



August 20, 2018

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on April 16, 2018, 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), 5 U.S.C. § 7120, and 29 C.F.R. § 458.29, occurred in connection with the election of union officers conducted by Local 3, American Federation of Government Employees (AFGE or National) on January 10, 2018.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the Act that may have affected the outcome of the election.

You alleged that union steward [REDACTED] distributed campaign flyers for incumbent presidential candidate [REDACTED] to members while she was distributing holiday gift cards purchased by the union for members. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), provides that a union must treat every bona fide candidate for office the same with regard to distribution of campaign literature. 29 C.F.R. § 452.67. Additionally, Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits the use of union or employer resources to promote the candidacy of any person.

The investigation disclosed that, in December 2017, [REDACTED] distributed gift cards on behalf of the union to members employed at the Green Bay Veterans Affairs facility. She simultaneously distributed as many as seven campaign flyers promoting the incumbent union president, [REDACTED]. No other candidates had the opportunity to distribute their flyers to members together with the union gift cards. Therefore, a violation of Section 401(c) of the LMRDA occurred.

The investigation further disclosed that the gift cards were purchased with union funds, and were distributed in conjunction with [REDACTED] election campaign activities, which may have created the appearance that the incumbent president was using the gift cards to influence members' votes. In addition, the investigation found that Powell engaged in the campaign activity during work time which is considered use of employer resources. Accordingly, a violation of Section 401(g) occurred.

Section 402(c) of the LMRDA provides, however, that an election will be overturned only when a violation may have affected the outcome of the election. Here, the investigation revealed that the violations could not have affected the outcome of the election. The investigation established

that [REDACTED] distributed, at most, seven gift cards with campaign flyers to members at Green Bay. Even if votes of these seven members had been affected by the unlawful distribution of campaign literature described above, those seven votes do not exceed the 72-vote margin by which [REDACTED] won the race for president. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You also alleged that distribution of G [REDACTED] campaign flyers by hand contravened an election committee rule limiting the distribution of campaign literature to mailings coordinated through the Local 3 election committee. As discussed above, Section 401(c) of the LMRDA provides that the union must treat every bona fide candidate for office similarly with regard to distribution of campaign literature. Further, Section 4 of the AFGE National Constitution requires the local's election committee to comply with all candidates' reasonable requests to distribute campaign literature.

The investigation disclosed that the election committee provided written campaign guidelines at the November 16, 2017 candidate meeting that you attended. The guidelines included direction on how requests from candidates to distribute their campaign literature through the union at the candidate's expense would be handled by the election committee. The guidelines did not, however, state that mailings coordinated through the election committee were the only permissible method to distribute campaign literature. The election guidelines nor the constitution and bylaws prohibit candidates from distributing flyers on personal time. The LMRDA does not contain such a restriction. The investigation revealed that all candidates were free to print and distribute campaign flyers at their own expense. There was no violation of the LMRDA.

The remaining allegations stemming from your pre-election protest were not considered in scope because you did not properly exhaust your available remedies under the constitution and bylaws with respect to those allegations. The allegations from your post-election complaint were untimely filed with the Department.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director within 15 days of service of this notice of dismissal. A copy of your request must be served on the District Director and the union and a statement of facts must be filed with the Director. The request for review must contain a complete statement of facts and the reasons upon which your request is based. *See* 29 C.F.R. § 458.59.

Sincerely,

A large black rectangular redaction box covering the signature area.

Sharon Hanley  
Chief, Division of Enforcement

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