

**Report of the Independent Investigation
Into Allegations of Harassment and
Related Misconduct Against J. David Cox**

Prepared by Working IDEAL for the
American Federation of Government Employees (AFGE)

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I. Executive Summary

On the evening of October 27, 2019, *Bloomberg Businessweek* published an article detailing allegations by multiple individuals asserting that the National President of the American Federation of Government Employees (AFGE), J. David Cox, had engaged in sexual harassment and other related misconduct.¹ In a letter to the AFGE National Executive Council (NEC), dated October 27, Cox denied the allegations. According to a public statement AFGE issued on October 29, Cox authorized an investigation, recused himself from it, and began a leave of absence. On February 28, 2020, Cox resigned the office of President.

AFGE is the nation's largest federal employee union, representing roughly 700,000 federal and D.C. government workers. AFGE has over 300,000 dues paying members and represents workers in every federal agency. AFGE provides legal representation, legislative advocacy, and other member services. AFGE's leadership body is the National Executive Council (NEC), which consists of three elected National Officers located at headquarters – the National President, the National Secretary-Treasurer, and the National Vice President for Women and Fair Practices – along with 12 National Vice Presidents (NVPs), each representing and located in a geographical region. AFGE employs about 280 employees, approximately two-thirds of whom work in the Washington, D.C. headquarters office, with the rest working in the field.

The NEC referred the Cox matter to its Legal Rights Committee, which voted to hire a third party to investigate the allegations against Cox. In early November 2019, the NEC retained Working IDEAL to perform this work. The NEC tasked Working IDEAL with conducting an independent, thorough, and impartial investigation of allegations of misconduct by Cox, evaluating AFGE's policies and practices related to preventing and responding to workplace harassment, and making recommendations for AFGE to strengthen its workplace. Working IDEAL is issuing this report on the findings and conclusions of our investigation into the allegations of sexual harassment and related

¹ Josh Eidelson, *President of Major U.S. Union Accused of Sexual Harassment*, BLOOMBERG BUSINESSWEEK (Oct. 27, 2019), <https://www.bloomberg.com/news/articles/2019-10-28/afge-president-accused-of-sexual-harassment-in-metoo-scandal>; See also Josh Eidelson, *Harassment, Culture of Fear Flourished at Federal Workers Union, Staff Say*, BLOOMBERG BUSINESS (Nov. 14, 2019), <https://www.bloomberg.com/news/articles/2019-11-14/harassment-culture-of-fear-flourished-at-federal-workers-union?sref=yJOoUFkA>.

misconduct by Cox, along with a set of recommendations arising out of the investigation.

1.1 About the Team and the Investigation

Working IDEAL is a consulting firm founded by people who have a long history representing and supporting workers and building inclusive workplaces. We provide trusted, effective, and innovative advice on inclusive workplace practices, harassment prevention, diverse talent, and fair pay to large and small companies, universities, non-profits, unions, and other organizations across the nation. We also conduct third-party audits and investigations of workplace practices and complaints, including harassment.

Jenny R. Yang of Working IDEAL, and a former Chair of the U.S. Equal Employment Opportunity Commission, led the investigation, joined by her Working IDEAL partners Pamela Coukos and Cyrus Mehri (who is also a founding partner of the law firm of Mehri & Skalet, PLLC). Our other investigation team members include Mehri & Skalet Partner Ellen Eardley and attorney Desiree Langley; attorney Anurima Bhargava, a former official in the U.S. Department of Justice, Civil Rights Division; and Sarah Crawford and Peach Soltis, formerly senior attorneys at the U.S. Equal Employment Opportunity Commission, and now with Working IDEAL. Mehri & Skalet has a long history of representing workers in race and gender discrimination cases, wage and hour cases, and other employment issues. Biographies of these investigation team members are included in the Appendix.

As part of Working IDEAL's investigation into allegations of sexual harassment and related misconduct by Cox,² the team conducted over 70 interviews³ and reviewed about 3,500 emails, along with select personnel and complaint files, event schedules, collective bargaining agreements, and written policies and procedures. A number of current and former employees and members reached out to our team directly or otherwise agreed to be interviewed or provide information. We sought to preserve the privacy of individuals who spoke with us or contributed information to the

² This report does not address every allegation contained in the Bloomberg media reports or every incident shared with us. We included incidents where we could obtain credible, first-hand accounts that fell within the scope of our investigation, and where we could address potential privacy or other concerns.

³ The FAQs that Working IDEAL provided to witnesses explaining our process and how we would use the information provided are also included in the Appendix.

investigation. Senior officials of AFGE and witnesses who are already publicly known via media reports are identified by name in this report, but for the others, we have not used their names and have limited identifying details. In a small number of instances, individuals declined to participate at all, or declined requests for follow up information.⁴

Notably, everyone in AFGE leadership with whom we requested an interview cooperated – with the exception of Cox – who, through his counsel, did not respond to multiple requests to participate in or provide information to this investigation. AFGE cooperated with all requests for records.

