



August 8, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor (the Department) on August 30, 2022, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or the Act) occurred in connection with the election of officers conducted by the American Federation of Government Employees (AFGE) in Lake Buena Vista, Florida on June 22, 2022.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there were no violations of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

First, you alleged that incumbent President Everett Kelley improperly campaigned from the stage at AFGE's national convention when he gave out awards, took pictures with attendees, and gave a speech.

Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits candidates from campaigning while they are being paid by the union or by an employer. It also prohibits the use of union funds to finance a candidate's campaign. *Id.* Of note, Article 1, Section IX of the AFGE Constitution provides that "[i]t shall be the duty of the National President, in accordance with the mandates of the National Convention, to ... preside at the triennial Convention and at the meetings of the NEC, unless a different officer is designated by a two-thirds vote of those present and voting...."

The Department's investigation disclosed that Kelley did not engage in campaigning on the occasions you identified. At the beginning of the convention (which took place from June 20 to June 24, 2022), Kelley addressed the delegates, speaking on various topics including Father's Day, Juneteenth, institutional racism, the future of the union, and struggles faced by government workers during the government shutdown. In his remarks, he did not promote himself, mention his candidacy or solicit votes. Kelley

gave another speech the same day that emphasized the need to work together in solidarity, briefly recognized the contributions of AFGE's leadership, and introduced the main convention video. He again made no reference to his candidacy and did not promote himself. Likewise, during the two awards presentations Kelley participated in during the convention, he did not promote himself or any other candidates, but simply introduced the presenters (National Vice President Cheryl Eliano and National Vice President Robert Harrison, respectively) who distributed the awards. The Act was not violated.

You also alleged that Kelley improperly campaigned in the polling area at the national convention. Specifically, you alleged that, while Kelley was in the balloting room to vote, he asked some delegates "are you going to vote for me?" and did so within earshot of others waiting in line.

Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires that adequate safeguards to ensure a fair election be provided. This provision has been interpreted as imposing a general rule of fairness during the conduct of union officer elections. *See* 29 C.F.R. § 452.110. The Department spoke to several delegates present in the waiting area and/or polling room on the date in question, all but one of whom denied witnessing Kelley asking for votes or otherwise campaigning. One delegate reported that, while he was in the waiting area, he saw Kelley walking up and down the line of delegates asking if he could "count on their vote." However, even accepting this uncorroborated testimony as true, and assuming that this delegate was swayed in some way, the delegate carried far less votes than the margins in any of the races.¹ Thus, any violation could not have affected the outcome of the election.

Relatedly, you alleged that the union failed to provide adequate safeguards when Kelley and others used an electronic megaphone to campaign, and candidate supporters were so loud their campaigning could be heard in the polling area.

The investigation revealed that there were no published rules prohibiting the use of a megaphone or campaigning near (but not in) the polling area. Though there were signs posted in the polling area that indicated where campaigning was not allowed, the delegates referred to in your complaint were located outside the polling area in a hallway where campaigning was allowed. Most delegates interviewed by the Department stated that they could not hear campaigning inside the voting room, and the few who said they could hear noise noted that they could not tell who was campaigning or what was being said. There was no violation of the LMRDA.

¹ The margins in the races for National President, National Secretary-Treasurer, and National Vice President for Women and Fair Practices were 35,801, 11,369, and 37,550, respectively.

You further alleged that Kelley greatly increased the frequency of his visits to local unions in the months leading up to the election, not for any legitimate union business, but to campaign. You alleged that Kelley used AFGE resources in the form of airline tickets and hotel rentals to complete this travel.

Again, Section 401(g) of the Act prohibits the use of union funds to promote the candidacy of any person. 29 U.S.C. § 481(g). The Department's review of Kelley's travel records for the year prior to the June 2022 convention revealed that Kelley's travel was fairly consistent during this time period. Though his travel increased slightly in the month immediately preceding the convention, the increase was not significant. Furthermore, the Department interviewed several officers of locals visited by Kelley in the months prior to the election, and none of them stated that Kelley campaigned when he visited. The Department also spoke to several members you identified as having been present at an AFGE District 6 conference in May 2022. Though these members claimed that Kelley campaigned at the conference, several other conference attendees randomly selected by the Department stated unequivocally that he did not. Furthermore, the number of delegate votes represented by attendees at the conference was less than the 35,801 margin in the president's race. Thus, any violation could not have affected the outcome of the election.

You also alleged that because True Ballot, the company hired by AFGE to print, distribute, and count the ballots for the national, had provided incorrect vote totals in the past, a recount of the ballots in the June 2022 election should have been conducted to ensure accuracy.

Again, Section 401(c) of the LMRDA requires that adequate safeguards to ensure a fair election be provided. As described above, the margins in the races for National President, National Secretary-Treasurer, and National Vice President for Women and Fair Practices (as reported by True Ballot) were 35,801, 11,369, and 37,550, respectively. A Department recount of the ballots in the National Secretary-Treasurer's race confirmed True Ballot's count with minor differences. In fact, the recount actually increased the margin in this race to 11,607 votes. Thus, to the extent there was any violation of the Act, it did not affect the outcome of the election.

Relatedly, you alleged that True Ballot did not assign the proper number of votes to some locals and some delegates. You alleged that these discrepancies may have affected the vote totals for Locals 2054, 17, and 506.

Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), stipulates that union officer elections shall be conducted in accordance with the constitution and bylaws of the labor organization. Appendix A, Part I, Section 6(c) of the AFGE Constitution states, "[i]n the election for delegates, members will be afforded the opportunity to determine the

number of delegates, up to the full entitlement as provided by the national or council constitution involved.” The attachment to AFGE’s 2022 “convention call” explained that, if a local failed to submit “documentation showing that it held a proper delegate nomination/ election giving its membership an opportunity to nominate and elect its full delegate entitlement,” the local’s delegates would only be entitled to a portion of the local’s votes.

The Department reviewed election records for the Locals you identified as being possibly impacted. The investigation revealed that Local 2054 was entitled to eight delegates and 1,855 votes but received 1,392 votes. However, the Local had only had six delegates, all ex officio delegates, attend the convention, and no documentation was submitted to show that the Local held a meeting to give all the votes to the ex officio delegates. Local 2054 was therefore only given 6/8ths (1,392) of its votes, in accordance AFGE’s rules. The Act was not violated.

The investigation also revealed that Local 17 was entitled to seven delegates and 948 votes. The credential records showed that the Local had one ex officio delegate and held a meeting in which six additional delegates and two alternates were elected. Local 17 was given the full voting strength of 948 votes. This was proper according to AFGE’s rules. Again, there was no violation of the Act.

The investigation likewise showed that Local 506 was entitled to seven delegates and 843 votes. The credential records contained documentation that the local had eight ex officio delegates, seven of whom attended the convention. Local 506 received their full voting strength, which again was proper according to AFGE’s rules. The Act was not violated.

Finally, the Department compared the voting strength for each local prepared by AFGE with the number of votes given to each delegate by True Ballot. This review identified discrepancies impacting 47 out of 443 locals. However, the locals that received “too many” votes properly carried proxy votes for other locals. And, of the locals the Department identified as receiving “too few” votes, all but one properly had their votes reduced due to failure to hold a meeting to elect additional delegates or for other legitimate reasons. The only error uncovered by the Department concerned Local 1972, which received 21 more votes than it should have. This violation did not affect the outcome of any races in the election, however, as the smallest margin in this election was more than 11,000 votes.

The Department also reviewed the credential files for instances in which the credentials appeals committee did not seat one or all of the delegates from the local or did not give the local the additional votes to which they thought they were entitled. This review did not reveal any discrepancies.

You also alleged that Local 2145 delegates were allowed to vote even though the local members voted not to send any delegates to the convention.

As noted above, Section 401(e) of the LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. *See also* 29 C.F.R. § 452.128. Again, Appendix A, Part I, Section 6(c) of the AFGE Constitution provides that “[i]n the election for delegates, members will be afforded the opportunity to determine the number of delegates, up to the full entitlement as provided by the national or council constitution involved.”

The Department’s investigation disclosed that a video of Local 2145’s May 10, 2022 meeting was recorded and posted online. A review of the video revealed that Local 2145 voted three times on whether to send delegates to the Convention. On the first vote, the majority seemed in favor of not sending delegates to the Convention; however, the Department’s review could not confirm these results and several parties claimed the results were inaccurate. A second vote was therefore called for. The second vote was not completed. A third vote was held, which resulted in 17 votes for the motion and 18 votes against the motion, with the result being that Local 2145 delegates would attend the Convention. The results of the third vote are consistent with the meeting minutes. There was no violation of the LMRDA.

You additionally alleged that several locals were not able to register their delegates due to an outage that caused the electronic registration portal to be shut down for four hours.

The investigation revealed that CVENT, the system AFGE required locals to use to register delegates and upload necessary documents, was open for approximately three months (from February 2022 through 11:59 p.m. on May 21, 2022). The system was offline for approximately four hours and 48 minutes on May 20, 2022. However, it was operational again for more than 24 hours prior to the close of registration. Additionally, AFGE promptly notified locals about the outage and notified them again when the system was back online. Importantly, numerous witnesses stated that they were not aware of anyone who had problems registering delegates. And no evidence corroborated the testimony of one witness who claimed that certain locals could not afford to come to the convention to be heard by the credential appeals committee. In general, the investigation uncovered no evidence that any locals failed to attend the convention because they were unable to register delegates in the system. Thus, there was no violation of the Act.

Finally, you alleged that Kelley’s hospitality suite at the convention was either paid for by AFGE or provided to Kelley for free by the hotel.

As described above, Section 401(g) of the Act prohibits the use of union or employer funds to finance a candidate's campaign. Thus, candidates may not use union or employer personnel, equipment or supplies to assist them in campaigning unless such assistance is available to all candidates. The Department conducted an extensive review of records provided by the hotel, the union, and Kelley himself. The review revealed that, as with accommodations for all AFGE staff, Kelley's regular room (a suite at the Walt Disney World Swan and Dolphin, a Marriott hotel) was booked and paid for by AFGE. Kelley also personally booked and paid for a separate hospitality suite at the hotel which he used for campaigning purposes. Kelley shared the hospitality suite with incumbent National Secretary-Treasurer Eric Bunn. The investigation confirmed that Kelley ultimately paid the entire amount charged by the Marriott for the hospitality suite with his personal credit card. Additionally, numerous receipts and invoices show that the food and beverages purchased for the hospitality suite were personally paid for by Kelley and Bunn. Therefore, the Act was not violated.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.


Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Everett Kelley, National President
American Federation of Government Employees
80 F Street, NW
Washington, DC 20001

David Borer, General Counsel
American Federation of Government Employees
80 F Street, NW
Washington, DC 20001

, Associate Solicitor
Civil Rights and Labor-Management Division