



February 23, 2017

Mr. [REDACTED]

Dear Mr. [REDACTED]

This Statement of Reasons is in response to your complaint to the Department of Labor, received January 14, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the September 16, 2015 election of officers held by Local 2026 (local) of the American Federation of State, County, and Municipal Employees (AFSCME or International).

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged that the local violated its constitution as well as that of the International in several instances. Specifically, you alleged that the local violated its constitution by holding its election in September instead of October. Section 401(e) requires unions to conduct their elections in accordance with their constitution and bylaws. Article VI, Section 2 of the local constitution states in relevant part that “[a]ll regular elections shall be held in the month of October.” Article IV of the local constitution requires a majority vote of the membership and the approval of the International President to amend any provision of the constitution. The investigation disclosed that the local executive board, at its July 7, 2015, meeting, in conjunction with the election committee chair, agreed to hold its elections in September to avoid any conflict with impending contract negotiations with the employer, Trumbull Memorial Hospital. The local violated section 401(e) by failing to hold its election in September, as required under Article VI, section 2 of its constitution, approval of the local executive board notwithstanding. Further, the local did not apply its amendment procedures to change the election month from October to September in the local constitution.

This violation, however, did not affect the outcome of the election. The investigation disclosed that the local provided all members and candidates with the requisite 15-day notice in advance of the nominations meeting, as required under Article VI, section 2 of

the local constitution. Consequently, you and other candidates had a sufficient amount of time within which to campaign. There was no violation that affected the outcome of the election.

You also alleged that the incumbents set the election date and issued the election notice after they were nominated for office, even though these are functions that the election committee is required to perform under the International Constitution. Appendix D, section 2.B of the International Constitution provides, in relevant part, that an election committee shall be established and shall have general responsibility for the conduct of the election in accordance with the International Constitution and the local's constitution. The investigation, however, disclosed that the election committee set the election date in conjunction with the local executive board. The election committee also directed the local recording secretary to issue the election notice. As for the timing, the investigation disclosed that the recording secretary mailed the notice of election in August, approximately 21 days in advance of the election. There was no violation.

You alleged that the local's decision to hold its polling site at the employer's premises constituted an improper use of employer funds that promoted the candidacy of the incumbents. Section 401(g) provides that no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election of officers. Simply holding an election on employer premises does not, in and of itself, constitute a use of employer funds that promoted any candidate's candidacy. The investigation disclosed that the local held its officer election on the employer's premises for the convenience of its members. It is not an uncommon practice for unions to hold their elections on the premises of employer work sites. Many do so for the reason cited by Local 2026. Holding the election on the premises of the employer did not promote any candidate's candidacy. There was no violation.

You also alleged that incumbents improperly used employer resources on September 3, 2015, when they placed campaign literature in the employer-provided mail boxes of the members, who work as registered nurses. The investigation disclosed that the employer permits its nurses to use their employee mail boxes for personal as well as professional purposes. You had the opportunity to place your campaign material in those mail boxes but chose not to do so. There was no violation.

You alleged that you were treated less favorably than the incumbents with respect to the use of AFSCME Council 8's postage meter. Section 401(c) requires the equal treatment of all candidates. The investigation disclosed that on September 11, 2015, you brought your campaign literature, approximately 250 pieces placed in envelopes, to the council's office along with your postage stamps which the council staff affixed to your envelopes. On the same day, a member of the incumbent slate brought her slate's campaign mailing to the Council 8 office, believing she could pay for the mailing at that

time. Because the incumbent slate member did not have any postage stamps with her, the director of the council offered use of the council's postage meter as long as reimbursement was made. The slate member proffered her credit card but the council instead accepted a check because its credit card machine was inoperable. The AFSCME Local Union Election Manual specifies, in pertinent part, that: "The candidate must prepare the materials...and put on the stamps or furnish the money to pay for the mailing meter charge." There was no unequal treatment because no other candidate requested to use the council's postage meter, nor did the council refuse to allow you or any other candidate the use of its meter. There was no violation.

