



December 19, 2019

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint received on March 7, 2019 by the Department of Labor alleging a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (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 re-run election of officers of Local 17 (Local 17 or local), American Federation of Government Employees (National), conducted under the National's supervision on November 30, 2018.

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

You alleged that the local improperly ruled you ineligible to run for local president by applying an invalid bylaw provision prohibiting retired members from running for office. Specifically, you alleged that the bylaw provision was illegal because the National Executive Council (NEC) did not approve the amendments, and that the incumbent local president drafted the retiree-restriction with the intent to prevent you from running for office. Section 401(e) of the LMRDA provides, in relevant part, that "every member in good standing shall be eligible to be a candidate to run for office and to hold office (subject to . . . reasonable qualifications uniformly imposed) . . ." 29 U.S.C. § 481(e). Unions may restrict retirees from running for and holding office. See 29 C.F.R. § 452.93 (The right of retirees to vote may be restricted to the extent provided by the constitution/bylaws of the labor organization). The National Constitution does not restrict retired members from running for office. However, the local's bylaws, which were amended on November 22, 2017, state at section 18 that: "[r]etired members of the local may not run for elected office."

The investigation disclosed you retired from federal service on June 30, 2018, five months before the November 1, 2018, nominations meeting. Prior to your retirement, you served on the Local 17 Bylaws Committee with [REDACTED], the incumbent president, and [REDACTED], the treasurer at that time. The Bylaws Committee was tasked with reviewing and updating the local's bylaws. Around October 13, 2017, the local mailed a notice to all members, including you, about a referendum vote to be held at a special membership meeting regarding the Bylaws Committee's proposed bylaw amendments, including a new provision prohibiting retired members from running for office. That notice identified the date and location of the special membership meeting. Included with that notice was a four-page draft of the proposed new bylaws, a URL to the existing 1992 local bylaws, and an absentee ballot for the referendum vote. The vote was held at a November 22, 2017 special membership meeting. The investigation disclosed you attended that meeting and voted in favor of adopting the amendments, including the prohibition on retired members from running for office.

In summary, the investigation determined that you had the opportunity to challenge the inclusion of the retiree-exclusion while serving on the Bylaws Committee, and again after you received your referendum notice with the accompanying amendment draft, and yet a third opportunity at the voting referendum itself, but you did not do so. Instead, you voted in favor of the amendments, including the amendment that excluded retired members from running for office.

Regarding your specific allegation that the amended bylaws were invalid because the NEC did not approve the amendments, the National Constitution provides the procedures for amending bylaws. Those procedures differ with respect to when the amended bylaws take effect, which is further dependent on whether a local has adopted the National's Local Standard Constitution. For locals governed by the National's Local Standard Constitution, no approval by the NEC is necessary. Article XI, section 3 of Appendix B, Standard Local Constitution, National Constitution, provides that "[b]ylaws shall be adopted and amended only after a one month notice to the local's membership and by two-thirds vote of members, either present at a membership meeting and voting, with provision for absentee vote, or by mail ballot. Such bylaws do not require NEC approval."

The Department's investigation confirmed the amended bylaws were valid because they met the requirements of Article XI, section 3 of Appendix B. At least two-thirds of the members attending the special membership meeting on November 22, 2017 voted in favor of adopting the amendments. The local provided its members with the requisite one-month notice of the bylaws vote, as well as an absentee ballot to every member. The local was not required to obtain NEC approval thereafter because Local 17 is governed by the Local Standard Constitution. Finally, there was no evidence that the

incumbent local president drafted the retiree-restriction to disqualify you personally, nor did you provide any such evidence. There was no violation.

You alleged that the incumbent president [REDACTED] used union funds to promote his candidacy. Specifically, you alleged that the incumbent president used union funds to pay for catering and higher quality foods and beverages at union events which [REDACTED] hosted while on time paid for by the union. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an officer election. 29 U.S.C. § 481(g).

During the Department's investigation, incumbent president [REDACTED] stated that during his tenure which began in 2016, he increased the number of union events. Those events included lunch and learns, ice cream socials, holiday parties, and recruitment events, among other things. [REDACTED] further stated that those events, paid for with union funds, were catered and included foods and beverages of a higher quality than provided prior to his tenure. [REDACTED] said his purpose in doing so was to encourage attendance and increase membership. [REDACTED] claimed that the local union's membership increased from 625 to 925 during the three years of his tenure. In the three months prior to the November 30, 2018 mail ballot election, the local held nine union-sponsored events: four in September; one in October; and four in November. In addition, two holiday parties were held in December, after the conclusion of the election. The investigation disclosed that incumbent president [REDACTED] never campaigned at any of those events, nor do you allege otherwise. As such, the incumbent president did not promote his candidacy at any of these union events. It is therefore of no consequence that union funds were used to pay for these events or that [REDACTED] was on time paid for by the union. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA that may have affected the outcome of the election occurred. Accordingly, the office has closed the file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director within 15 days of service of this notice of dismissal. A copy of your request must be served on the District Director and the union and a statement of facts must be filed with the Director. 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. § 458.59.

Sincerely,

[REDACTED]

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Chief, Division of Enforcement

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