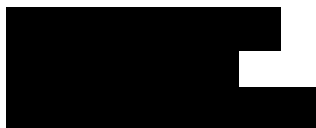


**U.S. Department of Labor**

Office of Labor-Management Standards  
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Washington, D.C. 20210  
(202) 693-0143



May 17, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on November 10, 2021, alleging that violations of 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, 5 U.S.C. § 7120, occurred in connection with the mail ballot election of officers held by the American Federation of Government Employees (AFGE), Local 3320, on August 30, 2021.

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 Act that may have affected the outcome of the election. Following is an explanation of this conclusion.

First, you alleged that the AFGE Constitution, AFGE Election Manual, and the Local 3320 Constitution and Bylaws require that the chairperson of the election committee be selected by the election committee or the local membership, but the AFGE 10th District National Vice President appointed an AFGE National Representative to serve in that position. Section 401(e) of the LMRDA provides that an election of union officers must be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA. 29 U.S.C. § 481(e); 29 C.F.R. § 452.2.

The investigation disclosed that Section 16 of the Local 3320 Bylaws prescribes the procedure for selecting the election committee. This provision reads, "starting with the election in 2021 and before the start of the nomination procedure (July 2021) . . . [t]he membership shall elect an odd number of [election committee] members, but no less than three, to run the election. . . ." During the investigation, the incumbent president stated that on July 7, 2021, the local held a special meeting to select the election committee members, only ten members attended the meeting, and three of these members volunteered to serve on the election committee. Prior to that meeting, in an email dated June 28, 2021, to the AFGE 10th District National Vice President (AFGE

NVP), the Local 3320 president requested the AFGE NVP's assistance in conducting Local 3320's upcoming August 2021 election. In response, the AFGE NVP appointed an AFGE National Representative (AFGE NR) to serve as the chairperson of Local 3320's election committee (election chair).

You take issue with the fact that the election chair was appointed by the AFGE NVP and not selected by the members or the election committee. However, the AFGE Constitution, AFGE Election Manual, and the Local 3320 Constitution and Bylaws do not specifically address the method for selecting the election chair. These governing documents are silent regarding that selection process. Moreover, the investigation found that in previous elections the AFGE NVP has appointed an AFGE official to chair or assist the election committee during an election. Further, there is no evidence that the AFGE NR discriminated in favor of or against any candidate in carrying out his duties as the election chair. The LMRDA was not violated.

Next, you alleged that, due to the short time period between the mailing of the nominations notice and when nominations were held, many members did not receive timely notice of the nominations meeting. You further alleged that the union was required to but did not give notice of the nominations meeting at least 15 days prior to the nominations meeting. Section 401(e) of the LMRDA requires that members be given a reasonable opportunity for the nomination of candidates. 29 U.S.C. § 481(e); 29 C.F.R. §§ 452.55-59. To meet that requirement, notice of nominations need not necessarily be given at least 15 days before nominations are held, so long as the notice is reasonably calculated to reach all members in good standing and is given in sufficient time to permit such members to nominate the candidates of their choice. 29 C.F.R. § 452.56(a). Section 401(e) further requires a union to conduct its election of officers in accordance with the union's constitution and bylaws. 29 C.F.R. § 452.2.

The investigation disclosed that Appendix A, Section 3(a)(3) of the AFGE Constitution provides that notice of nominations must be given at least ten days before nominations are held. The investigation found that the combined nominations and election notice was mailed to members on July 12, 2021, 11 days prior to the July 23, 2021 nominations meeting. Therefore, the union complied with the timeframe set forth in the AFGE Constitution for notifying members of that meeting. Moreover, the investigation revealed that this method of notice was reasonably calculated to reach all members in good standing. *See* 29 C.F.R. § 452.56(a) ("Mailing such notice [of nominations] to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy [section 401(e)]."). You asserted, however, that a member residing in Houston, Texas and a retiree residing in New Orleans, Louisiana did not have an opportunity to participate in the nominations meeting because they did not receive timely notice of that meeting. However, during the investigation the member stated that, although he told you that he did not receive the nominations and election notice, he later discovered that he had received the notice in the mail. The retiree stated that she received the nominations and election notice in the mail about

one week prior to the nominations meeting but chose not to participate in that meeting. The LMRDA was not violated.

In addition, you alleged that the election committee did not comply with Local 3320's governing documents when it failed to reopen nominations for the office of vice president after a candidate for that office passed away. Section 401(e) requires a union to conduct its election of union officers in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e). In addition, Section 401(c) of the Act, 29 U.S.C. § 481(c), contains a general mandate requiring a union to provide adequate safeguards to ensure a fair election. Thus, a union is bound by a general rule of fairness in conducting its election of union officers. 29 C.F.R. § 452.110.