You alleged that polling hours were too restrictive for members, making it inconvenient for them to vote. In support of your allegation, you stated that two members were not permitted to vote because of the odd polling hours set by the local. Section 401(e) requires unions to provide a reasonable opportunity to vote, which encompasses accommodating members' work schedules. 29 C.F.R. § 452.94. The investigation disclosed that the local's polling hours were held in three intervals: 6:45 am-8:00 am; 12:30 pm-2:00 pm; and 3:00 pm-7:00 pm. Those polling hours accommodated all members regardless of whether they worked an 8-hour, 10-hour, or 12-hour shift. Moreover, the member you identified as not being permitted to vote, in fact voted. Both those members arrived during one of the voting intervals prior to the opening of the polls, and voted once the polls opened. There was no violation.

You alleged that the incumbent president's threats to file a lawsuit against your slate intimidated harassed or coerced two members of your slate in to withdrawing their candidacies. The investigation disclosed that both candidates withdrew their candidacies for reasons unrelated to intimidation or coercion. ██████████ stated that he withdrew his candidacy because he disagreed with your campaign tactics. ██████████ then informed slate member ██████████ of his withdrawal. ██████████ then voluntarily withdrew her candidacy. ██████████ attributed her decision to withdraw to her not wanting to be the sole candidate remaining with you on your slate. ██████████ further stated that the incumbent president had not threatened her. There was no violation.

You alleged that the local failed to hold a secret ballot election because there were no partitions in the polling room. Section 401(b) requires local labor organizations to hold their elections by secret ballot. 29 U.S.C. § 481(b). Section 3(k) defines "secret ballot" as the expression by ballot of a choice cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. 29 U.S.C. § 402(k). Secrecy may be assured by use of voting machines or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is marking his ballot. 29 C.F.R. § 452.97.

The investigation disclosed that the conference room in which paper balloting took place was large, accommodating approximately eight to ten tables. Although the election committee did not control the flow of voters, there is evidence that no more than ten voters were ever present in the polling area at one time. These voters, on their own initiative, sought out a table separate from other voters. The investigation further disclosed that voters, including you, were unable to see how any other member voted at any time. The particular circumstances of this case indicate that voters could not be identified with their vote. Such circumstances include the size and physical arrangements of the room itself, the presence of numerous tables, the relatively few voters present at one time, all of which permitted each voter sufficient privacy while he or she voted. There was no violation.

You alleged that the local failed to provide adequate safeguards in two instances. First, the local permitted incumbent treasurer [REDACTED] to take a ballot outside the polling area to allow a member to vote. Section 401(c) requires union to provide adequate safeguards to insure a fair election. The investigation disclosed that on election day, the election committee called [REDACTED] to have her verify one member's eligibility to vote. That person was not on the dues payment list [REDACTED] had provided to the election committee earlier that day. Over the phone, [REDACTED] confirmed that the member was current in dues payment. The local provided adequate safeguards to ensure a fair election because [REDACTED] did not remove or bring any ballot to the polls. There was no violation.

Second, you alleged that the ballot was designed to favor the incumbent candidates because incumbent candidates were listed first for the most important offices. The form of the ballot is not prescribed by the LMRDA; a determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and other provisions of the Act. 29 C.F.R. § 452.112. The AFSCME Local Union Election Manual does not require a specific method for listing candidates but advises locals it would be improper to deviate from a previously used method if the nominations have already concluded. The investigation disclosed that the election committee listed the names on the ballot in a random manner, using no pattern whatsoever. There is nothing inherently unfair about the manner in which candidates' names were listed, given that it was unsystematic and remained in effect after nominations closed. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file in this matter.

Sincerely,





Chief, Division of Enforcement

cc: Beverly Dankowitz, Associate Solicitor, Civil Rights and Labor-Management

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OLMS/DOE/Meg Ferris/FPB N-5119/202-693-1234/January 17, 2017

Initials				
Date	01/17/17	02/10/2017		
Last Name	Meg Ferris	HANLEY		
Title	DOE Inv.	DOE Chief		

Case String: 350600677801 LM: DOE Number: 8921