



November 1, 2018

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on July 11, 2017, alleging that violations of the election provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481, as made applicable to the elections of federal sector unions by 29 C.F.R. §458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. §120, occurred in connection with the officer election held on March 9, 2017, and the runoff election held on April 14, 2017, by Local 2798, American Federation of Government Employees (AFGE) after a trusteeship was lifted.

The Department of Labor (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 LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the membership address list contained inaccurate addresses and that some members did not receive ballots for the election. Section 401(e) of the LMRDA provides that members in good standing shall have the right to vote. This provision implies that every eligible member must be afforded a reasonable opportunity to vote. 29 C.F.R. § 452.94. To this end, a union must have a procedure in place for obtaining current mailing addresses for its members on a periodic basis and make reasonable efforts to keep the address information on its membership mailing list current prior to the election.

The investigation established that Trustee [REDACTED] undertook various measures to improve the union's membership list. Specifically, at each monthly membership meeting, she asked the Local 2798 officers to remind members to update their address information with the union; she directed the local union officials to send emails to members requesting address updates and to follow up with individual members with

bad addresses to obtain better addresses; and she informed members about the procedure for requesting a duplicate ballot.

The Department's investigation established that [REDACTED] President of TrueBallot, Inc. (TrueBallot), administered both the March 9, 2017 initial and the April 14, 2017 runoff elections for Local 2798. [REDACTED] contracted with [REDACTED] to print the ballots and AccuMail to prepare a ballot package which included a ballot, a secret ballot envelope, a return ballot envelope and an outer envelope. AccuMail mailed the ballot packages to members on February 9, 2017.

The Department's investigation revealed that there were 700 ballots mailed in the initial election and 57 of those ballot packages were returned undeliverable. Of the 57 returned as undeliverable, seven were returned with a U.S. Postal Service sticker on the envelope that included a forwarding address. For the runoff election, there were 706 ballot packages mailed and 40 of those ballot packages were returned undeliverable. Of the 40 returned as undeliverable, six were returned with a sticker on the envelope that included a forwarding address. [REDACTED] acknowledged that if a ballot package was returned undeliverable and included a forwarding address from the post office, he did not take any action to mail a duplicate ballot, and did not notify the union of the updated address information. Thus, Local 2798 did not send duplicate ballots to these members and none of them voted in the initial or runoff elections. Inasmuch as Local 2798 failed to send ballots to the members whose ballot packages were returned undeliverable with a sticker on the envelopes that included forwarding addresses, the union violated the LMRDA. However, there was no effect on the outcome of either election because the smallest margin of victory for both elections was 26 votes for the same office, chief steward.

You also alleged that the incumbents gave the members incorrect information on how to make duplicate ballot requests and that the election committee did not respond immediately to duplicate ballot requests they received from members. The investigation revealed that the procedure for requesting a duplicate ballot was included in the nomination/election notice mailed to members on January 18, 2017. The procedure required the members to request duplicate ballots by emailing the election committee at [afge-dist14@afge.org](mailto:afge-dist14@afge.org) so that a duplicate ballot could be mailed to them. The procedure was also posted on bulletin boards at worksites. According to Trustee [REDACTED], if a member called her for a duplicate ballot, she told them to e-mail the election committee at [afge-dist14@afge.org](mailto:afge-dist14@afge.org). Once a request was received, she or the Election Committee Chairperson, [REDACTED], requested that a duplicate ballot be sent to the member by TrueBallot.

As administrator of both the initial and runoff elections, TrueBallot used a system called "duplicate ballot requester" to respond to requests for duplicate ballots. Seibel used the

members' addresses to create a database in the duplicate ballot requester system. He stated that if a ballot were returned to TrueBallot as undeliverable, he would scan the ballot into his system using the barcode on the ballot. [REDACTED] stated that he gave Trustee [REDACTED] access to the "duplicate ballot requester" so that she could be aware of those members who had been mailed a duplicate ballot, and request duplicate ballots on behalf of members. According to [REDACTED] testimony, [REDACTED] was able to sign into the requester, view members' mailing addresses, update members' addresses, and request that duplicate ballots be sent to members. Once Trustee [REDACTED] or Election Chair [REDACTED] requested a duplicate ballot through the requester, [REDACTED] printed a ballot and mailed a ballot package directly to the member at the address provided by [REDACTED] or [REDACTED]. If a member's name was not on the duplicate ballot request list, the member did not receive a duplicate ballot.

