



March 29, 2018

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your January 20, 2017 complaint to the Department of Labor. The complaint alleged that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, was violated in connection with the regularly scheduled election of officers that was completed on October 11, 2016 by Local 1915 (local or Local 1915), American Federation of Government Employees (AFGE or National).

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

Adequate safeguards

You made a variety of allegations that challenged the fairness of the election, without relating to a specific statutory provision or section of the union's constitution or bylaws. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to insure a fair election shall be provided. Pursuant to this provision, a union's wide range of discretion in the conduct of its elections is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

You alleged that the election committee members were pre-selected by incumbents and displayed bias in the incumbents' favor by mailing their campaign materials, writing to and orally soliciting members to vote for incumbents, speaking to incumbents, and distributing their campaign materials during the election day.

The investigation disclosed that, at the September 13, 2016 nominations meeting, the local solicited volunteers for five election committee positions. Five members volunteered, either on their own initiative or after being nominated by members in attendance. The investigation further determined that you actively solicited two of

those members to serve on that committee, and both were permitted to do so. There was no pre-selection of election committee members as all volunteered to serve at the nomination meeting. There was no violation.

With respect to bias on the part of [REDACTED] the Election Committee Chair (ECC), you alleged that you saw [REDACTED] at the union office affixing mailing labels to envelopes for the incumbent slate's campaign literature. The investigation disclosed that the election committee only mailed election notices to members; the election committee had no involvement in mailing any candidate campaign literature. There was no violation.

You also alleged that ECC [REDACTED] mailed members a letter that solicited votes for the incumbent candidates. During the investigation, you conceded that you had no information supporting this claim and referred the Department to an alleged witness to this violation. The Department interviewed the witness, who stated that he knew nothing about any such letter. Further, the ECC denied this allegation. There was no violation.

You further alleged that election committee member [REDACTED] campaigned on behalf of incumbent treasurer [REDACTED] while at the Veterans Administration Medical Center (VAMC) in Columbia, South Carolina, on October 11, 2016, when your witness saw [REDACTED] walking together towards the canteen. When interviewed by the Department, the witness stated only that he had seen [REDACTED] walking together, but did not hear their conversation or witness them campaigning. Both [REDACTED] denied any campaigning took place during that walk. There was no violation.

Next, you alleged that the election committee used the copier at the union office to print ballots, but left those ballots unattended while union officers were in the union office, and that [REDACTED] removed approximately one dozen of those ballots and placed them in her desk drawer. The investigation disclosed that the ECC and another election committee member printed the ballots in the union office over the course of two days. On the second day, the copier jammed. The ECC had to leave the office for an hour. In the meantime, [REDACTED] and another incumbent officer were in the union office. [REDACTED] fixed the jammed copier which expelled the remainder of the ballot copies. ECC [REDACTED] collected 20 ballots from the copier shortly thereafter. Your witness denied seeing [REDACTED] remove ballots from the copier, and [REDACTED] denied doing so. [REDACTED] also denied placing any of those ballots in her desk drawer. There was no evidence that [REDACTED] handled or retained any of the printed ballots. A review of the ballots revealed no evidence of ballot fraud such as identical markings, use of the same writing instrument, indentations on ballots, indicating more than one ballot had been voted at a time, etc. A review of the election records showed the number of ballots printed (591) substantially reconciled with the combined total of voted and unused ballots (592), further confirming an absence of fraud. There was no violation.

You also alleged that the ECC demanded to know for whom a member had voted after the member deposited a piece of paper that was not a ballot into the ballot box. The investigation disclosed that a member bypassed the election committee members at the voter registration table at the Columbia polling site, and walked directly to the ballot box where he deposited a white piece of paper. The ECC inquired about the nature of the paper he deposited. After learning that he had not deposited a ballot issued by the election committee, the ECC directed him to the election committee so that he could vote an official ballot. He complied. The ECC later retrieved the white paper. The white paper, however, was not retained with the local's election records, a violation of the records retention requirement under section 401(e) of the LMRDA. That violation, however, did not affect the outcome of the election because the white paper was not included in the tally. There was no violation that may have affected the outcome of the election.

You further alleged the ECC designed the ballot so that incumbent candidates' names were listed before the challengers' names. The LMRDA does not prescribe the form of the ballot, leaving that decision to the union as long as the decision is reasonable and conforms to the union's constitution and bylaws. 29 C.F.R. § 452.112. The local's bylaws are silent regarding the manner in which candidates are to be listed on the ballot. However, the AFGE Election Manual, Step 14, does provide that the election committee may determine whether candidate names appear on the ballot in the order nominated or may allow candidates to draw lots. ECC [REDACTED] chose to randomly list candidates' names. The ECC's method of listing candidates' names did not violate the constitution and bylaws which prescribed no specific ballot format, nor is it inconsistent with the guidance at AFGE Election Manual, Step 14, which is not stated in mandatory terms, allowing the election committee to prescribe the form of the ballot. There was no violation.