Working IDEAL took significant steps at the outset of this work to ensure an independent, thorough, and impartial investigation. Working IDEAL's agreement with AFGE states that we will make our own independent judgment of the facts, that the investigation findings are solely the conclusions of the Working IDEAL investigation team, and that these findings will not be influenced by AFGE or the NEC. No one at AFGE dictated with whom we spoke, what information we considered, or how we managed the investigation. Working IDEAL considers and has treated all of our internal working documents and notes as confidential and has not shared any interview notes with AFGE or any third parties. No one at AFGE has drafted any portion of this report, made any edits to it, or conducted any aspect of our investigation. The NEC's Legal Rights Committee served as our primary liaison, and we did not report to or receive any direction on this investigation from the Office of General Counsel.

1.2 Scope and Purpose of this Report

This Report focuses on Working IDEAL's independent investigation of allegations of sexual harassment and other related misconduct against Cox and AFGE's response. We have concluded that a number of serious allegations concerning Cox's actions are supported by credible and detailed evidence. Our investigation applied the commonly-used standard of a "preponderance of the evidence," which means that the evidence, taken as a whole, shows that the conduct discussed in the report findings is more likely to have occurred than not to have occurred.

⁴ These individuals were all former employees or people who had never worked at AFGE.

Our investigation also documented broader concerns about AFGE's equal employment opportunity (EEO) infrastructure, practices, and organizational culture. The investigation revealed gaps in the organization's mechanisms for reporting and responding to allegations of harassment and misconduct, and a perception by employees that the organization tolerated harassment and bullying. The path forward will require AFGE to engage in a concerted effort to build a culture of respect, inclusion, and accountability among leadership, employees, and members. As a first step, AFGE has committed to publicly sharing this report summarizing the findings and recommendations of this investigation, and to take action on these recommendations. These efforts will help AFGE begin the work of acknowledging harm, rebuilding trust, providing transparency, demonstrating accountability, and taking action to prevent future harm.

1.3 Overview of Findings

Our investigation focused primarily on allegations that Cox engaged in harassment or other related misconduct, including allegations made by former AFGE employees, Brett Copeland and Rocky Kabir, both identified in the Bloomberg article. Working IDEAL also investigated other incidents described in that article, as well as additional allegations concerning Cox's behavior uncovered during our investigation. One additional witness came forward late in our investigation with significant allegations of sexual misconduct, which could potentially add to, but do not conflict with, the findings in this report.⁵

Based on interviews and a review of documents, Working IDEAL has concluded that:

- **Brett Copeland's allegations are credible and consistent with other witness statements and documents from that time.**

Copeland alleges that at an AFGE event in Palm Springs, California in April of 2017, Cox subjected Copeland to sexually harassing behaviors, including sexual comments and innuendo, inappropriate and unwelcome physical contact, and an invitation to Cox's hotel room. Copeland also alleges he witnessed Cox engaging in inappropriate behavior toward Rocky Kabir, including making religious slurs and sexual innuendo. Copeland made detailed contemporaneous

⁵ These allegations are the subject of formal charges filed under the AFGE Constitution, and AFGE has now appointed a Committee of Investigation, which is proceeding on a separate track. If substantiated, these allegations could be the basis for additional findings of serious misconduct.

notes. He also texted and spoke with other witnesses late that evening and the next day concerning what he experienced. Copeland reported the incident to AFGE as soon as he returned to the office and resigned as the Director of Communications – a promotion that he had sought and was excited to have received just two weeks prior. The written documentation and our conversations with multiple witnesses are consistent with his account.

- **Rocky Kabir’s allegations are credible and supported by substantial evidence.**

Kabir alleges that Cox subjected him to unwanted physical contact and made repeated sexual comments, as well as repeated derogatory comments about Kabir’s religious affiliation. The investigation revealed an inappropriate supervisor and subordinate power dynamic between Cox and Kabir that placed Kabir in a vulnerable position. This included evidence that Cox rented Kabir space in Cox’s apartment, that Cox pressured Kabir to comply with Cox’s inappropriate demands, such as accompanying Cox to adult entertainment venues, and that Cox asked Kabir to procure sex workers for him. The written documentation and interviews with witnesses provide substantial evidence to support this account.

