



May 22, 2020



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on February 26, 2020. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), occurred in connection with the election of officers of the American Federation of State, County, and Municipal Employees (AFSCME), Council 93, which was first run on November 9, 2019, and rerun on January 19, 2020.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that, with respect to each of your allegations, no violation occurred which may have affected the outcome of the election.

You allege that the allotment of district representatives on the Executive Board of Council 93 is grossly disproportionate to the number of dues paying members in each district, in violation of the AFSCME Constitution. This allegation was not remedied by the rerun election on January 19, 2020, as the number of district representatives on Council 93 remained unchanged. Item 4 of the Bill of Rights of the AFSCME Constitution is a broad guarantee that “[m]embers shall have the right to fair and democratic elections at all levels of the union.” Item 7 of the Bill of Rights states, in part, that “all members shall have an equal right to vote and each vote cast shall be of equal weight.” You allege that the allotment of representatives is unfair and undemocratic as it dilutes the power of some districts on the Council and enhances the power of others. Under section 401(e), the Union must conduct the election in accordance with its constitution and bylaws so long as they are not inconsistent with the requirements of the LMRDA. 29 U.S.C. § 481(e). The Department’s regulation at 29 C.F.R. § 452.172, though not speaking precisely to the issue raised here, is instructive. This regulation states that,

“[t]here is no indication that Congress intended, in enacting title IV of the Act, to require representation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt. However, all members must be represented; the union may not deny representation to locals below a certain size.”

This regulation reflects the significant deference that the Department in a Title IV investigation gives to the Union's interpretation of its own constitution, bylaws, and chosen organizational structure so long as all officers are elected fairly and democratically and all members are accorded some meaningful representation. Investigators for the Department found that all local unions were allocated a specific number of representatives on Council 93 under Article VI, Section 4-6 of the AFSCME Council 93 Constitution. Council 93 followed this allocation in the subject election. Investigators also found that AFSCME interprets Item 7 of the Bill of Rights as applying to the right of members to have a vote of equal weight on union business such as the acceptance or rejection of collective bargaining agreements, not union officer elections. Because the Council 93 representatives allocated by the Constitution were elected fairly and democratically there was no violation.

You allege that Council 93 improperly denied you the right to have an observer present during the second counting of the ballots. You state that at the conclusion of the first tally it was determined that you had won one of four district representative seats allocated to your local union district on the executive board of Council 93. You argue that after that tally the observers left the room, engaged in a discussion, and afterwards conducted a recount, during which it was determined that you had not won one of the four district representative seats on the executive board. Section 401(c) of the LMRDA guarantees candidates the right to have an observer present during all critical stages of the election. 29 U.S.C. § 481(c). Investigators interviewed your observer [REDACTED], who stated that after the first tally she left the room and that shortly after she left the fire alarm went off so she went outside. She stated that when she returned to the room (about 20 minutes after the fire alarm) the election committee informed her that they had found additional ballots and would need to do a recount. They then did two recounts; the result of both was that you lost. Investigators also spoke with several members of the election committee. They reported that [REDACTED] was told prior to leaving the room that the results were not official and there would need to be a recount. The election committee had concerns about the accuracy of the first tally. After [REDACTED] and some other observers left, the election committee called observers to let them know they should come back to the room for the recount. Council 93 Executive Director [REDACTED] provided investigators with a text message informing [REDACTED] that they would be conducting a recount. No one else reported a fire alarm going off during any stage of the tally. By any account, observers were either brought back to the room for the recounts of the ballots or at least informed by the election committee that they should come back for the recount. For these reasons, there was no violation that would have affected the outcome of the election.

You also allege that after the election the Union failed to publish the full election results and failed to properly maintain the ballots as they were originally cast and counted. You believe the ballots were tampered with during the tally. Section 401(c) of the LMRDA requires the union to provide adequate safeguards to insure a fair election, while Section 401(e) requires the Union to publish the results of the election and "preserve for one year the ballots and all other records pertaining to the election." 29 U.S.C. §§ 481(c), 481(e). Investigators inspected all ballots for indications of ballot fraud or tampering and conducted a full recount of the ballots. Investigators found no indications that the ballots had been tampered with or fraudulently marked. The

recount revealed that there were six ballots that had been voided by the election committee due to a crossed out “x” next to a candidate’s name. Those ballots should have been counted because the intent of the voter was clear; however, because the smallest margin of victory was 74 votes, this violation, which impacted only six ballots, could not have affected the outcome of the election. The investigation found that the election committee announced the new officers on November 10, 2019, but did not publish the full results of the election as they acknowledge they should have. With regard to the announcement of the election results, there was no violation which would have affected the outcome of the election. Further, the investigation found that election records were properly maintained – there was no violation.

Finally, you allege that Council 93 employees improperly used union funds and engaged in improper conduct with voters. Specifically, you believe that Council employees advocated against your candidacy and for the candidacy of others. You further allege that Council 93 President Owen asked some delegates at the convention who they were voting for. You also believe that a Council 93 staff member, [REDACTED], was given a job after the election in exchange for declining to support your candidacy. Section 401(g) of the LMRDA prohibits any money received by a labor organization from being used to promote the candidacy of any person in an election covered by Title IV. 29 U.S.C. § 481(g). Section 401(c) of the LMRDA requires the union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Investigators spoke with several Council 93 officers and election committee members and found no evidence that any Council 93 employee or officer intimidated delegates or improperly used union resources in the subject election. Witnesses only observed candidates asking for votes at the convention. No delegate who felt intimidated by a Council 93 officer or employee was identified. Investigators also spoke with [REDACTED] who stated that her refusal to support your candidacy was based on her own personal opinion and that she was never promised anything from Council 93 based on how she voted. There was no violation.

Your additional allegations were determined to be either not within the scope of the investigation or not covered by the LMRDA.

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, and I have closed the file in this matter.

Sincerely,

[REDACTED]
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