You next alleged that the ECC did not properly direct election committee members regarding the procedure for counting the ballots. You asserted that the proper instruction would require each election committee member to review each ballot to ensure that the election committee member properly recorded the votes. The investigation disclosed that four election committee members participated in the tally of ballots. The four members were divided into two teams, with one team counting the ballots cast for officers and the other team counting ballots cast for delegates. There is no prescribed method for tallying votes under either the LMRDA or the National Constitution. The Department's recount of the votes cast for officers found some minor discrepancies, none of which affected the outcome of the election for any office. The election committee's method for counting the ballots did not violate the LMRDA.

You also alleged that the ECC compromised the integrity of the ballots by separating the delegate ballots from the officer ballots. The investigation disclosed that the ballots were two pages stapled together: one page listed candidates for the officer positions and the other page listed delegate candidates. After the close of polling, the election committee separated the officer page of each ballot from the delegate page so there were two

groups of ballots. This allowed one counting team to tally the votes on the officer ballots while the other team tallied the votes on the delegate ballots. There was no evidence that the integrity of the ballots was compromised. There was no violation.

You next alleged that incumbent treasurer ██████ remained in the polling area of the Columbia VAMC voting site for much of the election, which may have intimidated members to vote in her favor. The investigation disclosed that ██████ entered the polling area only once, when she voted. She returned, standing at a distance from the polling area, to take the election committee's lunch order, and later to deliver their meals. There was no rule prohibiting her from performing this activity. There was no violation.

You made two allegations concerning the notice provided to members about requesting absentee ballots. You alleged the election notice did not contain clear instructions to members on how to obtain an absentee ballot and that the notice listed an incorrect zip code. The election notice contained information about how to request an absentee ballot. It provided that any member unable to vote at the polls could request an absentee ballot from the union at a phone number listed on the notice. The notice further instructed that any absentee ballot should be returned by mail in a sealed envelope, to the election committee chair at a designated post office box. Examination of the election notice confirmed that the zip code listed for the post office box was correct. The instructions were accurate and reasonably clear. There was no violation.

You further alleged that incumbents' campaign flyers were posted on cabinets above the ballot box in the breakroom of the Greenville clinic, which was used as a polling site on October 5, 2016. At the Greenville polling site, campaign flyers from both the incumbent and challenger slates were posted on cabinets of the breakroom, alongside various notices unrelated to the election. The morning of the voting, ██████, a candidate on the challenger team, removed all of her slate's campaign materials from the cabinets, but not that of the incumbent slate. She did not notify the election committee or the incumbent slate of her opponents' postings. That the incumbent slate's campaign postings remained in the Greenville polling area throughout the day of the election was a failure on the local's part to provide adequate safeguards to ensure a fair election. However, the failure to take down the campaign flyers prior to voting could not have affected the outcome of the election. Most significantly, the postings were not within sight of voters as they entered the breakroom, received their ballot, and marked their ballot. The notices were more visible after the voter walked to the ballot box with his/her voted ballot to deposit it in the ballot box, which was on a counter below the cabinets. The campaign flyers, which contained text in a small font, would only be readable at that point. Also, because the campaign material had been properly posted at this site prior to the election, and was posted along with other notices, the possibility that its presence at the time of the voting would affect a voter was further diminished. There was no violation that may have affected the outcome of the election.

You alleged that incumbents campaigned to members as they stood in line to vote at the Columbia facility. The investigation disclosed that although members saw two incumbents, ██████████ and president Mitchell, in the hallways and on the way to the restrooms, no one saw or heard them speak or distribute any materials to members who were standing in line to vote. There was no violation.

Observers

You alleged that the ECC prohibited you from serving as your own observer. Section 401(c) of the LMRDA affords candidates the right to have an observer at the polls and the counting of the ballots and does not prohibit candidates from acting as their own observers. 29 C.F.R. § 452.107(a). The investigation disclosed that ECC ██████████ was unaware that candidates could serve as their own observers. As such, the ECC denied you the opportunity to serve as your own observer. The investigation found that the ECC also denied ██████████ request to serve as her own observer. These violations, however, could not have affected the outcome of the election as there were other observers present, including your own observer, throughout the ballot tally. There was no violation that may have affected the outcome of the election.

You alleged that the ECC prohibited your observer from viewing all ballots, including delegate ballots, as the votes were being recorded by the election committee. Your observer stated no one denied her the right to observe the ballot count and that from her seat, she could observe all ballots cast for delegates and would have been able to see ballots cast for officers had she chosen to leave her seat. The ECC did not restrict your observer from viewing the ballots. There was no violation.