- **There is substantial evidence that Cox subjected additional AFGE employees to conduct of a sexual nature and other inappropriate conduct.**

The investigation revealed additional allegations where individuals alleged that Cox made inappropriate sexual comments toward those around him, including AFGE staff, members, and others with whom he interacted while on AFGE business. These alleged incidents included invitations to his hotel room, invitations to engage in sexual activity or view adult entertainment, and/or frequent sexual jokes, commentary, and inquiries. We also identified incidents where Cox subjected individuals to conversations about soliciting sex workers, and where Cox asked individuals to procure a sex worker for him. Some individuals we spoke with also alleged incidents of racial or religious bias. Several described Cox as engaging in verbal abuse and belligerent behavior. We spoke with individuals who had first-hand knowledge of these incidents, and in some cases, we were also able to obtain additional information from other witnesses or documentary evidence. The incidents together provide credible evidence of an overall pattern of misconduct by Cox.

- **While AFGE took some steps to prevent and address harassment and misconduct, its written policies and constitutional procedures – and their implementation – left few checks on the power of the President. These organizational shortcomings hindered AFGE’s ability to learn the full picture of Cox’s misconduct and to hold him accountable.**

AFGE’s formal complaint procedures – including the internal EEO policy and reporting procedure, the constitutional procedures for bringing complaints against elected officials, and the grievance procedures – provided the President with significant authority over complaints and reporting channels and limited the organization’s ability to address misconduct by elected officials against staff. The senior Human Resources position was effectively or actually vacant at key times relevant to this investigation. As a result, the General Counsel’s Office took the lead on handling EEO reporting and investigations, despite having limited staffing and resources available to take on this additional workload. Both of these offices report directly to the President. Those charged with responding in the General Counsel’s Office instituted EEO training and ensured AFGE had a written policy and reporting procedure. They generally focused on responding to first-hand, written, and formal complaints where they could identify a specific violation of explicit policy. As explained in this report, this approach to triaging workload – and decisions not to pursue further investigation in some cases – hindered AFGE from effectively learning about and responding to Cox’s conduct. The evidence we obtained does not establish that any senior leader knew the full picture of sexual misconduct and other inappropriate behavior by Cox. As explained below in Sections 2.1, 2.2 and 2.3, some allegations of Cox’s misconduct toward staff were raised with, or otherwise known to, a few people in headquarters senior management at the time. Ultimately, AFGE’s systems and practices were not sufficient to ensure the NEC had adequate notice of problems or sufficient mechanisms to provide effective oversight in cases of Presidential misconduct.

- **Current and former employees shared their reluctance to raise concerns about Cox’s conduct, due to fears of retaliation and a lack of an organizational response when concerns were raised. This created an environment that chilled reporting and made it even harder for AFGE to learn about and respond appropriately to allegations of harassment.**

A number of individuals who spoke with us believed they had experienced retaliation for reporting or saw negative impacts on others who came forward

with concerns or otherwise challenged leadership on various issues. Witnesses reported that Cox would hold grudges or seek to penalize people whom he viewed as challenging his authority. AFGE operates in a highly politicized environment. On certain occasions when individuals expressed concerns, some members of the NEC and senior management ascribed “political” motivations to, or questioned the credibility of, these individuals. This created an environment where individuals often felt they would not be seen as credible or could experience negative consequences if they reported harassment or bias, particularly concerning Cox’s conduct. This perception may have been heightened by the terms of the EEO policy, which warned that false complaints could be subject to disciplinary action.

- **A number of additional organizational factors and external challenges contributed to Cox’s ability to engage in inappropriate conduct.**

Additional organizational factors and external challenges impacted AFGE’s response to concerns and contributed to an environment where Cox was able to engage in misconduct. Over the last several years, AFGE confronted a number of challenging internal and external pressures, including a hostile political climate and budgetary shortfalls, which affected the response to potential problems. A number of individuals we interviewed perceived that the organization tolerated inappropriate jokes and commentary, as well as abusive language and disrespectful conduct, which can be a precursor to more serious misconduct. In addition, heavy drinking was common among some of the attendees at AFGE events and conferences, which can increase the likelihood of inappropriate behavior. Another risk factor is that AFGE duties often require working outside the typical office setting, such as at hotels, and conducting work after usual business hours. The location and timing of work can contribute to people misjudging boundaries around professional conduct. It can also interfere with reporting structures and oversight mechanisms and make it easier to obscure misconduct.

Part II of this report sets forth the evidence we reviewed and the facts we learned concerning these findings.

1.4 Summary of Recommendations

Based on our investigation, we have identified a number of recommended actions for AFGE to take in order to promote a safe, respectful, and inclusive workplace that does not tolerate harassment or other forms of discrimination. These include a recommendation that AFGE revise its existing EEO policy and reporting procedures to strengthen protections for employees and ensure leadership engagement in preventing harassment. We also recommend that AFGE implement an effective process to hold the President and other elected officials accountable for harassment or discrimination against staff. AFGE has already taken steps to implement structural and policy changes that relate to several of these recommendations.

