



October 5, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint to the Department of Labor (Department) alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in the October 10, 2020 American Federation of Government Employees (National or AFGE) election of national officers for District 11.

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

You alleged that [REDACTED], successful candidate for National Vice President (NVP), District 11, promoted his candidacy by posting on his Facebook campaign page a letter from [REDACTED], Montana AFL-CIO Executive Secretary, to the National President that praised [REDACTED] accomplishments. Section 401(g) provides that no moneys of a labor organization shall be contributed or applied to promote the candidacy of any person in a covered election. 29 U.S.C. § 481(g). In determining whether written material constitutes campaign material, courts examine the tone, content, and timing of the material in question. The investigation disclosed that the letter in question was posted on or around September 5, approximately one month before the election, to a personal Facebook page. The tone was laudatory of [REDACTED] contributions to the union. However, the content was devoid of any mention of the election itself. Consequently, the letter did not constitute campaign material. There was no violation.

You alleged NVP District 11 candidate [REDACTED] used union property when he listed on his Facebook campaign website the names and titles of union officers who supported his candidacy. Section 401(g) prohibits officers and employees from using facilities, equipment, stationery, or other union resources to assist them in campaigning. 29 U.S.C. § 481(g); 29 C.F.R. § 452.76. The National does not have a rule that officers' titles constitute union property or that prohibits the use of titles in campaign material. The

investigation disclosed [REDACTED] listed his supporters by their names and officer titles but used no union funds in the creation and maintenance of his campaign website. The investigation further revealed that you also included the titles of officers in your campaign materials in past elections. There was no violation.

You alleged that [REDACTED], while serving as District 11 Legislative and Political Organizer, campaigned improperly when he continued to work after announcing his candidacy in violation of the AFGE Constitution. Section 401(g) permits officers and employees to campaign as long as they do so on time not paid for by the union and the union's constitution does not prohibit such campaigning. 29 C.F.R. § 452.76. Article VII, section 5, of the National Constitution requires employees running for office to take leave without pay during the election. The investigation disclosed that [REDACTED] relinquished his union laptop to District 11 six weeks in advance of the election and was approved for leave without pay for that time period. [REDACTED] complied with the LMRDA and the requirement in the National Constitution by not campaigning on time paid for by the union. There was no violation.

You also alleged that [REDACTED] used his position with District 11 to obtain contact lists unavailable to other candidates to support his campaign. Section 401(c) requires unions to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. 29 U.S.C. § 481(c). The Department's investigation revealed that all candidates were provided the same contact list to use for campaigning. [REDACTED] knew that two local presidents on the candidates' contact list were no longer serving in their respective positions. In response, [REDACTED], of his own volition, forwarded to all candidates, including you, updated contact information regarding the local presidents at issue. There was no violation.

Next, you alleged that you were improperly denied seating as a delegate. Section 401(f) provides, in relevant part, that when officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with Title IV. 29 U.S.C. § 481(f). Article VIII, Section 2(d), of the National Constitution provides: "No local shall be entitled to cast a vote in the district caucus unless all accounts due the Federation . . . are paid in full. Per capita tax . . . shall be paid in full 60 days prior to convening in order for a local to be entitled to representation or to vote in a district caucus."

The Department's review of your local's (Local 4012) records showed it was in arrears in its per capita tax payments during the qualifying 60-day period. Consequently, neither you nor Local 4012 President Elizabeth LaBelle, who was seated and voted 200 votes for your local, should have been seated because Local 4012 was ineligible to participate in the caucus. The credentials committee acted properly in not seating you and LaBelle's 200 votes could not have affected the outcome of the election, which was

decided by a margin of 5,049 votes. There was no violation that may have affected the outcome of the election.

You also alleged that you were improperly denied the right to nominate yourself at the caucus, a right you believe all District 11 members had. In elections at conventions or caucuses at which nominations are made, delegates who have been elected by secret ballot must be given ample opportunity to nominate candidates on behalf of themselves or the members they represent. 29 C.F.R. § 452.63. As noted above, indirect national elections must be conducted in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(f). Appendix A, Part II, Section 1(c), of the National Constitution states that National Vice President elections shall be by delegates selected by members of their respective locals. The Department's investigation revealed that the National has interpreted its constitution to mean that only delegates may nominate candidates. The interpretation consistently placed on a union's constitution by the responsible governing body will be accepted unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3. The investigation disclosed no evidence that non-delegates were permitted to speak or participate in past caucus elections. Given that the National's interpretation is consistent with its past practice and that its interpretation is not clearly unreasonable, the National's interpretation is accepted. In any event, ultimately a delegate nominated you as a candidate and you ran unsuccessfully for office. There was no violation.