Union funds

You alleged that incumbents offered \$100 in union funds to any employee who agreed to join the union. Section 401(g) of the LMRDA provides that “[n]o moneys received by any labor organization by way of dues, assessments or similar levy . . . shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title.” The local has a program to incentivize employees to join the union by offering them \$100 to join on the spot. The incumbents denied offering the \$100 bonus in exchange for a new member’s vote. The investigation disclosed that both slates created a voter guide containing the names of their slate members and distributed those voter guides in all breakrooms at the Columbia VAMC. On October 11, 2016, local treasurer ██████████ wrote two \$100 bonus checks and gave each new member one of the checks. According to ██████████ and other member witnesses, ██████████ neither said anything to those new members nor provided them with any campaign material. ██████████ a new member solicited by a supporter of your slate, claimed that ██████████ handed her a voter guide along with her bonus check. While the evidence is conflicting, if the \$100 bonus check was offered simultaneously with the voter guide that would constitute a violation of section 401(g), which prohibits the use of union funds to promote any candidate in a union officer election. However, even if this violation

occurred, it would not affect the outcome of the election because it could only have affected one vote, and the smallest margin of victory was 11votes.

You also alleged that [REDACTED] used the union computer, copier, and paper, as well as the time of the office manager to create, photocopy, and distribute her slate's campaign materials. [REDACTED] denied the allegation and provided personal receipts showing the purchase of campaign materials. In addition, the office manager denied assisting any candidates in the distribution of their campaign literature. You provided no proof to contradict this evidence, nor did the investigation show any evidence of improper use of union resources. There was no violation.

Employer funds/resources

Section 401(g) of the LMRDA provides that "no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title." You alleged that the incumbents improperly placed a large stand-alone campaign poster in a hallway at the VA Columbia Hospital, an area not designated as a breakroom and therefore not in compliance with the employer's campaigning policy. The human resources manager representing the employer stated that the stand-alone poster did not violate the employer's campaign rules which prohibit campaign postings on hospital walls and doors. There was no violation.

Ballot secrecy

You alleged that the local failed to hold a secret ballot election because it did not provide a private room for voting. Section 401(b) of the LMRDA requires local labor organizations to hold their regular elections of officers by secret ballot. Section 3(k) defines "secret ballot" as the expression by ballot of a choice cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. Secrecy may be assured by use of voting machines or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is marking his ballot. 29 C.F.R. § 452.97.

Section 401(b) does not require unions to provide a private room for voting. However, that provision has been interpreted to require unions to provide some physical arrangement to assure the secrecy of the ballot. The investigation disclosed that none of the polling sites contained booths or partitions. However, members voted their ballots at separate tables and on counters not in view of other members, which constituted physical arrangements that permitted voter privacy. In particular, the investigation determined that the election committee controlled the flow of voters entering the polling site to ensure that members voted one at a time, providing voters with sufficient privacy to cast a secret ballot. There was no violation.

Voting

You also alleged that some members who requested an absentee ballot did not receive one. The Department's review of the election records disclosed that six members requested an absentee ballot and five were mailed an absentee ballot and their ballots were included in the tally. The investigation, however, found that one of those six members was not mailed an absentee ballot because an election committee member failed to pass along the request to the ECC. As a result, that member did not vote in the election. The local denied a member in good standing the right to vote in the election when it did not provide that member with an absentee ballot, in violation of section 401(e), which provides that every member in good standing be afforded an opportunity to vote. However, this violation did not affect the outcome of the election because all contested offices were won by margins greater than one vote. There was no violation that may have affected the outcome of the election.

You alleged that members were denied the right to vote when the Sumter polling site closed before 9:00 a.m., affording insufficient time for members to cast a ballot, and in violation of the AFGE Election Manual. In support of your allegation, you stated that two members were not permitted to vote because polls closed before 9:00 a.m., the stated hour of closing. Section 401(e) of the LMRDA requires unions to provide a reasonable opportunity to vote, which encompasses accommodating members' work schedules. 29 C.F.R. § 452.94. The investigation disclosed that polling hours for the Sumter facility were from 8:00 a.m. to 9:00 a.m. The ECC visited each of the seven members at this location, informing them that the polls were open for voting. At approximately 8:45 a.m., per the directive of management, the ECC moved the polling site to another room, advising each of the members who had not yet voted of the new location. The polls remained open until 9:00 a.m. Moreover, the persons you identified as having not voted, had in fact voted. One member arrived before 8:00 a.m. and voted once the polls opened, and the other voted on a different day at another location. There was no violation.

You alleged that the election committee failed to verify the eligibility of 18 new members before allowing them to vote. The National's longstanding policy, embodied in its Election Manual, is that new members who sign a dues deduction authorization form 1187 and submit that form to a responsible local officer are eligible to vote immediately. The investigation disclosed that the voter eligibility list did not contain the names of new members. As a result, the election committee sent all new members not on the list to the union office to obtain verification of their eligibility status. This verification was obtained and presented to the election committee before those members were given a ballot. The Department's review of the election records showed that 22 new members joined the union between October 4, 2016 and October 11, 2016; fourteen of those new members voted. All new members who voted were eligible to do so. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA that may have affected the outcome of the election occurred. 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 solid black rectangular redaction box covering the signature area.

~~Sharon Hanley~~
Chief, Division of Enforcement

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