

**U.S. Department of Labor**

Office of Labor-Management Standards  
Suite N-5119  
200 Constitution Ave., NW  
Washington, D.C. 20210  
(202) 693-0143



January 16, 2024



Dear [REDACTED]:

This Statement of Reasons is in response to the complaints you filed with the Office of Labor-Management Standards, U.S. Department of Labor (Department, or OLMS) on April 6, 2023 (First Complaint) and July 3, 2023 (Second Complaint) alleging that 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 of 1978 (CSRA), 5 U.S.C. § 7120, occurred in connection with the May 18, 2023 election of officers that was conducted by the American Foreign Service Association (AFSA).

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

In the First Complaint, you alleged that you were unlawfully denied an opportunity to run for office because you were a former member of the foreign service who had not obtained tenure, and AFSA's bylaws require union officers to be either current members of the foreign service, or former members of the foreign service who had obtained tenure. Section 401(e) of the LMRDA provides that all members in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. 29 U.S.C. § 481(e). You alleged that AFSA's eligibility requirements were unreasonable and non-uniform. Specifically, you objected that obtaining tenure could take up to five years; you also argued that while you did not reach tenure during your time in the foreign service, you had more experience than some current foreign service members who were nevertheless entitled to run for office. The Department's investigation found that having tenure was only one way to meet the AFSA's candidate eligibility requirement. Nominees could also meet the requirement with current employment in the foreign service.

It is ordinarily reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period. Such a requirement should not be so inflexible as to disqualify those members who are familiar with the trade but

who are temporarily not working because of illness, economic conditions, or other good reasons. 29 C.F.R. 452.41. The Department examines candidacy qualifications on a case-by-case basis, considering various factors, including but not limited to: (1) the relationship of the qualification to the legitimate needs and interests of the union; (2) the relationship of the qualification to the demands of union office; (3) the impact of the qualification, in the light of the congressional purpose of fostering the broadest possible participation in union affairs; (4) a comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and (5) the degree of difficulty in meeting a qualification by union members. 29 C.F.R. 452.36. The Department concluded AFSA's requirement was both uniformly imposed and reasonable.

With respect to uniformity, the investigation found that Article III, Section 2 of AFSA's bylaws states, "Only current or former tenured members are eligible to hold office." In practice, the AFSA bylaws established a working at the trade requirement that requires union officers to be either (a) presently working in the foreign service or (b) to have achieved tenure while previously so employed. This working at the trade requirement was uniformly imposed on all members. The investigation found AFSA adopted this provision because current foreign service members, even those with just one year of experience, had a long-term interest in AFSA's mission and understood the issues facing the union. The union made a similar determination for former foreign service members with tenure because of their connection to and knowledge of the issues AFSA addresses. The inclusion of former foreign service members with tenure does not undermine the uniform application of the working at the trade requirement if, as here, the union applies the requirement equally to all nominees. In this case, AFSA required all candidates to be either currently employed in the foreign service or previously employed with tenure.

AFSA's requirement to hold office is also reasonable under the Department's interpretative regulations at 29 C.F.R. § 452.36. First, the working at the trade requirement, including the provision for those with tenure, bears directly on the legitimate needs of the union and the demands of union office. AFSA adopted the relevant constitutional provision to ensure its officers understood the day-to-day issues the union addresses. Second, the investigation did not find evidence that the working at the trade requirement, including the tenure provision, disqualified a large percentage of the membership. Third, working at the trade requirements are commonly adopted by other unions. *See* 29 C.F.R. § 452.41. Finally, AFSA's requirement, when taken as a whole, is not unduly burdensome to meet: an AFSA member must either be a current foreign service officer, or a retired officer with tenure. Because AFSA's requirement is both uniformly imposed and reasonable, there was no violation of the LMRDA.

You also alleged AFSA's eligibility criteria discriminated against people with disabilities because a person could become disabled and retire from the foreign service without obtaining tenure and therefore be excluded from holding union office. The Department's interpretive regulations provide that working at the trade requirements

should not be so inflexible as to disqualify members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working. 29 C.F.R. § 452.41(a). You did not provide evidence that the union unlawfully disqualified you or any other nominee on the basis of temporary disability. The investigation found that you, as indicated in your complaint, “prefer[ed] to work in the civil service or other non-foreign-service jobs” after being medically recovered from your disability. You could have sought work in a foreign service position that would have enabled you to meet the working at the trade requirement as a current employee. Because you did not, AFSA properly disqualified you as a candidate. Accordingly, there was no violation of the LMRDA.

In the Second Complaint you alleged that a candidate, [REDACTED], dropped out of the race but was allowed to resume his candidacy in violation of AFSA’s election rules after you were disqualified. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Under section 401(e), unions must treat candidates that drop out of a race in accordance with their applicable constitutional and bylaw provisions, if any, so long as they are consistent with the LMRDA. *See* 29 U.S.C. 481(e). In this case, however, the investigation found that while [REDACTED] texted you that he would not run for office, he changed his mind shortly thereafter. At no point did [REDACTED] notify the election committee or the union that he was withdrawing his candidacy. [REDACTED] never dropped out of the race and there was no violation 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,

[REDACTED]  
Tracy L. Shanker  
Chief, Division of Enforcement

cc: Asgeir Sigfusson, National President  
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[REDACTED], Associate Solicitor  
Civil Rights and Labor-Management Division