



May 12, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on September 8, 2022, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 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 for the Human and Civil Rights Coordinator (HCR coordinator), conducted by the National Education Association, Indiana, Federal Education Association-Statewide Region (union or FEA-SR), on April 23, 2022.

The Department investigated your allegations. As a result of this 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.

You alleged that the FEA-SR director's personal assistant (FEA-SR assistant) managed the inbox for the email address to which members were required to email their completed nomination forms and failed to properly handle the nominations process. You asserted that, as a result, the FEA-SR assistant should have recused herself from participating in the ballot count. 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 union officers. 29 C.F.R. § 452.110.

The investigation found that you and your opponent were the only candidates for HCR coordinator. The FEA-SR assistant set up the Gmail account associated with FEASRElectionemail@gmail.com for the election. Members were required to email their self-nomination forms to that email address by 11:59 p.m. on February 18, 2022. You claimed that the FEA-SR assistant mishandled the nominations process because the opposing candidate did not email his completed nomination form to the designated email address until March 2, 2022, or twelve days after the February 18 deadline, and the union improperly accepted his nomination for office.

As evidence that the opposing candidate submitted his nomination form after the February 18 deadline, you claimed that the FEA-SR assistant and the FEA-SR director altered the date displayed on the email forwarding the opposing candidate's nomination form to the union to give the appearance that it was submitted by the deadline. You also claimed that the nomination form was not created until 2:35 p.m. on February 15, 2022, but the email forwarding that form to the union was timestamped 2:19 p.m., or 16 minutes before the form was created.

During the investigation, the Department reviewed the metadata for the nomination form. This review showed that the form was created on February 15, 2022, at 1:35 p.m., CST, not 2:35 p.m., CST. The investigation found that after the opposing candidate completed the form, he scanned it, attached it in PDF format to an email dated February 15, 2022, and then emailed it to the union. The timestamp on the email indicated that the nomination form was emailed to the union later that afternoon at 2:15 p.m., CST. The email was received by the union at FEASRElectionemail@gmail.com at 3:19 p.m., EST. The one-hour difference between the time the email was sent to and received at this email address was attributed to the difference in the time zones. There is no evidence that the FEA-SR assistant or the FEA-SR director altered the date or the timestamp on the email. In addition, the investigation found that your opponent forwarded his nomination form to the union a second time on February 18, 2022, at 6:09 p.m., CST, 7:09 p.m., EST. The opposing candidate, therefore, timely submitted his nomination form to the union by the February 18, 11:59 p.m. deadline. The LMRDA was not violated.

You also alleged that the FEA-SR director refused to show you a screenshot of the inbox for the email account linked to FEASRElectionemail@gmail.com. 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). Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e). The investigation disclosed that the union's governing documents do not require that candidates be permitted to view a screenshot of the inbox of the union's election email account. Your opponent did not request and was not permitted to view or receive a screenshot of that inbox. The LMRDA was not violated. In addition, you alleged that the FEA-SR assistant improperly moved ballots that had been sorted into piles for a particular candidate to a pile of ballots that had been voted for another candidate. 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).

The investigation found that the ballot count and the vote tally were conducted at the office of the FEA-SR accountant and live streamed on a "GoToMeeting" webcast.

During the ballot count and vote tally, election officials sorted the ballots by candidate and then placed the ballots into stacks of 25 ballots. While observing the webcast, you stated in the GoToMeeting chat that ballots had been placed into the wrong stack. After reviewing a stack of ballots, election officials discovered that one ballot was stuck to another ballot. The officials then recounted that stack, moved the single ballot to the correct stack, and updated the ballot count.

During the investigation, the Department recounted the ballots and the votes and found that the union correctly identified the winning candidate. There was no showing that the union or the FEA-SR assistant improperly moved ballots between piles. The LMRDA was not violated.

You further alleged that the union did not appoint an Elections Committee. Instead, the FEA-SR director used her personal assistant to handle the election process instead of appointing an election committee. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e). Article 15, Section 7 of the FEA constitution provides, "the Elections Committee shall conduct the tally of ballots in the election of the . . . Human and Civil Rights Coordinator . . . in accordance with specific procedures determined by the Board of Directors and such other duties as may be incumbent upon it under specific nomination and election procedures developed by the Board of Directors." During the Department's investigation, the union identified the following election officials: Diane Gibbs, FEA-SR director, Carolyn Kirkland, FEA-SR assistant, [REDACTED], FEA-SR accountant, [REDACTED], assistant to the FEA-SR accountant, and [REDACTED], FEA-SR webmaster. The union explained that there was no Elections Committee selection process, that Gibbs, Kirkland, and [REDACTED] decided to conduct the election, and that it has always been the director conducting the elections. Nothing in the constitution prohibits the FEA-SR assistant from serving on or assisting the Elections Committee. The investigation showed that the FEA-SR accountant and one of his employees conducted the ballot count and vote tally. The FEA-SR assistant assisted them in the counting and tallying processes. The FEA-SR assistant also assisted in verifying voter eligibility. The LMRDA was not violated.

Finally, you raised other allegations that either did not state an LMRDA violation or were not raised in your protest to the union. Section 402(a) of the LMRDA requires that a member exhaust the remedies available under the union's constitution and bylaws before filing a complaint with the Secretary of Labor. 29 U.S.C. § 481(a). These allegations were not properly exhausted, or are not covered by the union officer election provisions of the LMRDA and, for that reason, are dismissed.

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

cc: Richard Tarr
Executive Director, General Counsel
NEA-FEA
1201 16th Street, NW, Suite 117
Washington, DC 20036

Suzanne Summerlin
Deputy Executive Director, Deputy General Counsel
NEA-FEA



Diane M. Gibbs
Director, NEA-FEA-SR
P.O. Box 41035
Fayetteville, NC 23035

, Associate Solicitor
Civil Rights and Labor-Management Division