The investigation found that one of the two candidates for vice president passed away after the nominations meeting and prior to the ballots being printed. As a result, the unopposed candidate was elected by acclamation due to the candidate's death. You asserted, however, that Step 8 of the AFGE Election Manual required the union to reopen nominations for vice president. This provision provides, "[i]f one of two candidates withdraws or becomes ineligible before the balloting begins, nominations should be reopened."

However, the union's governing documents, including Step 8 of the AFGE Election Manual, are silent concerning reopening nominations under circumstances where a candidate dies after the nominations meeting and prior to the ballots being printed. Union officials stated during the investigation that, although this is the first time an office has been uncontested due to such circumstances, Step 8 of the AFGE Election Manual does not require that nominations be reopened due to a candidate's death. Ultimately, to avoid confusion with respect to voters who possibly were unaware that the candidate had passed away, his name did not appear on the ballot. Further, information printed on the ballot informed voters that the unopposed vice-presidential candidate had been elected by acclamation due to the candidate's death. The LMRDA was not violated.

Also, you alleged that Local 3320's Constitution and Bylaws did not recognize the merger of Local 3475 with Local 3320 or include the former New Orleans, Louisiana members of Local 3475 as members of Local 3320. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e); 29 C.F.R. § 452.84.

During the investigation union officials stated that former Local 3475 New Orleans members were members of Local 3320 at the time of the election and eligible to vote. The Department's review of the July 23, 2021 and August 30, 2021 membership lists, and the membership mailing list disclosed the names of 17 members whose home addresses were located in the state of Louisiana, indicating that they were former Local

3475 members. These 17 members were mailed ballots and eight of them voted in the election. Thus, the union afforded the former Local 3475 members an opportunity to vote. The LMRDA was not violated.

Moreover, you alleged that the election committee failed to update the mailing addresses for members in accordance with the AFGE National Election Manual. Section 401(e) of the Act guarantees the right of every member in good standing to vote for or otherwise support the candidate or candidates of his choice. 29 U.S.C. § 481(e); 29 C.F.R. § 452.84. While Section 401(e) does not contain specific instructions regarding the conduct of labor organizations in a mail ballot election, the right of every union member in good standing to vote must require, at a minimum, that a union take reasonable steps to maintain current mailing addresses for its members and to distribute election ballots to all those entitled to vote.

The investigation found that the election committee took reasonable steps to maintain current mailing addresses for its members and afforded eligible members a reasonable opportunity to vote. During the investigation, the incumbent president stated that prior to the election she periodically reminded members by email to update their mailing addresses with the union. On July 9, 2021, prior to the mailing of the nominations and election notice, the election chair received a membership mailing list from the local president containing bad addresses for twelve members. The election committee and union stewards were able to obtain updated addresses for eleven of these members and they were mailed ballots. The remaining member did not respond to the election committee's repeated requests for an updated address. Ultimately, a ballot was mailed to the member's last known home address on file with the union, and the member voted in the election. The LMRDA was not violated.

You further alleged that the election chair failed to provide candidates with information about how to request a campaign mailing until after the ballots had been mailed to members. Section 401(c) of the LMRDA provides that a union is required to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate expense campaign literature in aid of such person's candidacy to all members in good standing of such organization. 29 U.S.C. § 481(c); 29 C.F.R. §§ 452.71-72.

The investigation found that approximately two weeks prior to the August 6, 2021 ballot mailing, the union provided all candidates, including you, with sufficient information about how to request a campaign mailing. During the July 23, 2021 candidate meeting the union offered to cover the cost of the mailing labels for all candidates. After that meeting the election chair emailed all candidates, including you, a copy of the campaign and election rules and a handout highlighting the important dates for candidates and other election-related matters. You confirmed during the investigation that you attended the July 23 candidate meeting and received a copy of the rules and the handout.

The investigation further found that the handout stated that beginning August 2, 2021, candidates could prepare and deliver the envelopes enclosing their campaign materials to the District 10 office so that personnel could affix members' campaign mailing labels to the envelopes. In addition, the campaign and election rules informed candidates that ballots would be mailed out on August 6, 2021, a request to distribute campaign literature to members would be honored in the order received, and each candidate should check with postal officials to determine the proper postage. The rules further stated that all campaign materials had to be hand-delivered to the election officials at the District 10 office for mailing in sealed, return addressed, stamped envelopes. Therefore, the union provided you with adequate information prior to the ballot mailing about how to request a campaign mailing. Further, you admitted during the investigation that you never requested the election committee to conduct a campaign mailing for you. The LMRDA was not violated.

Next, you alleged that the election committee failed to maintain the integrity of the mailbox rented for the return of the voted ballots when an AFGE official who was not an election committee member rented that mailbox and retained the keys to that box. Section 401(c) of the LMRDA contains a general mandate requiring a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Thus, a union is bound by a general rule of fairness in conducting its election of officers. 29 C.F.R. § 452.110.