You alleged that former NVP [REDACTED] used union resources to impede your campaign. Section 401(g) prohibits the use of union resources to campaign for or against any candidate. 29 U.S.C. § 481(g). You cited two incidents to support your allegation. First, you alleged that [REDACTED] campaigned against you in an email he sent to Council 220 members five months before the District 11 caucus. Council 220 is the AFGE National Council of Social Security Administration Field Operations Locals. Local 4012, your local, is affiliated with Council 220 and Local 4012 represents, *inter alia*, Social Security Administration employees in various states, including Colorado, Montana, Utah and Wyoming within District 11. The investigation disclosed that [REDACTED], using a union computer, advised Council 220 members that your and LaBelle's temporary appointments as Local 4012 vice president and president, respectively, were invalid. Neither you nor LaBelle had submitted any documents to the District 11 credentials committee validating your election nor had either of you contacted District 11 about being credentialed. Although this email was within a few months of the election, it was legitimate business regarding your union positions. Consequently, this email does not constitute campaign material. There was no violation.

You also alleged that [REDACTED] instructed Local 4012 treasurer Mark Hill not to pay Local 4012's per capita tax in order to mar your credentials and deny seating you at the caucus. Hill did not confirm your allegation. Rather, Hill informed the Department that as of the date of the May email from [REDACTED], Local 4012 had not yet paid the per

capita tax it owed. The investigation revealed no evidence that [REDACTED] instructed anyone not to pay Local 4012 per capita dues. There was no violation.

Next, you alleged that the union failed to provide adequate notice of the October 10 caucus and failed to provide credentialing information to all subordinate locals in District 11, in violation of the caucus rules. Indirect national elections must be conducted in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(f). However, nomination and election notices in such elections are not subject to all the technical requirements of secret ballot elections. *Compare* 29 C.F.R. § 452.56 (nomination notice); 29 C.F.R. § 452.99 (election notice). Nevertheless, where nominations are made by locals or other subordinate organizations, fundamental safeguards must be observed including the right of members to vote for and support the candidates of their choice without improper interference. 29 C.F.R. § 452.60(b). The union's constitution and bylaws set the rules for conducting the convention or caucus insofar as it is not inconsistent with Title IV. 29 U.S.C. § 481(f).

Article VIII, Section 2(b), of the National Constitution provides: "The method of electing an NVP . . . by each district shall be as follows: the [National Secretary-Treasurer (NST)] shall certify to each incumbent NVP the locals in good standing in his or her district." In May of any election year, "the incumbent NVP in each district will hold a district caucus of representatives of all locals in good standing for the purpose of electing an NVP . . . for that district." Article VIII, Section 2(e), provides: "Standard credential forms must be sent in advance of caucuses to all locals in all districts by the NST for insertion of delegates' names and signatures for the local president and secretary or secretary-treasurer."

The investigation disclosed that all District 11 locals were sent notice of both the original May caucus date and the rescheduled October caucus date through a series of communications via email, letter, and monthly District 11 Zoom meetings with local presidents and vice presidents. In February of the election year, the National mailed a credentials packet to all District 11 local presidents and treasurers, a packet that included either a letter of eligibility along with a credentials form, or a letter of ineligibility with no credentials form. That letter advised that the caucus would take place in May. The May caucus was not held because of concerns regarding the COVID-19 pandemic and District 11 planned to reschedule it. On August 6 of the election year, District 11 emailed another notice to all local presidents announcing an August 13 call to discuss a new caucus date. The email also advised recipients to contact the office if a local had not yet received a credentials form. On August 17, District 11 emailed locals advising that the caucus would be held virtually. On September 8, District 11 responded via email to complaints about not receiving credentials forms by advising locals that the National had mailed such forms and directing locals to return forms via email by September 10.

In addition, District 11 sent all members notice of the caucus via AFGE's bimonthly newsletter: the September/October Edition of the Government Standard. The newsletter notice stated that the District 11 caucus would be held online on October 10, and that credentials were due by September 10. Further, District 11 held regular Zoom meetings on the third Tuesday of every month to update locals on current events in the district. The rescheduling of the caucus was discussed at the district's monthly meetings. Local presidents and treasurers of the district were sent invitations to those meetings and members were free to attend as well. On October 6, four days before the caucus, District 11 emailed the caucus Zoom link and instructions for Zoom use to registered delegates.

