



July 26, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on September 6, 2015, 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 the Civil Service Reform Act of 1978, occurred in connection with the election of officers conducted by Local 1793 of the American Federation of Government Employees (AFGE) on April 29, 2015.

The Department of Labor conducted an investigation of your allegations. As a result of its investigation, the Department has concluded with respect to certain allegations, identified below, that there was no violation of the LMRDA that may have affected the outcome of the election. The other allegations contained in your complaint to the Department may not be considered because your complaint was not timely filed as to those allegations. The following is an explanation of these conclusions.

In your complaint, you alleged that the union violated the LMRDA by allowing [REDACTED] to be a candidate for president in the April 2015 election. You stated that [REDACTED] had a break in membership caused by nonpayment of dues following his retirement in January 2015. You stated that a member who has had a break in membership within the prior year is not eligible for office and that the local is barred from restoring membership retroactively.

Section 401(e) of the LMRDA requires that members in good standing shall be eligible to be candidates and to hold office, subject to reasonable qualifications uniformly imposed. The AFGE Rules of Conduct for an Election provide that, to be qualified as a candidate for any local officer position, an individual must have been "a member for one year of an AFGE local, immediately preceding the closing of the nomination process." AFGE Constitution, Appendix A, part I, section 1(e)(2). The Department's investigation found that, even if this candidate qualification was improperly applied to [REDACTED] any violations could have had no effect on the outcome of the race for president. [REDACTED] lost the election and received 23 votes. The margin between the top

two candidates, Karen Ford-Styer and [REDACTED], was 103 votes. Thus, the number of votes [REDACTED] received could not have affected the outcome of the race.

You also alleged that the union violated the LMRDA in that candidates were not given an opportunity to inspect membership lists. Specifically, you alleged that the treasurer did not make the appropriate lists available to the election committee.

Section 401(c) of the LMRDA provides every candidate the right to inspect the union's member list once within 30 days before an election. The local effectuated this right by holding a candidates' meeting within 30 days before the election at which the mailing list was available for inspection. Moreover, the Department's investigation did not confirm that any candidate made a request to inspect the membership list that the union did not honor. The investigation revealed that the union permitted candidates to inspect the membership list 30 days prior to the election, as required by section 401(c). There was no violation of the LMRDA.

You next alleged that Election Committee Secretary [REDACTED] provided a sample ballot to the incumbent officers and that Treasurer Miriam Rockemore used a union printer to print copies of the sample ballot for campaign purposes.

Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of an officer. With regard to the first aspect of your allegation, the Department's investigation revealed that the incumbent candidates did use a sample ballot for campaign purposes but that all candidates had equal access to the sample ballot and were able to use it for campaign purposes. With regard to the second aspect of your allegation, there was conflict among the witnesses' statements regarding whether the union printer was used to produce campaign literature. Although you alleged that you observed Rockemore on the morning of the election using a printer in the union office to print copies of the sample ballot for distribution as campaign literature, Rockemore and Ford-Styer provided statements denying that Rockemore did so. Ford-Styer and Executive Vice President Yul Owens also provided statements that they used only their home printers to produce the sample ballots that they used for campaign purposes. Section 402(b) of the LMRDA provides that the Department may bring a civil action seeking Title IV remedies only where the Department's investigation finds by a preponderance of the evidence that a violation occurred. Here, the Department did not find by a preponderance of the evidence that union funds were used to promote the incumbents' slate. There was no violation.

You further alleged that Election Committee Secretary [REDACTED] violated AFGE election policy by failing to remain neutral toward all candidates. You alleged that she yelled and cursed at [REDACTED] in front of multiple other members and candidates at the nominations meeting and the candidates' meeting.

Section 401(c) of the LMRDA requires unions to refrain from discrimination in favor of or against any candidate and to provide adequate safeguards to ensure a fair election. These requirements can be violated where a failure of an election committee member to be neutral. Here, even if [REDACTED] conduct as a member of the election committee constituted a violation, the Department's investigation uncovered no evidence of any restrictions placed on [REDACTED] campaigning or other adverse effect on his candidacy as a result. There was no effect on the outcome of the election.

You raised other allegations, based on the conduct of the election by Elections USA, that may not be considered as part of your complaint to the Department because you did not timely file your complaint to the Department with regard to those allegations.

Before a member of a labor organization may file an administrative complaint with the Department of Labor, the Department's regulations require the member to utilize "the remedies available under the constitution and bylaws of the labor organization and of any parent body." 29 C.F.R. § 458.63. A member who has exhausted those internal union remedies and has received a final decision from the union then has one calendar month within which to file an administrative complaint with the Department.

Part III of Appendix A to the AFGE National Constitution sets forth the internal exhaustion provisions for protesting and appealing elections. Those provisions include the following steps for local officer and delegate elections: A written protest must be made to the local election committee prior to, during, or within ten days after the election. The election committee must attempt to resolve the protest or render a decision within 15 days after receipt of the complaint. The complainant may elevate the complaint by appeal, within 15 days of the due date of the election committee's decision, to the National Vice President (NVP). The NVP must issue a decision on the appeal within 30 days after receipt of the appeal. The NVP's decision "shall be the final determination." However, the National President has discretionary authority to review the NVP's decision if the complainant files an appeal within 15 days of receipt or the due date of the NVP's decision. AFGE National Constitution, Appendix A, part III, sections 2-5 (pp. 46-47).

The election committee issued its decision on your and other members' election protests on May 22, 2015. President Karen Ford-Styer timely appealed the election committee's decision to the NVP. On June 9, 2015, the NVP issued a decision overturning the portions of the election committee's decision that disqualified any Local 1793 members or officers as candidates and the portions of the election committee's decision that were based on the conduct of the election by Elections USA. The NVP stated that he would exercise his authority to oversee the runoff election scheduled for June 18, 2015.

You had notice of the NVP's decision no later than June 18, 2015, when the election committee's rulings were not implemented in the rerun election. You had 15 days from June 18, 2015, to take the final possible step of appeal to the National President. You did not do so by July 3, 2015. As explained above, the NVP's decision was a final decision under the AFGE National Constitution.

Under the Department's regulations, you were required to file your complaint concerning these issues with the Department within one calendar month after exhausting the internal union remedies. The date of exhaustion of internal remedies was no later than June 18, 2015, when you had notice of the NVP's decision overturning the relevant portions of the election committee's decision. You did not file an administrative complaint with the Department by July 18, 2015. Consequently, the Secretary does not have the authority to consider the allegations in your complaint that addressed the conduct of the election by Elections USA.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred with regard to the allegations you timely raised with the Department, and the other allegations contained in your complaint to the Department may not be considered because the complaint was not timely filed as to those allegations. Accordingly, the office has closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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