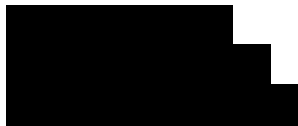




January 23, 2024



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on October 13, 2023, alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act, 5 U.S.C. § 7120. You alleged that violations occurred in connection with the rerun election for president of Local 3239, American Federation of Government Employees (AFGE), conducted on July 18, 2023.

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

You first alleged that Local 3239 has a pattern of voter database problems because of incorrect names and addresses of members in good standing. During the Department's investigation, you stated that you reviewed the membership list by Zoom on July 14, 2023. You alleged that the list contained an inaccurate mailing address for one member and also included two individuals who were no longer members of Local 3239.

Under the provisions of section 401(e) of LMRDA, an election notice is required to be mailed to each member at their last known home address not less than fifteen days prior to the election. 29 U.S.C. § 481(e). As a part of this statutory duty, a union must make reasonable efforts to keep its membership list current. In addition, section 401(c) of the LMRDA requires, in pertinent part, that a union provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c).

The Department's investigation established that the union mailed election notices on June 26, 2023, to every member who appeared on the membership mailing list as of that date. The investigation found that no election notices were returned as undeliverable. Therefore, the investigation did not substantiate your allegation that the local's membership database contained incorrect addresses for members. Further, the investigation established that everyone who voted in the election was a member in good standing and was eligible to vote. Thus, to the extent that you alleged that ineligible

members voted, the investigation also did not substantiate this allegation. There was no violation.

Relatedly, you alleged that the union's voter database problems disenfranchised voters because the election notice was not distributed to all members in good standing. As noted above, section 401(e) of the LMRDA requires the union to mail an election notice to each member at their last known home address. In addition, section 401(e) provides that in any secret ballot election, "[e]ach member in good standing shall be entitled to one vote." Further, section 401(e) requires that elections be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV, 29 U.S.C. § 481(e).

The Department's investigation established that, under Local 3239's bylaws, members of the local who are in good standing – that is, who are current in their dues payments – are allowed to vote. The investigation further established that the election notice provided, consistent with AFGE's long-standing policy expressed in the AFGE Election Manual, that "[a]ny member who has signed a dues withholding form (SF 1187) accepted by a responsible officer of the local is in good standing and eligible to vote."

The Department's investigation established that new members do not appear on the local's membership mailing list, and do not receive union notices by mail, until the local treasurer has added them to the membership database. The investigation further found that the local does not consistently add new members to the membership database as soon as it receives their SF 1187s. At the time of the investigation, the local's records included at least eleven SF 1187s from new members who had not yet been added to the membership database. The investigation also found that, in some cases, the local did not add new members to the membership database until they appeared on the dues payment list, which could be as long as two months after the local received their SF 1187s because of an employer backlog.

The Department's investigation established that as many as 32 members who were eligible to vote on June 26, 2023 – the date the election notice was mailed – did not appear on the local's membership mailing list and therefore were not mailed an election notice. This failure violated the LMRDA. However, the investigation found that two of those members voted in the election and that a third member requested and received an absentee ballot in the mail. Thus, the violation could have affected, at most, only the remaining 29 members. Under section 402(c) of the LMRDA, a union election is set aside only where the violation may have affected the outcome of the election. 29 U.S.C. § 482(c). The vote margin between you and your opponent in the race for president, the only race in the rerun election, was 31 votes. Therefore, this violation could not have affected the outcome of the election.

You also alleged that the election notice contained errors and unclear instructions and was confusing. During the investigation, you acknowledged that the election notice stated that the election was a rerun election of the local president's race as ordered by the AFGE national president and that the term of office would end with the installation of officers following the regularly scheduled election in 2023. However, you alleged that this information was confusing to members and dissuaded them from voting.

