



April 13, 2020



Dear [REDACTED]

This Statement of Reasons is in response to the joint complaint you and [REDACTED] filed with the Department of Labor (the Department) on August 23, 2018, 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 (CSRA), 5 U.S.C. § 7120, and 29 C.F.R. § 458.29, occurred in connection with the election of union officers conducted by Local 22, American Federation of Government Employees (AFGE or National) on May 22, 2018.

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

You alleged that the Local 22 membership address list was not updated thoroughly before the nomination notices for this election were mailed, and as a result, some members did not receive them. You also noted that the AFGE Election Manual advises unions to update their lists of members and their home addresses at least six weeks before an election.

Section 401(e) of the LMRDA requires that a “reasonable opportunity . . . be given for the nomination of candidates.” Accordingly, notice must be “timely [and] reasonably calculated to inform” members of how and for which offices nominations will proceed. 29 C.F.R. § 452.56. While no specific method of notice is prescribed, mailing the notice of nominations to each member’s last known address within a reasonable time of the nomination meeting would satisfy this requirement. Regarding member addresses, the AFGE Election Manual suggests that the election committee should compile “as accurate a list as possible” six weeks prior to an election.

The investigation disclosed that the nomination notice was mailed to every member at their last known home address more than 15 days prior to the nomination meeting. As you admit, in your role as Secretary-Treasurer you had not updated the membership address list in months because Local 22 was no longer doing mailings on a regular basis. However, the investigation revealed that Local 22 President Wheeler attempted to update members’ addresses at membership meetings and that the local worked to correct addresses when the undeliverable nomination notices were returned by calling the members and contacting shop stewards. Local 22 mailed over 400 nomination notices to members’ addresses, and only a small percentage were returned

as undeliverable. The nomination notice was also posted in at least two locations at Local 22 worksites. There was no violation.

You also alleged that candidates were not allowed to inspect the Local 22 membership list in the Local office upon request. Section 401(c) of the LMRDA prohibits discrimination in favor of or against any candidate with respect to the use of lists of members. The AFGE Election Manual grants candidates the right to inspect a list containing the names and last known addresses of all members at least once within 30 days prior to the election.

The investigation disclosed that [REDACTED] asked for a copy of the membership list, and like all candidates in contested positions, was offered a set of address labels at no cost within 30 days of the election. The labels contained the names and last known addresses of Local 22 members. Candidates were therefore permitted not only to inspect the membership “list” but to have a copy of it in the form of mailing labels, exceeding the AFGE Election Manual requirement and complying with the LMRDA requirement that unions refrain from discrimination against candidates regarding the membership list. *See* 29 C.F.R. § 452.71(b). While [REDACTED] declined to accept her address labels, the other two candidates used them for their campaign mailings. You were not denied an opportunity to inspect the membership list.

You further alleged that the union acted improperly when it provided the address labels for campaign mailings using its own funds, at no cost to the candidates. Under Section 401(c) of the LMRDA, unions must “comply with [a candidate’s] reasonable request . . . to distribute . . . campaign literature” at their own expense, and must treat all candidates equally in this regard. Section 401(g) of the LMRDA states that union money may not be “contributed or applied to promote the candidacy of any person in a [covered] election.” However, as the Department’s regulations make clear, this section “is not intended to prohibit a union from assuming the cost of distributing . . . campaign literature,” provided that it is done on a nondiscriminatory basis. 29 C.F.R. § 452.73.

The investigation revealed that all candidates in the contested races were offered address labels at no charge. There was no violation.

In addition, you alleged that there should have been a cutoff date for voter eligibility, and that a Local 22 member who wanted to vote was deemed ineligible and thus unable to do so. Section 401(e) of the LMRDA entitles each member in good standing to one vote. This right “may be qualified by reasonable rules and regulations” set forth in the union’s constitution and bylaws. 29 C.F.R. § 452.85.

The investigation revealed that neither the AFGE Constitution nor the Local 22 Bylaws require a voter eligibility cutoff date. The Local 22 Election Committee did not set a voter eligibility cutoff date and required only that voters were members of the local in good standing. Accordingly, it was proper for Local 22 to allow new members to join and vote up to the date of the election.

Regarding the individual you alleged was improperly denied an opportunity to vote, the investigation did not reveal any evidence that this individual was in fact a member in good standing of Local 22. No membership application or records for this individual were found. The union told the individual to fill out a new membership application, but the application was apparently never filed and the Election Committee Chair (the Chair) subsequently did not send the individual a ballot. There was no violation.

You additionally alleged that you were not informed that you could serve as your own observer throughout the election process. Section 401(c) of the LMRDA affords candidates the right to have observers present at the polls and at the tallying of ballots. Candidates are also permitted to serve as their own observers. 29 C.F.R. § 452.107.

The investigation revealed that the Chair sent two emails, on May 5 and May 22, 2018, notifying you, as well as all other candidates, that candidates could have personal observers present at the counting of votes. The May 5, 2018 email stated that the observer need only be a dues-paying member, and did not state that candidates could not serve as their own observers. Furthermore, you did not ask the Election Committee if you could serve as your own observer, nor were you told that you could not.

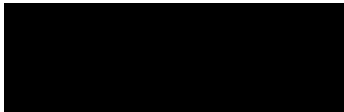
The investigation further disclosed that the official Local 22 nomination notice stated that each candidate could have a reasonable number of members present as observers throughout the election process, including the tally of ballots, in accordance with the AFGE National Constitution. Accordingly, no violation of the LMRDA occurred.

You further alleged that incumbent officers – [REDACTED] and VP for Portsmouth [REDACTED] – improperly took part in the election process, including in ways that may have demonstrated bias against your candidacy. Section 401(c) of the LMRDA prohibits disparate candidate treatment in the interest of ensuring free and fair union elections. 29 C.F.R. § 452.66; *see* 29 C.F.R. § 452.110.

The investigation did not reveal any evidence that the participation of [REDACTED] and VP [REDACTED] in the election process adversely affected or impermissibly benefited any candidates. Both incumbent officers ran unopposed. The investigation disclosed that they provided advice on election processes and timelines when asked, sometimes simply by directing the Election Committee to the AFGE Election Manual, National Constitution, Local Bylaws, and National Representative, as well as by providing the Committee with sample materials from previous elections. In addition, [REDACTED] downloaded the membership list for the Election Committee in his capacity as president. He and VP [REDACTED] assisted in updating it and creating and printing the ballots partly because you, the Secretary-Treasurer at the time, opted to stay out of the election process once you learned that your position was contested. The investigation disclosed that the ballots were subsequently approved by the Election Committee, and that [REDACTED] were not involved in stuffing, mailing, or tallying the ballots. There was no violation of the LMRDA.

Finally, you alleged Local 22 failed to hold a candidates' meeting to review the election rules. It was determined that, even if true, this allegation would not be a violation of Title IV of the LMRDA. As such, this allegation was not investigated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its 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 Chief, Division of Enforcement (DOE), and the union, and a statement of service 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. § 458.64(c); *see also* 29 C.F.R. § 458.59.



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