We also recommend that AFGE work with a new outside entity to conduct a culture and climate assessment to assist in more fully understanding the needs and concerns of the workforce, and in identifying strategies to build an inclusive and respectful culture and climate. Although Working IDEAL initially contemplated conducting a second phase culture and climate review, we recommend AFGE work with a new entity for this assessment. This will facilitate a clear end to the investigation process and will enable AFGE to continue strengthening its organizational practices and culture.

Our recommendations include:

- 1. Make a Leadership Commitment to Building a Harassment-free and Inclusive Workplace.**
 - Commit to concrete actions by leadership that strengthen organizational culture.
 - Establish a visible and proactive role for leadership in strengthening policies and practices, modeling respectful behavior, creating a culture of shared accountability, and working to rebuild trust.
- 2. Update the Equal Employment Opportunity (EEO) Statement to Strengthen Reporting Procedures for Employees and Clarify Investigation Practices and Responses.**
 - Ensure multiple options are available to raise concerns or report complaints and support employees who encounter misconduct.
 - Provide appropriate and more explicit privacy protections that balance employer needs and employee protections.

- Consider options for more informal conflict resolution and problem-solving support for AFGE employees.
- Ensure that managers and leaders respond appropriately when they are on notice of potentially concerning conduct.
- Remove language from the EEO policy that may have a chilling effect on employee complaints.
- Formalize standards and procedures for internal and external investigation.
- Provide appropriate corrective action or response to address harm and risk.

3. Transition Staffing Responsibility for Responding to EEO Complaints.

- Bring on a strong leader as Director of Human Resources.
- Transition handling internal complaints from the General Counsel's Office to Human Resources.

4. Consider Options for an Interim External Procedure for Handling Workplace Complaints and Concerns.

- Consider an interim external process for receiving complaints while implementing new internal procedures.

5. Ensure Effective Accountability Structures to Address Misconduct by the President, Elected Officials and Other Senior Leadership.

- Clarify how the EEO policy applies to elected officials and how staff may bring complaints against elected officials.
- Establish appropriate sharing of information by senior staff with the NEC about EEO reporting and compliance.
- Create clear, specific practices for recusal or addressing conflicts of interest.
- Strengthen the capacity of the NEC to engage in oversight of the President and senior AFGE leadership.

6. Address Other Gaps in Formal Policies and Procedures Identified in This Report.

- Responsible use of alcohol.
- Romantic or intimate relationships between individuals in direct reporting chains.
- Bullying and respectful conduct in the workplace.

- Safety at AFGE events and conferences.
- No use of AFGE funds and no holding work functions at adult entertainment venues.
- Intimate partner violence.

7. Expand and Formalize Regular Training.

- Regular mandatory EEO training consistent with best practices.
- Training on new policies and practices.
- Training on management, leadership, and trust-building.

8. Continue Implementation of the Code of Conduct.

- Continue implementing the Code of Conduct recently adopted by NEC.
- Use it at meetings and events.

9. Commission a Culture and Climate Review and Identify a New Outside Entity to Lead It.

- Conduct a culture and climate assessment with a new outside entity to assist AFGE in more fully understanding the needs and concerns of the workforce and identifying additional strategies to create a respectful and inclusive culture and climate.

10. Apply Principles of Accountability and Transparency in Efforts to Strengthen the Workplace.

- Develop a work plan to address a broader set of improvements to strengthen culture and climate, as well as reporting recordkeeping, training, and governance.

Part III provides more detail about these recommendations.

II. Factual Findings

2.1 Communications Director Allegations

Brett Copeland's allegations center on an incident in Palm Springs, California in April 2017. Two weeks prior to the incident, Copeland had been officially promoted to the position of AFGE's Director of Communications, after previously serving in that role in an acting capacity. Copeland started working at AFGE in 2014, and in 2015, he was promoted to Deputy Director of Communications. Copeland and others described his excitement about his promotion to the Director of Communications position.

Copeland recounted that in the early morning hours of April 13, 2017, he encountered Cox and Kabir at a bar in Palm Springs, California. They were in town for an AFGE conference and were staying at a nearby hotel. Cox appeared to be intoxicated. He sat down at a table with Copeland and two others who were not AFGE employees and not previously known to Copeland, Cox or Kabir. Cox made a number of derogatory comments, including calling Kabir "a goddamned Muslim." Cox, Copeland and Kabir left the bar together and walked from the bar to the hotel. Copeland stated that during this walk he expressed a need to use the restroom, and that Cox repeatedly urged Copeland to urinate near a bush along the sidewalk, while Cox stood very close and put his arm around Copeland. As the three of them continued walking toward the hotel, Cox made graphic sexual references, told Copeland that he loved him, and repeatedly suggested that both Copeland and Kabir should join him in the jacuzzi in his hotel suite. Copeland reported that when they arrived at the hotel, before parting ways, Cox hugged him, put his head on his shoulder, told Copeland he loved him again, and then, to Copeland, it felt like Cox licked his ear.⁶

Copeland's account is corroborated by witness interviews and other documentation, including a record of text messages Copeland sent that night, an account of a colleague he spoke with the following morning, and a detailed timeline he drafted later in the day on April 13, 2017.⁷

⁶ This language is taken from the contemporaneous timeline Copeland wrote and then provided to AFGE. While there is some variation in how this part of the interaction has been described, we believe the accounts are consistent with respect to all of the important aspects of the evening.

