



February 9, 2016

Dear [REDACTED]

This Statement of Reasons is in response to your complaint to the U.S. Department of Labor received on August 18, 2015 alleging that the American Federation of Government Employees (AFGE) District 9 violated 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, when it ordered a rerun of Local 2663's March 27, 2015 election.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred.

On May 19, 2015, in response to a protest from a local member, AFGE Ninth District National Vice President (NVP) Mike Kelly ordered a rerun of the March 27, 2015 election in which you ran unopposed for president of Local 2663. NVP Kelly provided two reasons for ordering the rerun: (1) notice of the nomination meeting was not given at least ten days in advance; and (2) the election committee incorrectly disqualified your opponent for lack of good standing. AFGE National President J. David Cox, Sr. considered your appeal and determined that it presented no grounds for reviewing and reversing NVP Kelly's decision. In your complaint to the Department, you allege that NVP Kelly did not have a valid basis for ordering the rerun.

The requirement set out in section 402(a) of the LMRDA, that members exhaust internal union remedies before filing a Title IV complaint with the Department, was included in the LMRDA to give unions a chance to correct election problems and deficiencies without government intervention, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Department defers to union decisions on internal union election protests providing for the conduct of a new election. The Department will not seek to reverse a union's remedial decision to hold a new

election unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable.

The investigation revealed no application of a rule violating the LMRDA, no evidence of bad faith, and no evidence that NVP Kelly's decision to rerun the election was contrary to the principles of union democracy. Section 3(a) of Appendix A of the AFGE Constitution requires that notice of a nomination meeting be given at least ten days prior to the meeting and that the notice contain certain information, such as the offices to be filled, the method for making nominations, and the manner whereby members who will be absent from the meeting may make and/or accept nominations. The investigation indicates that notice of the nomination meeting was posted ten days before the meeting on three union bulletin boards. The posted notice, however, was deficient in that it did not contain the information required by the AFGE Constitution. An email about the nomination meeting, which also did not contain all of the required information, was sent to members six days before the nomination meeting. As such, the investigation showed that no notice of nomination was given that both complied with the timeframe in the AFGE Constitution and contained the required information. Proper and timely notice of nominations is a tenet of union democracy. To decide to hold a rerun based on nominations notices that do not fully meet the union's constitutional requirements is not a decision based on the application of a rule that violates the LMRDA and is not contrary to the LMRDA's principles of union democracy. Moreover, the investigation did not reveal any evidence that the decision was made in bad faith. The union's decision to rerun the election does not provide a basis for legal action by the Department to overturn that decision.

The investigation further indicated that NVP Kelly's decision to rerun the election because of the improper disqualification of a presidential candidate for not being in good standing also did not violate the standard set forth above. The AFGE Constitution and Local 2663's Bylaws provide that a candidate must be a member in good standing. Step 9 of the AFGE Election Manual states that, to be in good standing, a member must be current in dues and that an election committee may disqualify from candidacy a delinquent direct pay member if the committee has given the member notice of her delinquency in sufficient time before the nomination and/or election for the member to become current in dues. NVP Kelly's interpretation of the union's rules is that they require that a candidate must be given a reasonable amount of time to satisfy a delinquency in dues. He determined that the presidential candidate in this instance was not given a reasonable amount of time to satisfy her delinquency after being notified that she owed dues for two pay periods in the previous year during which she had been on leave without pay. The candidate was not informed of her delinquency until after the nominations meeting

had taken place. Since the candidate paid back the dues within a couple of days of being notified, NVP Kelly decided that she should have been considered a member in good standing and thus should not have been disqualified.

Under the LMRDA, the interpretation consistently placed on a union's constitution by the responsible official or governing body will be accepted unless clearly unreasonable. 29 C.F.R. § 452.3. There was no evidence that AFGE has been inconsistent in its interpretation of AFGE's rules requiring that a candidate delinquent in dues be given notice and a reasonable amount of time to satisfy the delinquency. A rule requiring that candidates be given notice of their delinquency does not violate the LMRDA. Nor was there evidence that NVP Kelly acted in bad faith in ordering the rerun. Moreover, the decision was not unreasonable or contrary to the principles of union democracy. Based on the investigative findings and general deference to remedial actions taken by the union, the Department has determined that NVP Kelly's decision to rerun the election based on the improper disqualification of a presidential candidate did not constitute a violation of the LMRDA.

For the reasons set forth above, the Department has concluded that AFGE's decision to rerun the election was not based on the application of a rule that violates the LMRDA, made in bad faith, or otherwise contrary to the principles of union democracy embodied in the LMRDA. Accordingly, we have closed the file on this matter.

Sincerely,

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