The investigation found that on Friday, July 9, prior to the August 6 ballot mailing, an AFGE official who resided in Killeen, Texas and had served as trustee when Local 3320 was in trusteeship, rented a post office box at the post office located in that city for the return of the voted ballots. During the investigation, the former trustee stated that he gave the keys to the box to the election chair on Monday, July 12. The former trustee stated that he never accessed the post office box while the keys were in his possession. During the investigation, the election chair stated that, after he received the keys from the former trustee, the election chair was the only person who had access to the keys. The Department's examination of the voted ballots found no evidence of ballot tampering or other ballot irregularities. Thus, although the AFGE official retained the keys to the post office box secured for the return of the voted ballots for a short time before turning them over to the election chair, the LMRDA was not violated.

Also, you alleged that during the nominations meeting the election chair did not have the membership list and was unable to determine whether those individuals who were nominated or self-nominated were members in good standing and eligible for candidacy. Section 401(e) of the LMRDA provides that every member in good standing is eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed). 29 U.S.C. § 481(e); 29 C.F.R. § 452.32. Section 401(e) further requires a union to conduct its election of officers in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e).

Section 1(e) of Part I of Appendix A of the AFGE Constitution sets forth the eligibility requirements for candidacy. This provision provides that to qualify for candidacy an individual must be a member in good standing and must have been a member of an AFGE local for at least one year immediately preceding the closing of the nomination process. The investigation found that during the July 23 nominations meeting the election committee used a membership list dated July 23, 2021, the date of the meeting, to verify nominees' eligibility for candidacy. It appears that this list included the names of all members who were in good standing at the time of the nominations meeting. The list also included the date such members joined the local. The Department's review of the July 23 membership list confirmed that the names of all the candidates on the ballot appeared on that list and that the candidates met the one-year membership qualification for candidacy. The LMRDA was not violated.

In addition, you alleged that during the nominations meeting you inquired about how to request an opportunity to inspect the membership list, but the election committee failed to afford candidates an opportunity to inspect that list. Section 401(c) of the LMRDA provides that every bona fide candidate has the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization. 29 U.S.C. § 481(c); 29 C.F.R. §§ 452.71-72.

The investigation found that, before the August 6 ballot mailing, all candidates, including you, were provided with sufficient information about the availability of the membership list for inspection. The investigation found that you attended the candidate meeting held on July 23. During that meeting, the election chair informed candidates that the membership list would be available for inspection on Mondays, in Killeen, Texas, while he was in the District 10 office, that the Fort Worth candidates could meet with him at that office any day other than Monday to inspect the list, and the Houston candidates could meet with the other election committee members located in Houston to inspect the list. In addition, the election chair sent you and the other candidates an email dated August 9, 2021, supplementing the information disseminated at the July 23 meeting to clarify that the election chair also would handle requests to inspect the membership list from candidates located in the Dallas/Fort Worth area and two other election committee members would handle such requests from candidates located in Houston.

During the investigation you stated that the ballots already had been mailed to members by the time you received the August 9 email and, therefore, it was too late for you to inspect the membership list. However, you stated during the investigation that you received the campaign and election rules and the handout on July 23, which was approximately two weeks prior to the August 6 ballot mailing. The rules indicated that any candidate interested in inspecting the membership list could do so once within thirty days prior to the election. Although you received this information, you admitted

during the investigation that you never requested the election committee to permit you to inspect the membership list. The LMRDA was not violated.

Moreover, you alleged that the AFGE election guidelines required the election chair to void ballots returned without a secret ballot envelope, but he included such ballots in the vote tally. Section 401(e) of the LMRDA provides that an election of union officers must be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA. 29 U.S.C. § 481(e); 29 C.F.R. § 452.2. Section 401(b) of the LMRDA requires that an election of local union officers be conducted by secret ballot. 29 U.S.C. § 481(b); 29 C.F.R. § 452.97. The AFGE Election Manual provides guidelines for resolving voted ballots returned without a secret ballot envelope. Page 63 of those guidelines states that a voter must use the secret ballot envelope to ensure that ballot secrecy is maintained and that the failure to use such envelope will result in the ballot being voided. But page 65 of the guidelines provides that the election officials have two options when a ballot is returned without a secret ballot envelope. Under the first option, the election officials may adopt a policy that requires such ballot to be voided. Under the second option, ballots returned without a secret ballot envelope may be included in the vote tally, but the election officials must take the necessary steps to preserve the secrecy of the ballot. The election committee implemented the second option during the election.