⁷ Copeland's timeline shows that he was also drinking that night, but he also prepared a highly detailed contemporaneous written record of the incident.

When Copeland returned to the office on Friday, April 14, 2017, less than 48 hours after the Palm Springs incident, he submitted his resignation in writing to Cory Bythrow, AGFE's Deputy Chief of Staff, as well as to David Borer, AGFE's General Counsel, to Brian DeWynngaert, AFGE's Chief of Staff, and to Keith Wright, AGFE's Human Resources Manager. Copeland reported the incident to Bythrow that same day. Consistent with Bythrow's obligations as a senior manager, he referred Copeland to the General Counsel's Office, and Borer met with him early that next week, on April 18 and 19, 2017, to discuss the incident, Copeland's resignation, and how it should be handled. Copeland submitted his detailed timeline to both Bythrow and Borer. This timeline identified both Copeland and Kabir as targets of Cox's harassment.

Copeland expressed his concerns about Cox's treatment of Kabir in these conversations with Borer. Copeland recalled raising whether there was an inappropriate relationship between a supervisor and subordinate, and that Borer responded by asking Copeland whether or not he understood the relationship to be consensual.

While accounts differ on some details, conversations and documents made at the time reflect that Borer told Copeland the NEC would need to be notified in order to take formal action addressing Cox's conduct. Borer also stated to us that he advised Copeland about the three options for filing complaints – the EEO process, the grievance process, or filing Article 23 charges. Evidence shows that Copeland expressed a desire to keep the incident confidential, and that Copeland did not want Borer to share his report with the NEC. Copeland also expressed concern about reputational risk to AFGE if the story became public. Evidence also shows Copeland was motivated by a desire to address the inappropriate conduct, and to prevent harm to others. Copeland understood Borer to promise that nothing like this would happen again.

Shortly after Copeland made his report, Borer interviewed Cox, who largely denied the conduct. Borer and DeWynngaert also discussed Copeland's allegations. AFGE never conducted an interview with Kabir, the primary witness to the night's events, who was also identified as a potential victim of Cox's harassing behavior in Copeland's timeline. Copeland's resignation became effective about two weeks after the incident.

Copeland's account of the incident and subsequent responses are credible and corroborated through witness statements and documentation. Numerous witnesses we interviewed said they believed Copeland or had no reason to doubt him, and no witnesses suggested that Copeland had a motivation to make untruthful allegations.

The fact that multiple witnesses confirm that Copeland was enthusiastic to have just been promoted to his “dream job,” only to abruptly resign weeks later, lends additional credibility to these allegations.

2.2 Confidential Secretary Allegations

Rocky Kabir alleged that Cox engaged in numerous incidents of sexual harassment and other ongoing misconduct spanning the tenure of Kabir’s employment at AFGE as Cox’s Confidential Secretary. Kabir was acquainted with Cox in the spring of 2016, when Kabir was working at a department store in New York City and Cox was a regular visitor. According to AFGE records and first-hand witness accounts, Cox visited New York with staff and socialized with Kabir on multiple occasions before Kabir’s hire. Records show that Cox directed a staff member to purchase a train ticket for Kabir to travel from New York to Philadelphia during the Democratic National Convention in July 2016, an event that Cox and other AFGE staff attended. Kabir states that he attended one day of the convention with Cox. This occurred months prior to Kabir’s application for an open position in Cox’s office. According to Bythrow, Kabir possessed relevant qualifications for the position; however, by several accounts, Kabir’s hire in October 2016 did not follow the typical AFGE hiring process. AFGE records show that instead of using the AFGE jobs website, Kabir submitted his resume directly to staff in the National President’s Office, and Kabir was hired after an abbreviated interview process.

Kabir’s primary job duties were to travel with Cox to work meetings and events across the country, and to assist with his schedule and travel logistics; some referred to the Confidential Secretary position as akin to a “body man.” This position inherently requires atypical work hours with frequent evening and weekend work because it closely mirrors the President’s schedule.

