "[a]dequate safeguards to insure a fair election shall be provided." The DOL investigation revealed that approximately 70 absentee ballot packages were prepared for mailing on November 10, 2014 but that no absentee ballots were received by the election committee prior to November 17, 2014. There was no violation.

Also, you allege that four candidates were in the voting area touching and counting ballots, that ballot boxes were not secured at the North Little Rock and Little Rock polling sites, and that ballots may have been tampered with in violation of Section 401(c) of the Act. Witnesses interviewed during the investigation stated that no candidates touched the ballots and that the ballot boxes were always secure and in the view of an election committee member. The Department's investigation did not substantiate your allegations. There was no violation.

Further, you claim that a candidate was told that a member saw the Secretary-Treasurer with his hand inside a ballot box in violation of Section 401(c) of the LMRDA. According to you and another candidate, when the other candidate asked the Secretary-Treasurer about the incident, he said he was putting a check for the election committee in the ballot box. According to the Secretary-Treasurer, the only thing he put in the ballot box was his own voted ballot. He stated that he put the

checks for the election committee in an envelope, which he placed in his inbox at the Little Rock union office. Moreover, the member who you alleged witnessed this incident denied that he saw the Secretary-Treasurer place his hand inside a ballot box, and denied telling anyone that he witnessed such activity. There was no violation.

Next, you allege that campaign flyers posted throughout the campaign period by two candidates were removed from bulletin boards within hours of posting. You stated that no one saw the campaign flyers being removed, that no one knows who removed them, and that their opponents' flyers were not removed. The investigation determined that flyers posted in unauthorized areas (such as the outside of the glass on bulletin boards) may have been removed by housekeeping. The investigation did not establish that other candidates removed the flyers. There is no evidence that candidates' flyers were improperly removed. There was no violation.

In addition, you claim that [REDACTED], after voting, followed candidate [REDACTED] around and that she continued the action until [REDACTED] threatened to call the police. Section 401(e) of the Act provides that every member in good standing has the right to vote for or support the candidate(s) of his choice, without being subject to penalty, discipline, or improper interference or reprisal. DOL's investigation did not find evidence that the candidate was followed by anyone. Even if your allegation were true, it would not support that the candidate was subjected to "penalty, discipline, or improper interference or reprisal" with respect to exercising rights within the meaning of Title IV of the LMRDA. The candidate did run for office and did vote. There was no violation.

Further, you allege that the union failed to provide proper notice of the election because flyers were not posted on the union information board to announce the election and that although the Vista email system was used to announce election winners and losers, it was not used to announce the election. Section 401(e) of the LMRDA provides that "[n]ot less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address." In addition, Appendix A, Section 3(a)(4) of the AFGE Constitution states that election notices must be mailed to each member at his or her last known home address not less than 15 days prior to the date of the election. *See also* 29 CFR 452.99. Section 401(e) of the Act and 29 CFR § 452.2 provide that elections shall be conducted in accordance with the constitution and bylaws of the labor organization. However, there is no specific requirement to post flyers on the union information board or to announce the election on an email system. Nevertheless, the Department's investigation determined that the nomination/election notice was posted inside the locked glass bulletin board; a newsletter mailed to all members in July announced the election; and members were informed of the election by the mailed election notice. There was no violation.

Also, you claim that the North Little Rock polling area location was changed at the last minute without proper notice. Section 401(e) of the Act provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of his choice. The DOL investigation determined that, on the Wednesday or Thursday prior to the Tuesday election, the union learned that the designated room that would serve as the polling site within the VA would be unavailable. As a result, the union purchased easels and posted signs in multiple locations around the VA on the Saturday and Sunday prior to the election to inform people of the room change. Election committee members confirmed that signs were posted in multiple locations to notify members of the change in room and several members interviewed stated they saw the signs. The OLMS investigation did not disclose that members were denied the right to vote; there was no violation.