The Department's review of the election records revealed that there were 14 requests for duplicate ballots (12 email and two telephone requests) for the initial March 9, 2017 election. The database revealed that most duplicate ballots were mailed within one day of when the request was made. Even though 14 requests were received, only 13 duplicate ballots were mailed for the initial election. The records review revealed that [REDACTED] who was among the 14 requesters, was not mailed a ballot for the March 9, 2017 election. [REDACTED], however, received a ballot for the runoff election and voted in the April 14, 2017 runoff.

Also, there were 24 duplicate ballot requesters for the April 14, 2017 runoff election. Of this number, 20 duplicate ballots were mailed to the requesters. However, there was no record of duplicate ballots being mailed to four members who requested one, and none of these four members voted. The union's failure to mail a duplicate ballot to [REDACTED] in the initial election and to the four members who requested one in the runoff election violated the LMRDA, but the failure had no effect on the election outcome because, as discussed above, the smallest margin of victory for both elections was 26 votes in the race for chief steward.

You alleged that election committee members may have accessed voted ballots prior to the day of the tally because there were too few ballots returned. You specifically alleged that District 14 employee [REDACTED] and Trustee [REDACTED] may have tampered with the voted ballots because [REDACTED] put the ballots in a closet and [REDACTED] went into the closet with [REDACTED] for about five minutes prior to the actual tally. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided to all members. The investigation established that Trustee [REDACTED] rented the post office box for voted ballots and received two keys. On March 9, 2017, the day of the tally, she gave one key to [REDACTED] from True Ballot. The investigation did not reveal any evidence that [REDACTED] checked the Post Office box prior to the tally. On the day of the tally, [REDACTED], [REDACTED], and two members from District 14, [REDACTED], retrieved

the ballots and walked them back to the AFGE National Office. Once the ballots were brought to the national office on the day of the tally, they were put in a closet in the conference room because the tally did not start immediately. ■■■ denies that she went into the closet where the ballots were stored with any district office employee and the investigation did not reveal any evidence to corroborate your allegation. The records review revealed that 700 ballots were mailed in the initial election and 143 (20%) ballots were received and counted. Also, there were 706 ballots mailed in the runoff election and 162 ballots (22%) were received and counted. There was no violation.

You alleged that incumbent candidates were allowed to campaign on employer property, but the challengers were not. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided. 29 CFR § 452.79. On February 13, 2017, you and ■■■ used the medical center's online calendar to reserve the atrium to campaign on February 16, 2017 from 11 am to 4 pm. VA Medical Director of Protocol ■■■ stated that he did not approve your request because he did not receive approval from the Office of District Counsel. When he received approval from the District Counsel that campaigning was permissible as long as it did not interfere with patient care or hospital operations, he created a rotational schedule that gave all candidates time to campaign in the atrium. Consequently, on February 21, 2017, he advised all candidates by email that campaigning would be permitted according to a rotational schedule. On the morning that you were to distribute your campaign materials, you stated that you received the email from ■■■ but interpreted it to mean that campaigning was not allowed. That was a misinterpretation of the e-mail. In fact, the incumbents received the same email and campaigned about a week and a half later on at least three different days in the lobby and the basement; additionally, ■■■ set up a table on at least one occasion. As a result, you, other challengers and the incumbents were provided with opportunities to campaign. There was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of 29 C.F.R. § 458.29 that had an effect on the outcome of the election, and I have closed the file regarding 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,



Sharon Hanley  
Chief, Division of Enforcement

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