Based on accounts by Kabir and several witnesses, Cox subjected Kabir to acts of inappropriate sexual conduct, and Cox leveraged his position of power to make unreasonable and unprofessional demands of Kabir. Kabir recounted an instance when Cox was sick and demanded Kabir assist him in the shower. Kabir stated that Cox frequently sought physical contact with him – making repeated attempts to touch his face, “private parts,” and buttocks. According to multiple accounts, Cox had Kabir accompany him to adult entertainment venues, and asked Kabir to procure sex workers for him. Kabir stated that although he went to these establishments, he felt pressured to do so, and that he refused to procure sex workers for Cox. Some witnesses who regularly observed the two of them together reported that Cox

exhibited sexual or romantic feelings for Kabir. For example, one witness noted that Cox frequently sought physical closeness to Kabir, and several witnesses allege Cox exhibited anger and jealousy when he found out that Kabir had begun dating someone.

At least three witnesses indicate that they understood Kabir was living with Cox for a period of time in Cox's apartment while Kabir worked for Cox at AFGE – an arrangement that created vulnerability for Kabir. Kabir has characterized this as Cox renting him an office in the apartment. Borer recalls learning of the arrangement in June of 2018 from Public Policy Director Jacque Simon, who works in the National President's Office. Subsequently, Borer told Cox that he needed to disclose the financial arrangement on a Department of Labor (DOL) form. DeWynngaert was aware of the living arrangement at least by the time Kabir left AFGE in August 2018. In October 2019, during a meeting with some members of AFGE senior staff, Cox stated that he had been letting Kabir live in his apartment to help Kabir out financially.

Witnesses reported that Cox frequently disparaged Islam, and that he referred to Kabir and others as "goddamned Muslims." This slur was also referenced twice in Copeland's timeline of the April 2017 events.

At some point in 2018, Cox and others at AFGE discussed firing Kabir for cause, and he ultimately left the organization in August of 2018. There is evidence in the record that Kabir's separation from AFGE was atypical – instead of allowing his benefits to lapse at the end of the pay period, AFGE terminated all benefits on his last day, which did not comport with normal practice.

Kabir's account indicates that once he made clear that he was planning to get married, Cox began making allegations of poor job performance, and questioning the legitimacy of Kabir's timecards, overtime, and expense reports. Witnesses stated that Cox told them that Kabir abused the car service, taking it out without authorization. We cannot fully evaluate these allegations because we have not obtained any documentation or first-hand witness accounts that substantiate allegations of Kabir's declining performance, timecard discrepancies, or abuse of the car service. Kabir suggests Cox's actions were in retaliation for rejecting his romantic and sexual overtures.

There are conflicting accounts regarding what knowledge, if any, AFGE senior staff such as DeWynngaert, Borer, and Simon, had regarding Cox's conduct toward Kabir during Kabir's employment from October 2016 through August 2018. Kabir did not

file any formal complaint about Cox's behavior during his employment, although he did speak to Simon about his concerns. Kabir stated to us that he was concerned about coming forward based on what he observed about how AFGE handled Copeland's complaint and because of Cox's role in the complaint process. Accounts differ on what Kabir told Simon, but according to Kabir, he did raise concerns with her about sexual harassment by Cox. In contrast, Simon stated that Kabir told her that he was unhappy, that he wanted to quit, that Cox was too demanding, and that Cox was resentful when Kabir wanted to spend time with his girlfriend. According to David Borer, Simon relayed information regarding Cox and Kabir's living arrangements to Borer more than once during the spring or summer of 2018. Borer responded that he needed Kabir to "come in himself" and report before he could take any action. By this time, Borer knew, at least, of Copeland's prior complaint regarding Cox's misconduct, as well as the information Copeland provided in his April 2017 timeline, which included information about Kabir. Deputy General Counsel Gony Frieder Goldberg, who had responsibilities for handling EEO complaints at that time, also said she had heard "stories" about Kabir and Cox that involved sex workers and adult entertainment, but that she had no personal knowledge.

We found no evidence that any members of the NEC had actual knowledge of Cox's treatment of Kabir while he was employed at AFGE, nor evidence that members of the NEC knew of concerns suggesting that Kabir lived with Cox. Some NEC members acknowledged that they had heard "rumors" about potentially inappropriate elements to the relationship between Cox and Kabir, but some believed that these might be a "political" attack by Cox's rivals.

On July 25, 2019, almost a year after Kabir resigned, all members of the NEC, as well as DeWyngaert, Bythrow, Borer, Goldberg, Simon, and other AFGE senior staff, received an email setting forth allegations of Cox's inappropriate conduct toward Kabir, sent by Jeremy Lannan, the National Vice President for Women and Fair Practices. The recipients had already been added to an existing email thread where Lannan made allegations that Cox was discriminating against him on the basis of sexual orientation and age, and the email about Cox and Kabir was part of that thread. In the chain of emails, first Lannan raised concerns that he was facing sexual orientation and age discrimination; next Cox countered with his own age discrimination claims against Lannan; then Lannan responded by expressing concerns of retaliation by Cox, for meeting with Goldberg in early July 2019 to report these allegations that Cox engaged in sexual harassment of Kabir.

