



February 4, 2021

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on January 6, 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 president of the Orange County Classroom Teachers Association (OCCTA or CTA), which was completed on April 3, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations occurred which may have affected the outcome of the election for president.

Initially, the Department's investigation disclosed that OCCTA is composed exclusively of public sector employees and, thus, the local itself is not subject to the LMRDA. *See* 29 C.F.R. § 451.3(a)(4). However, the president of OCCTA, by virtue of being elected to that office, is also automatically elected to the Governance Board of the Florida Education Association (FEA), which is a labor organization covered under the LMRDA. As a member of that governing body, the OCCTA president is vested with broad governing or policymaking authority or responsibility. Thus, the OCCTA president is an "officer" of FEA, for purposes of the Act, as that term is defined in § 3(n) of the Act, 29 U.S.C. § 402(n). *See* 29 C.F.R. §§ 452.20, 452.21. Title IV of the LMRDA governs the elections of union "officers." 29 U.S.C. §§ 481-483. Therefore, the election of the OCCTA president is subject to the LMRDA.

You alleged that the OCCTA election cycle was later than usual, which gave the incumbent president, Wendy Doromal, additional time to campaign at schools prior to the start of the election period. Relatedly, you alleged that the late scheduling of the election cycle made the timing of spring break advantageous to Doromal and her team because most members would likely receive and cast their ballots during spring break, and the incumbent team had the longest period to campaign prior to the break.

Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office. 29 U.S.C. § 481(c).

Pursuant to Art. III, Section I of the CTA bylaws, OCCTA's officer elections were required to conclude by May of the election year. During the Department's investigation, OCCTA Election Chair [REDACTED] confirmed that the election cycle was not later than elections held in previous years. The investigation also established that spring break is determined a year in advance by the Orange County Public Schools and that all schools close during spring break; thus, no candidate, including Doromal, could campaign at schools during that time. The OCCTA also had not established a specific period for campaigning; candidates could begin campaigning at any point. Furthermore, you acknowledged that you had not witnessed Doromal engaging in any campaigning at schools prior to the election period and you did not know of anyone who saw Doromal campaigning at any school. There was no violation.

You alleged that, at an Area Representative meeting, a candidate asked a question about campaigning on OCCTA property and that Election Committee Chair [REDACTED] improperly referred the question to Doromal. You claim that this allowed Doromal, but not other candidates, to influence election committee decisions in ways that benefited her candidacy, also in violation of section 401(c). The Department's investigation established that, while Doromal may have contributed a response to the question, the election committee reviewed the campaign guidelines and was responsible for issuing the final response to the question, concluding that no campaigning on OCCTA property would be permitted. There was no violation.

You alleged that the OCCTA election committee applied different standards for candidate eligibility to candidates nominated for the same office. Specifically, you claim that the election committee disqualified [REDACTED] from running for president on the basis that, if elected, she would exceed the term limit established in the bylaws, but permitted Doromal to run despite the fact that her retirement would have taken effect prior to the expiration of her term. Section 401(e) of the LMRDA provides that every member of a union is eligible to run for union office, subject to "reasonable qualifications uniformly imposed." 29 U.S.C. § 481(e). Article IV, Section 4(a) of the CTA Bylaws was adopted in 2016 and prohibits an officer from serving more than six years in any one office. This provision also changed the term of office from two to three years. When nominated for president, [REDACTED] had already served as president a full two-year term and 13 months of a second term. The election committee determined that, if elected to serve a new three-year term as president, [REDACTED] would exceed the six-year term limit on serving in any one office, and was thus ineligible to run for president. This decision was upheld by the parent labor organization, the American Federation of Teachers (AFT). Such limits on the number of years an officer can serve are permissible under the LMRDA. *See* 29 C.F.R. § 452.49.

With respect to Doromal, the election committee determined that she was eligible to run and hold office because she was an active member at the time of nomination and

election, as required by Article III, Section III of the CTA Bylaws, and had been a member for two years, as required by Article IV, Section III of the Bylaws. Although Doromal retired after she was re-elected president but before her installation into office, the local bylaws do not explicitly prohibit retired members from *servi*ng as officers. This interpretation was upheld by both the FEA and the AFT. 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. Because there was no evidence that the union had been inconsistent in its interpretation of these rules, and because these decisions were upheld on appeal, the Department has determined that the election committee's determinations that [REDACTED] was ineligible and that Doromal was eligible to run for president did not violate the LMRDA.

You alleged that the election committee did not comply with your reasonable request to include a candidate statement with the mailing of the ballots. In addition to prohibiting disparate treatment of candidates, section 401(c) of the LMRDA provides that unions are to comply with all reasonable requests of any candidates to have campaign literature distributed by the labor organization, at the candidate's expense. *See also* 29 C.F.R. § 452.67.