As noted above, section 401(c) of the LMRDA requires that a union provide adequate safeguards to ensure a fair election, and section 401(e) requires the union to mail an election notice to each member at their last known home address. 29 U.S.C. §§ 481(c), (e). The Department's interpretive regulations provide that the election notice must specify the date, time, and place of the election and the offices to be filled. 29 C.F.R. § 452.99. In addition, where the union knows in advance that a substantial number or a particular segment of the members will not be able to vote in person, the union must make available absentee ballots or other means of voting and give its members reasonable notice of the availability of such ballots. 29 C.F.R. § 452.95.

During its investigation, the Department reviewed the contents of the election notice. The Department's review established that the contents of the notice met the requirements of section 401(e) and the regulations: The notice stated that the election was a rerun election for the office of Local 3239 president and that it would be conducted by manual secret ballot on July 18, 2023, from 7 a.m. to 7 p.m. at the local union hall at 20833 Southfield Road, Suite 240, in Southfield, Michigan. The notice also stated that absentee ballots were available and provided instructions for requesting and returning such ballots. The Department's review further determined that the notice included all of the information required by the AFGE Constitution and AFGE Election Manual and that nothing on the notice was incorrect or appeared to be confusing. The investigation also identified no members who viewed the election notice as incorrect, unclear, or confusing, or who were dissuaded from voting by the notice. There was no violation.

You further alleged that the election notice and the election process appeared to favor your opponent. You alleged that the AFGE national president, who ordered the rerun election, favored your opponent. During the Department's investigation, you alleged that the election supervisors committee (ESC), which was appointed by the AFGE national president, held the rerun election as a manual ballot election at the union office to make it more convenient for your opponent's supporters and to dissuade those who supported you but had health concerns about COVID. You asserted that many of your opponent's supporters live near the union office and that some other members would have had to travel two to three hours to vote in-person. You further alleged that holding the rerun election at the union office favored your opponent, who had acted as president for some time and attended meetings as president, by giving the appearance that the union was supporting your opponent. You also alleged that your opponent had advance notice of

the rerun election, and thus more time to prepare, because she works out of the union office.

As noted above, section 401(c) of the LMRDA requires that a union provide adequate safeguards to ensure a fair election. In addition, section 401(c) requires unions to refrain from discrimination in favor of or against any candidate. 29 U.S.C. § 481(c).

The Department's investigation did not substantiate your allegations of favoritism for your opponent in the election notice or the election process. As noted above, the Department's review of the election notice determined that it included all of the required information and that the information was correct. The Department's review further determined that nothing in the election notice favored one candidate over the other. The Department's investigation established that the AFGE national president appointed attorneys from AFGE's Office of General Counsel to serve as the ESC. The investigation confirmed that the ESC determined the method and location of the election. The investigation found no evidence that the ESC's election-related decisions and actions were intended to favor, or did favor, your opponent. The investigation also established that absentee ballots were available upon request to any member who preferred not to, or was unable to, vote in person at the union office. Furthermore, your opponent denied that she had advance notice of the rerun election. There was no violation.

You also alleged that you were deliberately left out of the voting process to select the election committee for the rerun election. As noted above, section 401(c) of the LMRDA requires that a union provide adequate safeguards to ensure a fair election. In addition, section 401(e) requires that elections be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV. 29 U.S.C. §§ 481(c), (e).

As explained above, the challenged election was a nationally supervised rerun election, and the AFGE national president appointed attorneys from AFGE's Office of General Counsel to serve as the ESC. The Department's investigation determined that section 14 of Local 3239's bylaws provides that, for local officer elections, the election committee should be elected by a majority vote of the membership at a meeting preceding the start of the nomination process. However, the Department's investigation further determined that the union's constitution and bylaws are silent regarding the selection of an election committee for a nationally supervised local election. Thus, the Department's investigation did not establish that the union's constitution and bylaws required that the election committee for the rerun election be elected by the membership. Moreover, even if section 14 of Local 3239's bylaws applied and the ESC was not selected in accordance with it, the violation could not have affected the outcome of the election.