During the July 25, 2019 exchange, the email from Lannan containing Kabir's information began with a description of Kabir's "allegations of sexual harassment" against Cox, and it included specific mention of pressure to solicit sex workers and Kabir's living arrangement with Cox. Lannan's email states that he heard the allegations directly from Kabir in conversations that took place in March and April 2019.

Lannan reported the concerns raised by Kabir in March and April 2019 to Goldberg on July 1, 2019, after a June 2019 AFGE EEO training for NEC members. In the June 2019, training, Goldberg discussed the need to refer EEO complaints through appropriate channels. Shortly thereafter, Lannan requested a meeting with Goldberg to share the Kabir allegations, along with his own concerns of discrimination.⁸ Goldberg and Lannan met on or about July 1, 2019. A few weeks later, on July 25, 2019, Lannan sent the email that raised the Kabir allegations with the rest of the NEC members and other senior staff, and he expressed concern that he was experiencing retaliation for reporting Kabir's allegations to AFGE.

Because Lannan's own allegations of sexual orientation discrimination, age discrimination, and retaliation involved claims by and against elected officials, he inquired about the option for an outside review. Goldberg viewed an outside investigation as appropriate under the circumstances, and after securing approval from Cox, Goldberg arranged to retain a law firm on behalf of AFGE in August 2019 to conduct an investigation. Goldberg then informed the NEC that AFGE would be pursuing an outside investigation of the issues raised by the email. During this external investigation, between August and November of 2019, Kabir was not interviewed about the allegations Lannan had conveyed.

Subsequently, the NEC asked Working IDEAL to take over the investigation of matters raised in the Lannan-Cox email exchange from the other firm.⁹

2.3 Additional Incidents of Sexual and Other Misconduct

Witness interviews and documents revealed a pattern of problematic conduct by Cox. While some witnesses expressed shock when they read Copeland's and Kabir's

⁸ Lannan shared with our investigation that in his conversation with Kabir, he told Kabir about his options to file a complaint with the Equal Employment Opportunity Commission (EEOC), and the D.C. Department of Human Rights; Lannan informed Goldberg he had communicated this information to Kabir.

⁹ Working IDEAL is conducting an ongoing parallel investigation of those matters.

allegations in the Bloomberg articles, at least a few witnesses characterized the allegations as unsurprising.

Some witnesses told us they never witnessed Cox engage in any inappropriate conduct, and that Cox treated them well personally – better or more fairly than his predecessor.

Other witnesses observed Cox drinking heavily when he traveled for work. One witness described this as “a daytime Cox and a nighttime Cox,” while another observed that Cox “was not good with boundaries.” Several witnesses described Cox generally as being warm, benign, or “gentlemanly” much of the time, but also displaying occasional severe levels of anger. One characterized this as Cox having a “long fuse” – he could be patient but once he lost his cool, he could be abusive. Individuals who witnessed incidents of belligerent or inappropriate behavior also stressed to us that most of the time, Cox was personable and effective in his role.

A series of alleged incidents, most occurring between 2015 and 2019, paint a picture of Cox as drinking heavily on work travel and subsequently engaging in inappropriate sexual conduct and other misconduct toward those around him — both AFGE staff and others. In some of the incidents, witnesses described Cox as hostile, belligerent or verbally abusive. Several of these incidents are corroborated by more than one witness, and together lend credibility to the existence of a broader pattern in their similarity.

- Witnesses reported multiple incidents of Cox talking about soliciting sex workers and/or being asked to procure a sex worker for him.
- Witnesses reported multiple incidents involving Cox staying at a hotel and inviting AFGE staff to his room late at night, sometimes to drink alcohol, watch pornography with him, and/or masturbate with him; Cox was typically intoxicated during these incidents.
- Witnesses reported multiple incidents of Cox becoming angry and screaming at service staff at hotels and airports. In one instance, the behavior was so severe that witnesses report that it severed the relationship between AFGE and the establishment for a period of time. One incident involved Cox arriving at an airport intoxicated after a flight, and upon arriving at the hotel, he stood outside and yelled, demanding that a local official come out to greet him.

- We learned through multiple sources of an incident in which Cox allegedly propositioned a member of hotel staff, and hotel management expressed concern to their contacts at AFGE.
- A witness described an incident in which Cox was at a bar with AFGE staff, and Cox asked the group invasive questions about pubic hair grooming.
- A witness described an incident in which Cox made physical contact and a sexual comment while next to an AFGE colleague using a urinal.
- Jane Nygaard described an incident that occurred while she was a District NVP, in which Cox made a comment about her breast size in front of a group of other members of the NEC.
- Multiple witnesses described hearing Cox use racial and religious slurs.

