



May 9, 2016

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor (Department or DOL) on October 14, 2015. Your complaint alleges that violations of the election provisions 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 C.F.R. § 458.28 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the partial rerun election of officers conducted May 22, 2015, by American Federation of Government Employees (AFGE) Local 3369 (the Local or the union).

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 affecting the outcome of the election.

You alleged disparate treatment with respect to campaigning opportunities as well as posting and distributing campaign literature. Under the LMRDA Section 401(c), a union is obligated to provide adequate safeguards to insure a fair election, which has been interpreted to include equal treatment of candidates. The Department's investigation did not disclose that you were treated differently from other candidates in terms of opportunities to campaign or post or distribute campaign literature. Contrary to your assertions, the investigation determined that, while the Local's election committee allowed all candidates to send out campaign material, which you did, candidates were not permitted to campaign in Social Security Administration (SSA) workplaces. The AFGE National Constitution and the AFGE Election Manual prohibit the use of employer facilities for campaigning purposes. *See* AFGE National

Constitution, Appendix A, Part I, Section 4(b) and the AFGE Election Manual, Step 10. The investigation also revealed that SSA allowed campaigning only in non-work areas during non-work time; campaign materials were not allowed to be left in work areas. There was no violation.

Additionally, you claim that the election chairperson and incumbent candidates campaigned on union time while visiting SSA worksites to organize and recruit new members and used those visits as a pretext to engage in campaigning. LMRDA Section 401(g) prohibits the use of union resources to promote an individual's candidacy for union office. Although the Department's investigation showed that incumbent officers regularly visited various SSA worksites to hold organizing and recruiting events, the investigation revealed no evidence of campaigning at these events. Thus, no violation occurred.

Next, you allege that the Local failed to provide adequate safeguards for a fair election because it used a different mailing list for your campaign literature than was used for mailing the ballots. Specifically, you note that fourteen envelopes containing your campaign literature were returned due to bad addresses, however, there were no returned ballots due to bad addresses on the day of the ballot tally. The Department's investigation confirmed that two different address lists were used, because the Local continually updated its membership information, on which the lists were based, until the day of the election. There was no violation.

You also claim that the election committee tried to prevent you from making campaign telephone calls to union members, thereby denying you a reasonable opportunity to campaign. The Department's investigation revealed that, following numerous complaints from members who had received multiple calls in a day and/or calls late at night, the executive vice president emailed the membership that the local did not endorse or promote the phone calls. Although the executive vice president initially indicated that he would handle any complaints about these calls, shortly thereafter he directed members to forward such complaints to the election chairperson. About two weeks later, the election chair emailed you about the members' complaints that the committee members had received and requested that you cease and desist from making those calls. You stated that, by that time, you had already called 90% of the approximately 100 members on your list. Thus, you were prevented from calling only about 10 members. Because the smallest margin of victory in this election was 35 votes, the union's conduct, even if it constituted a violation of the Act, would not have affected the outcome of either race.

Next, you allege that Executive Vice President Alberto Garces used the SSA email system to send emails to the bargaining unit praising the incumbent candidates and attacking the challengers. Section 401(g) prohibits the use of an employer resource to promote a person's candidacy. The investigation revealed that Garces regularly emailed the membership about developments of interest to the membership. While the March 30, 2015 message was sent during the election campaign, it focused on the

officers' regular functions and activities pertaining to the membership. The tone and content of that message did not promote the incumbent officer's candidacies. The April 29, 2015 email, discussed above, that Garces sent concerning complaints about campaign phone calls did not in any way identify the source of the calls and therefore did not disparage your candidacy, nor did it promote anyone's candidacy in any way. The material you challenge was not campaign literature. Accordingly, no violation occurred when those messages were sent on the SSA email system.

Further, you claim that the union denied your request to distribute campaign material at your own expense. Section 401(c) imposes a duty on the union and its officers to comply with all reasonable requests to distribute campaign literature at the candidate's expense and to treat all candidates equally. The Department's investigation showed that you failed to provide the union a sufficient number of envelopes to send your literature to each of the union's approximately 1100 members. The union did send your literature to the first thousand members on its alphabetical membership list at the same time it sent the other candidates' initial campaign mailings, which was after the ballots were sent. When you provided 90 more envelopes several days later, the union arranged a second mailing and sent your literature to 90 more members. Although the second mailing was likely received more than a week after members received ballots, the union nonetheless complied with your requests to distribute campaign literature. There was no violation.

Next, you allege that the incumbents improperly used union funds in support of their candidacy by using the AFGE insignia in their campaign materials. The Department's investigation determined that AFGE's Election Manual states that AFGE does not prohibit candidates from using the AFGE shield or logo on clearly identified campaign material where it is obvious that the logo does not imply a union endorsement of the candidate." See AFGE's Election Manual, Attachment 12, Section 5. The investigation showed and you have acknowledged that the literature was clearly identified as campaign material, not an official AFGE publication. Although the incumbents' campaign literature from the first election contained a picture of one of the incumbents posing with the AFGE National President, this literature contained no photo, badge, or any other indication that would give the impression that AFGE was endorsing the incumbents. There was no violation.

Finally, you allege that the union failed to provide adequate safeguards for a fair election because it used a different eligible voter list for mailing ballots than was used at the tally and incorrectly failed to count ballots of members who voted but were not found on the newer list. Further, you claim that, because the challenger candidates were not aware of the new members until the tally, the incumbents received the unfair advantage of campaigning to new members. The Department's investigation revealed that no campaign literature was mailed to new members who joined after the April 27, 2015 mailing of the ballots. The investigation also confirmed that the membership list used for the tally of ballots contained more up-to-date information about members, including new members who joined and those who had paid arrearages in order to

restore their good standing up to and including election day, consistent with the AFGE Election Manual. However, the Department's review of the voted ballots showed there were fifteen unopened ballots and three voided ballots. Of the fifteen unopened ballots, ten names did not appear on the eligible voter list, but five names did appear on the eligible voter list; no reason was given as to why those five ballots were not counted. Also, of the three voided ballots, one voted for both president candidates and not for treasurer; it is unclear why the other two were voided. While the union's failure to count those five unopened ballots and two voided ballots violated the Act, due to vote margins, there was no effect on the outcome of the election.

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

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