Next, you alleged that the rerun election was motivated by prejudice and bias, lacked transparency and integrity, and deprived you of notification of when the absentee ballots

were going to be picked up from the post office; of the right to observe each phase of the election process; of the right to ensure transparency and observe the secrecy of the election and election process; of the right to observe each phase of the rerun election, including mailing of the election notices and the entire absentee ballot process; of the right to ensure consistent rulings by the election committee or election supervisors; and of the opportunity to ensure that balloting material was preserved, including all related materials and records. However, during the Department's investigation, you acknowledged that you never made a request to observe part of the election process that was denied. You also provided an email dated July 17, 2023, that the ESC sent to you and your opponent, advising that observers could be present at the union hall on July 18, 2023, and asking you to identify those observers.

Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. As noted above, section 401(c) of the LMRDA also prohibits disparate candidate treatment. 29 U.S.C. § 481(c).

The Department's investigation established that no candidate was denied the opportunity to observe any aspect of the election process. The investigation found that the ESC communicated all pertinent information affecting candidates to both you and your opponent and that both candidates' email requests to participate in the election were acknowledged and satisfied. These communications included (1) inspection of the membership mailing list, (2) campaign literature requests and distribution of campaign literature, (3) absentee ballot pickup details and custodial maintenance, (4) requests for observers, and (5) ballot tally results. The investigation also established that candidates were allowed to be their own observers. The investigation found that you voted in person at the polling site on the day of the election and that you were permitted to stay and observe but chose not to do so. As noted above, the investigation found no evidence that the ESC's decisions or actions in supervising the rerun election favored your opponent. Furthermore, your opponent denied that she was provided any access or opportunity that you were not provided. There was no violation.

You also alleged that absentee ballots were not guaranteed to be counted. During the investigation, you alleged that members felt that they did not have enough time to vote an absentee ballot. You alleged that there were "a lot" of members who requested absentee ballots but did not receive them, and two or three other members whose voted absentee ballots were returned to their home addresses as undeliverable.

As noted above, section 401(c) requires a union to provide adequate safeguards to ensure a fair election, and section 401(e) provides that all members in good standing have the right to vote. 29 U.S.C. §§ 481(c), (e).

The Department's investigation established that the election notice mailed to members on June 26, 2023 instructed members how to request an absentee ballot from the ESC by email. The notice stated that voted absentee ballots must be received in the designated post office box by 7:00 a.m. on July 18, 2023. The Department's investigation established that there were no restrictions on who could request and receive an absentee ballot. The investigation found that eight members submitted absentee ballot requests and that ballot packets were mailed to all eight requesters in a timely manner. The investigation established that two members timely mailed back voted absentee ballots, which were counted. The investigation found that another member, who requested an absentee ballot on July 10 and to whom an absentee ballot packet was mailed on July 11, opted instead to vote in person to ensure that her vote was counted. The investigation found that two other members hand-delivered their voted absentee ballots to the post office on the day prior to or the day of the election. The investigation found that those two members' absentee ballots were entered into the regular mail system, circulated to the main processing plant in Detroit, and finally carried back to their addressed destination, at which point they could no longer be delivered to the post office box and were returned to the members. No returned undeliverable absentee ballot packets were found in the local's election records. In sum, every member who requested an absentee ballot was mailed one in a timely manner, and every voted absentee ballot that was timely received was counted. There was no violation.

Finally, you alleged that the election notice was mailed on June 26, 2023, but that you were not notified of the rerun election until June 28, 2023, by email; that the election notice did not contain the candidates' names or identify the author of the notice; that the election notice was not mailed 30 days before the election; and that you were not allowed to review the final proofs of the rerun ballot, rerun election notice, and rerun election procedures. Even if true, these allegations would not constitute violations of Title IV of the LMRDA.

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 and I have closed the 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,

A solid black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker
Chief, Division of Enforcement

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