



January 23, 2024

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on August 18, 2023, alleging that the Federal Education Association (FEA) violated 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 of 1978 (CSRA), 5 U.S.C. § 7120, when it decided to conduct a union-ordered rerun of its March 28, 2023 union officer election—for FEA Director, Stateside Region (listed as the FEA Director for DDESS on the ballot).

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that the union’s decision to conduct a rerun was not a violation of the LMRDA.

I. Background

The investigation established the following facts:

The FEA is an intermediate body labor organization, subordinate to its national parent organization, the National Education Association (NEA). *See* 29 U.S.C. § 481(d) (“intermediate bodies” shall elect their officers not less than once every four years by secret ballot among the members in good standing or by representatives of such members who have been elected by secret ballot).¹ The FEA held its regularly scheduled election for officers on March 28, 2023, by secret ballot among the members in good standing. You defeated Diana Gibbs for the position of FEA Director, Stateside Region by a margin of 22 votes. On May 5, 2023, Gibbs protested the election with FEA’s Board of Directors. Gibbs raised seven examples of what she believed to be violations of the election rules. FEA’s Board of Directors found three of her allegations

¹ *See also* 29 U.S.C. § 402(i) (definition of labor organization); *id.* at § 402(j)(5) (describing covered intermediate bodies); 29 C.F.R. § 451.4(f) (describing labor organizations included in the category “intermediate bodies”).

constituted violations of the election rules and ordered a rerun election for the position of FEA Director, Stateside Region.

This Statement of Reasons will focus on Gibbs' fifth allegation – that improper campaigning occurred during a membership meeting. Because the Department finds FEA's decision to rerun the election for FEA Director, Stateside Region, was lawful on this ground, and as there was no showing that the decision to rerun the election was made in bad faith on any ground, we need not analyze the other two reasons FEA decided to rerun the election.

The Campaign Rules, Federal Education Association, applied to the FEA's March 2023 election. Election Rule C.2 states, "Individual campaigning may take place before or after a scheduled Association meeting. Campaigning may take place before or after the function and between sessions. Campaign literature will not be distributed *during* the meeting." (underlining in original; italics added).

██████████, president of the Fort Liberty Association of Educators, a local labor organization subordinate to FEA, wanted to invite you and Gibbs to a candidate forum to present your ideas to the membership, and to allow members to ask questions. ██████████ sought guidance from FEA General Counsel Richard Tarr on whether to invite the candidates to the upcoming February 7, 2023, membership meeting, or schedule a new meeting specifically for the candidate forum. Specifically, ██████████ sought an interpretation of Election Rules B.1 and B.2, which govern procedures for FEA leadership to endorse candidates. ██████████ did not raise Rule C.2. Tarr interpreted Rules B.1 and B.2 and advised those rules contemplate relying on regularly scheduled meetings. Tarr did not interpret Rule C.2.

Gibbs declined to attend the February 7, 2023, meeting, believing the forum was contrary to FEA's election rules. You attended the meeting and spoke after the reading of the minutes about your vision for the union. Twenty-six members attended the meeting.

Gibbs complained to FEA's Board of Directors that you violated Rule C.2 because you spoke during the meeting itself, and not before, after, or during a break. You argued to the Board of Directors that 1) FEA General Counsel Richard Tarr sanctioned the meeting; and 2) your conduct did not constitute campaigning. FEA's Board of Directors rejected your arguments, found that you violated Rule C.2, and ordered a re-run of the election to cure the violation.

II. Standard

The standard applicable to the union's conduct of its election, *i.e.*, whether a violation may have affected the outcome of the election, 29 U.S.C. § 482(c), is not applicable to a union's decision to order a rerun of its election. Section 402(a) of the LMRDA requires that a union member exhaust internal union remedies before filing a Title IV complaint with the Department. 29 U.S.C. § 482(a). This requirement was included in the LMRDA to give unions a chance to correct election problems and deficiencies themselves, thereby preserving a maximum amount of independence and encouraging responsible self-governance. In furtherance of this legislative objective, the Department accords a certain degree of deference to a union's decision to hold a new election in response to internal union protests. The Secretary will not seek to reverse a union's remedial decision to hold a new election, unless it is apparent from the Department's investigative findings that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the LMRDA and holding a new election was unreasonable.

III. Analysis

Based on a review of record evidence, including FEA's constitution and election rules, the Department did not find sufficient cause to reverse FEA's decision to hold a remedial election. First, FEA's application of the election rules did not violate a provision of the LMRDA. Second, there is no evidence FEA's decision to hold a remedial election was made in bad faith. While ██████████ sought advance guidance from General Counsel Richard Tarr, ██████████ asked specifically about election rules B.1 and B.2, which establish procedures for union leadership to endorse candidates. Tarr advised on those narrow provisions and did not excuse compliance with other election rules. You were afforded an opportunity to raise your arguments before FEA's Board of Directors about why the election results should stand. FEA's Board of Directors nevertheless concluded that Rule C.2 still applied. The evidence reflects that FEA was not motivated by bias, but instead by a desire to give effect to each of its election rules. Third, FEA found the election rule violation involved campaigning before an audience larger than the margin of victory.

Under the circumstances of this case, FEA's decision to rerun the election was not unlawful, in bad faith, contrary to the principles of union democracy or unreasonable.

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,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Brian Chance, President
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, Associate Solicitor
Civil Rights and Labor-Management Division