The Department's investigation established that the OCCTA did not permit candidates to include a candidate statement in the ballot mailing and that doing so had not been a recent past practice of the union. Furthermore, you admitted that you did not request that the election committee mail your candidate statement to members at your own expense. The election committee provided candidates with member worksite addresses and advised candidates that they could print the labels for member worksites and request that their campaign mailings be distributed to members through the school courier system. There was no violation.

You alleged that the election committee denied your request for a list of members' home and email addresses, and that while Doromal had access to these lists, non-incumbent candidates were only provided with members' worksite information for campaigning purposes. You also claimed that the worksite lists needed to be updated throughout the election period, thereby benefiting the incumbents who had access to other member lists, and that the election committee communicated separately with Doromal based on the fact that she was not copied on the election committee emails to candidates. Section 401(c) of the LMRDA prohibits a union from discriminating in favor of or against any candidate with respect to the use of membership lists.

The OCCTA Election and Campaign Guidelines stated that candidates would receive an electronic list of members organized by worksite, and that candidates could distribute campaign materials through the Orange County Public Schools courier service from the CTA office. The Guidelines do not authorize the distribution of members' home or email addresses to candidates for purposes of campaigning. The Department's investigation established that, while Doromal could access members' home and email addresses by virtue of her position as president, she did not use these lists to campaign

and you did not provide any evidence to the contrary. You stated that you requested to receive the list of members' home and email addresses. The OCCTA, however, was not required to provide you these lists. Additionally, the election committee provided the member worksite lists, as well as any updates to those lists, to all candidates at the same time. The Department's investigation also did not establish that the election committee engaged in separate communications with Doromal. Election Committee Chair [REDACTED] stated that she may have inadvertently included Doromal as a blind carbon copy on some of the committee's emails to candidates, which explained why Doromal's email address may not have been visible. There was no violation.

You alleged that the ballots were collected from the post office, transported to the tally site, and counted during the workday, making it difficult for candidates other than Doromal, who was on full time release from the school system, to observe the tally process without taking personal leave. Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

OCCTA's Election and Campaign Guidelines informed candidates of their right to observe or designate an observer for the tally. The election committee emailed candidates the date and time of the ballot collection from the post office. One candidate and one observer attended the ballot collection and tally. Doromal did not attend. You did not request to have an observer present at any point in the election. There was no violation.

You alleged that it was unclear whether the election committee could reconcile and account for all of the ballots printed, in part because there was no means by which to identify the voting member from the outside of the voted ballot envelope. You also alleged that the inability to verify the identity of the voter could have resulted in members requesting duplicate ballots and casting more than one vote. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. The Department's investigation established that OCCTA only mailed ballots to eligible members, and there was no evidence that any ineligible person or member cast a ballot. However, the Department confirmed that the ballot return envelopes did not contain information that would allow the election committee to identify the voter. This lack of voter identification on the return ballot envelope could have allowed a member who received a duplicate ballot to cast more than one ballot. This violated the Section 401(c) requirement that unions provide adequate safeguards. Section 402(c)(2) of the LMRDA provides that an election will only be overturned, however, where a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). OCCTA mailed four duplicate ballots to four members. Even if these four members cast more than one ballot, these votes would not have changed the outcome of the president race, as Doromal's margin of victory was 395 votes. Moreover, the Department did not uncover any evidence of fraud during its investigation. Accordingly, this violation did not affect the outcome of the election.

You alleged that members were denied the right to vote. Specifically, you claimed that OCCTA made no attempt to re-mail the undeliverable ballot packages to updated addresses; that members were denied replacement ballots; that the union did not have mailing addresses for some members in good standing; and that direct dues paying members were improperly left off the eligibility list. Section 401(e) of the LMRDA states that all members in good standing shall have the right to vote for or otherwise support the candidate or candidates of their choice.

The investigation established that, on the day of the tally, the union retrieved 142 ballot packages that had been returned as undeliverable. Thus, the union did not attempt to re-send these ballots to better addresses. The Department also determined that OCCTA omitted 12 direct dues-payers from the mailing list used to send ballots; denied one member's request for a duplicate ballot; and did not have mailing addresses for six other members in good standing. The union may have also failed to send a ballot package to an additional member, but the Department was unable to confirm whether this member ever received the ballot package. Accordingly, as many as 162 members in good standing were denied the opportunity to vote. Even when combined with the other violations, however, this would not be sufficient to change the outcome of the election of OCCTA president.

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,



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Chief, Division of Enforcement

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