Next, you allege that the President told a candidate that she could not vote for herself. The investigation revealed that in this election, the candidate was running for First Vice President Title 38. AFGE Local 2054 Bylaw Section 5(a) states that vice presidents must be employees of the group they represent. AFGE General Counsel stated that AFGE interprets Section 5(a) of the Bylaws to mean that Title 5 and Title 38 vice presidents, and candidates for those offices, must be employed in the Title 5 and Title 38 units, respectively. The investigation revealed that the candidate you reference was terminated from her Title 38 nurse position years ago, and that she was rehired into a Title 5 position and was not entitled to vote for the Title 38 position. Records review found the candidate voted a Title 5 ballot, but was not entitled to a Title 38 ballot because she held a Title 5 position. There was no violation.

In addition, you claim that you and candidate [REDACTED] asked the ECC for absentee ballots, but that the ECC ignored your request. Section 401(e) provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of his choice. The Department's investigation, including a review of election records, revealed that all members who requested absentee ballots were mailed one. None of the 130 absentee ballot requests were from you or the candidate you alleged requested an absentee ballot. You and the other candidate voted at the polls on November 24, 2014. There was no violation.

Further, you allege that the ECC stated at the November 10, 2014 election meeting that only Title 5 (non-professional members), not Title 38 (professional) members, would be allowed to vote for president. The DOL investigation determined that the ECC stated that during an election committee or candidates' meeting, she made an incorrect statement about which members could vote for president, but quickly retracted it to clarify that all members could vote for president. Review of the election records revealed that members who were classified as Title 38 were given a general ballot, which included the position of president. There was no violation.

Also, you claim that the ballots were printed on two sheets of paper, that some voters may not have received complete ballots, and that two members told you that they did not see your name on the ballot. Using two sheets of paper for the ballot, without more, does not violate the LMRDA. The Department's investigation concluded that ballots have been printed on two sheets of paper since 2001 – the first sheet identifies positions all voters vote for (*i.e.*, president, executive vice president, and secretary-treasurer). The second sheet lists candidates for first vice president. The Title 5 and Title 38 first vice president candidates are listed on separate sheets of paper because members can only vote for the first vice president for their particular title. The investigation also revealed that one of the members who you claimed said she did not see your name on the ballot is a Registered Nurse, and would have received a Title 38 ballot, not the Title 5 ballot which listed your name. Moreover, the election records review showed that both members who allegedly did not see your name on the ballot did in fact vote. Because members were not denied the right to vote, there was no violation.

Next, you state that absentee ballots did not contain secret ballot envelopes and voters' names were visible in the return envelopes in violation of Section 401(b) of the Act, which requires secret ballot elections. *See also* 29 CFR § 452.96. Based on the DOL investigation, one or two absentee ballots were not in a secret ballot envelope. However, an election committee member immediately removed the ballot(s) and comingled them with the others to preserve voter secrecy. No one could then connect voter with vote. Because voter secrecy was maintained, there was no violation.

In addition, you allege that a member reported being "hovered over" by the President while voting in violation of the secret ballot provision contained in Section 401(b) of the Act. *See also* 29 CFR § 452.96. The Department's investigation determined that the President denied "hovering," and no one interviewed substantiated the allegation that secrecy was not maintained. There was no violation.

Finally, you claim that three of your opponents campaigned outside the election polls and had their campaign literature visible in the voting area. You further claim that another candidate saw a stack of campaign literature on the voting table. Section 401(c) of the LMRDA provides that "[a]dequate safeguards to insure a fair election shall be provided." In addition, the AFGC Election Manual (Step 22) states that the election committee must not permit campaigning in or within 50 feet of the polling area. Based on DOL's investigation, there was no campaigning in or within 50 feet of the polling area. Campaign material was in the polling room and in voting booths, but the material appears to have been left by voters not placed there by candidates. No one reported seeing anyone passing out or placing literature within the restricted area. The investigation revealed that the candidate whom you allege saw campaign literature in the voting area denied making that statement. An observer saw campaign cards for a slate on the table that held the voting box, and threw them in

the trash. Because there is no evidence of improper campaigning by candidates, there was no violation.

For the reasons set forth above, the Department of Labor concludes that there was no violation that may have affected the outcome of the election. Accordingly, I have closed the file on these matters.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: J. David Cox, National President
American Federation of Government Employees
80 F Street, NW
Washington, DC 20001

Barbara Casanova, President
AFGE Local 2054
P.O. Box 782
Little Rock, AR 72114

Beverly Dankowitz, Acting Associate Solicitor
Civil Rights and Labor-Management Division