The union met the requirements of Article VIII, Section 2, of the National Constitution when it mailed the February notice to locals advising of their eligibility or ineligibility to participate in the caucus, and included credentials forms for eligible locals, well in advance of the October caucus. Taken together, the union's efforts to notify locals of the rescheduled October caucus were sufficient to provide the fundamental safeguards required by the LMRDA. *See* 29 C.F.R. § 452.60(b). There was no violation.

You alleged that, in connection with your campaign mailing, District 11 provided you with a delegate list on September 19, that was untimely and inaccurate. Specifically, the names of several delegates were not on it. You believe you were disadvantaged by this inaccuracy because you received corrections nine days before the October caucus, a delay you believe other delegates did not experience. Section 401(c) requires, among other things, that unions comply with candidates' reasonable requests to distribute campaign literature and prohibits unions from discriminating in the use of union lists. 29 U.S.C. § 481(c). Section 401(f) requires that national elections be conducted under the union's constitution and bylaws. 29 U.S.C. § 481(f). Appendix A, Part II, Section 4(b), of the National Constitution provides: "All declared candidates for national offices covered by this Part will be provided upon timely request the following information: (1) A complete list of the names, business, and home addresses and business telephone numbers of the presidents, treasurers, and delegate(s) of each local participating in the election for which the candidacy has been declared." The National Constitution, Appendix A, Part I, Section 4(a) provides: "All candidates for office must be treated equally with respect to the availability of lists of members and mailing of campaign literature."

The investigation disclosed that on September 18, District 11 mailed you, and two other candidates who requested a campaign mailing, a list of delegates' names. After requests from you and another candidate, on September 19, District 11 emailed you and the other two candidates a list containing delegates' telephone numbers. Contrary to your claim, no candidate received a list of delegates earlier than any other candidate. In addition, all three candidates were sent the same lists.

However, the Department reviewed the lists of delegates that the union provided and found that five delegates were not included in that list. All five delegates, representing 1,539 votes, attended the caucus. Nonetheless, this violation did not affect the outcome of the election because it was decided by a margin of 5,049 votes, and all candidates received the same lists at the same times. There was no violation that may have affected the outcome of the election.

You alleged delegates were prevented from speaking when the District 11 NVP muted their microphones. Fundamental safeguards must be observed during indirect national elections. 29 C.F.R. § 452.60(b). The Department's review of the audio recording of the caucus confirmed that District 11 followed Robert's Rules of Order which requires meeting attendees to be recognized by the chair before speaking. The union did this by recognizing each delegate before unmuting their microphone so they could speak. District 11 NVP [REDACTED] served as presiding officer until the election committee chair was elected. Both [REDACTED] and [REDACTED], newly elected election committee chair, followed Robert's Rules and unmuting the microphone for delegates who were recognized. No recognized delegate was denied access to the microphone. There was no violation.

You alleged District 11's credentials committee failed to prepare and deliver its required report to the election committee in violation of the caucus rules. Section 401(f) requires national bodies to conduct their elections in accordance with their constitution and bylaws. 29 U.S.C. § 481(f). The National Constitution and Bylaws do not require such a report.

However, even if the caucus rules were binding, there would be no violation. The caucus rules require a report to the election committee five days before the caucus. The report must contain eligibility determinations for all local unions so that any local deemed ineligible to participate in the caucus may challenge its disqualification. The investigation disclosed that no election committee existed five days prior to the caucus and, consequently, could not receive such a report until the day of the caucus. In any event, the National had notified locals of their ineligibility to participate in the caucus months earlier and those locals had the opportunity to appeal their ineligibility at that time. No delegate was disadvantaged by the lack of a report. There was no violation.

You alleged that delegates were improperly required to submit their email and phone number in order to vote. Fundamental safeguards must be observed during indirect national elections. 29 C.F.R. § 452.60(b). The investigation disclosed that True Ballot, the election company hired to provide online voting, required delegates to submit their email addresses and telephone numbers for voting registration purposes only. The Department found no delegate who was precluded from voting because of this registration process, nor did you identify any such delegate. There was no violation.

You alleged that [REDACTED], successful candidate for NVP, District 11, was not a member of the National and therefore ineligible to stand for office. Article VII, Section 1(a), of the National Constitution states: "No person shall be a candidate for, or be elected to, national office unless he or she . . . has been a member in good standing of the Federation for the three consecutive years immediately prior to the date of nomination for the office being sought." The investigation disclosed that [REDACTED] has been a union member since 1993. The National confirmed [REDACTED] was a member in good standing for the requisite period. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,

[REDACTED]

Chief, Division of Enforcement

cc: Everett Kelley, National President
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[REDACTED], Associate Solicitor
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