The investigation disclosed that during the ballot count the election committee took the necessary steps to preserve the secrecy of the ballots. The investigation found that four of the 63 voted ballots were returned without a secret ballot envelope. The election chair properly unsealed and commingled these four ballots with the remaining ballots without disclosing the identity of the voter. The election chair unsealed each outer envelope one at a time, removed the folded ballot from its envelope, and then, while each ballot remained folded, commingled them with the other 59 folded ballots before conducting the tally. The outer envelopes for the four ballots were commingled with the other 59 outer envelopes. No ballot was identified with its voter. The LMRDA was not violated.

You further alleged that the election committee failed to void ballots containing markings and ink or pencil smears. Section 401(b) of the LMRDA requires that an election of local union officers be conducted by secret ballot. 29 U.S.C. § 481(b); 29 C.F.R. § 452.97. The Department reviewed each of the 63 ballots returned by voters. This review found that no ballots contained suspicious markings, ink or pencil smears, or information identifying the voter. The review also found that one voter had written the name of a write-in candidate on a ballot for the office of Chief Steward. However, the voter could not be identified with the ballot. Further, the investigation found no evidence of ballot fraud or other election impropriety. The LMRDA was not violated.

You alleged that the election committee failed to provide a procedure for new members who joined the local during the election to request ballots. Section 401(e) of the LMRDA

provides that members in good standing have the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e); 29 C.F.R. § 452.84.

The investigation found that seven new members joined the union during the election. Of these members, one of them had joined before the August 6 ballot mailing and was mailed a ballot with the initial ballot mailing. The investigation also found that the election chair automatically mailed ballots to the remaining six new members as soon as he received a list of new members from the union. Generally, such packages were mailed the day after the members joined the union or the next business day. The investigation further found that four of the new members voted in the election, and that the remaining two members stated during the investigation that they received ballots in the mail but for various reasons did not vote. The LMRDA was not violated.

You alleged that the election chair failed to report how many return envelopes were received, the number of addresses updated, the number of ballots printed and mailed, and the number of duplicate ballots mailed out. Section 401(e) of the LMRDA requires designated election officials to preserve all election records for one year. 29 U.S.C. § 481(e); 29 C.F.R. § 452.106. Section 401(e) of the LMRDA also provides that an election of union officers must be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA. 29 U.S.C. § 481(e); 29 C.F.R. § 452.2.

Appendix A, Section 5(g), of the AFGE Constitution requires the election committee to prepare a written report at the completion of the election. The provision provides, "At the conclusion of the balloting, the Election Committee shall tally the total ballots cast (or in an election by mail the ballots received), the ballots challenged, the ballots voided, the number of valid votes cast for each candidate, and the total number of valid votes cast. The Election Committee shall prepare a written report and inform the members of the results as soon as possible."

The investigation found that the union complied with the reporting requirements prescribed in Appendix A, Section 5(g), of the AFGE Constitution. The investigation disclosed that at the completion of the election the election committee issued a ballot tally certification form, which included the number of valid ballots counted, total voided ballots, unresolved challenged ballots, the number of valid votes cast for each candidate, the total number of valid votes cast, and the number of ballots counted for each race. However, the election chair did not keep a record of the number of ballots printed or mailed. According to the election chair, on August 6 he created and printed 118 ballots for the initial ballot mailing at the District 10 office, which equaled the number of names on the membership list dated August 6. The election chair also stated that the additional ballots that he used to fill requests for replacement ballots and to mail ballots to new members were printed at his residence at the time of each request or when he needed to mail a ballot to a new member.



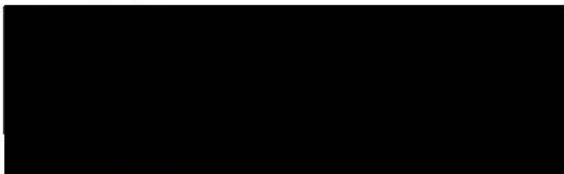
As a best practice, the union should have maintained an exact count of the ballots printed and mailed. However, the Department's investigation determined that there was no showing that the union failed to adequately safeguard the ballots, nor did the investigation uncover any fraud or ballot tampering. In addition, the investigation found that the election committee retained a list containing the names of the three members who requested and were mailed replacement ballots. The election committee also retained a list containing the names of the six new members who joined the union after August 6, the date they joined, and the date they were mailed ballots. Further, the Department's review of the voted ballots did not disclose any evidence of ballot irregularity or fraud. There was no violation.

Finally, you alleged that the election committee failed to timely respond to members' requests for replacement ballots. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e); 29 C.F.R. § 452.84.

The investigation found that the election committee maintained a list of members who requested and were mailed replacement ballots. The lists showed that replacement ballot requests were filled on the same day the request was made or the next business day. The investigation showed that the new member who contacted you on August 12 and informed you that he did not receive a ballot in the mail, telephoned the election chair that same day, requested and was mailed a ballot, and voted in the election. The LMRDA was not violated.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director of OLMS within 15 days of service of this notice of dismissal. 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. § 458.64(c).

Sincerely,



Chief, Division of Enforcement

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