Each of the above incidents relies on at least a credible first-person account. Some of these accounts are also supported by additional documentary evidence or additional witnesses. We find that, taken together, they reflect an overall pattern of behavior that lends each additional credibility.

We did not find evidence that any senior leader knew the full scope of sexual misconduct and other inappropriate behavior listed above. While we frequently heard about general “rumors” or information that was circulating, in some cases we could not definitively establish the timing or details of specific knowledge. We did confirm the following:

- We spoke to witnesses who, in a few of the instances above, had raised concerns about inappropriate behavior by Cox to a line supervisor.
- There were other AFGE staff and employees who witnessed Cox's statements listed above involving sexual innuendo or inappropriate sexual remarks since these statements were made in the AFGE workplace, at events, or in front of other AFGE employees.
- With respect to the incident where hotel management complained that Cox had propositioned a member of the hotel staff, an AFGE employee shared this report with the District NVP, who at the time was Everett Kelley. Kelley stated that he asked Cox about it immediately afterwards, and that Cox denied the incident occurred.
- Individuals who worked closely with the National President’s Office, including Bythrow and Borer, witnessed Cox’s verbal abuse and anger.

- We could not determine whether anyone in AFGE senior management was aware of allegations that Cox asked staff to procure sex workers. We did not find any evidence that any member of the NEC was aware of these allegations prior to July 2019.

Finally, we want to address a set of troubling allegations that primarily involve Cox's conduct while utilizing a private car service contracted through AFGE. Allegations include Cox engaging in sexual acts with sex workers in the car, offering money to those around him to perform sexual acts in the car, and threatening and intimidating people into complying with demands for sexual acts. Misconduct related to the car service is the subject of pending Article 13 charges before the NEC, and AFGE has appointed a Committee of Investigation for these charges, its usual practice for charges under the Constitution. Accordingly, we have not pursued further investigation of these matters.

We have not been able to conclusively determine whether any of these allegations regarding the use of the car service for non-official business, sexual misconduct, or regarding AFGE staff or officers' visits to adult entertainment, implicate a misuse of AFGE funds. AFGE is aware of this potential concern, and we understand they are pursuing appropriate action to evaluate it.

During our investigation, witnesses also reported a range of past incidents at AFGE concerning inappropriate conduct by other individuals besides Cox, including sexual comments and conduct, allegations of racial and religious bias, and inappropriate and offensive social media postings, among other concerns. These allegations are outside the specific scope of this report, which focuses on Cox's conduct. We will provide AFGE with any recommendations for further follow up on these additional allegations.

2.4 Overview of Challenges Related to AFGE's Reporting Structures and Practices

The challenges raised by AFGE's existing systems, practices, and procedures for addressing Cox's misconduct provide important lessons. We identified a need to strengthen procedures for handling complaints and concerns about harassment and other EEO issues. We have provided recommendations and examples of best and promising practices in Section III. The evidence also illustrates the obstacles an organization confronts when addressing toxic behavior by the leader of the organization. All employees have an important role in preventing workplace harassment and misconduct, but workplace leaders play a particularly important role in

ensuring effective accountability, oversight, and checks on the power of the President and other elected officials.

The problems we identified can be organized into three categories. The first, which we address in the following section, was that AFGE's written policies, reporting and response procedures, governance structures, and the implementation of those systems, were largely inadequate to hold Cox accountable or address Cox's harassment and misconduct. The second, which is discussed in Section 2.6, concerns the extent to which AFGE's work environment chilled reporting, due to staff concerns about retaliation, and how some members of leadership did not credit complaints or reports or discounted them based on their source. Both of these shortcomings inhibited reporting and made it even harder for AFGE to learn about and respond appropriately to allegations of workplace harassment and related misconduct. Finally, as set forth in Section 2.7, we identified a number of additional risk factors, such as the current organizational challenges facing AFGE, a tolerance by some for heavy drinking, inappropriate jokes and comments, abusive language and disrespectful conduct at events and activities, and significant activities taking place outside the typical office setting and after usual business hours and on weekends. These factors exacerbated the likelihood that problems would occur, and that they would not be adequately detected or addressed.

In addition, organizations face particular challenges in creating effective accountability structures where leaders are elected officials. AFGE officers are elected by the membership and the AFGE Constitution provides elected officials with specific rights and protections. Those organizational challenges are magnified when the elected official is the president of the organization with substantial power over budget and operations. As we discuss in our recommendations, AFGE can take concrete steps to strengthen the EEO process and to create effective accountability structures despite these challenges.

2.5 AFGE's Written Policies, Formal Procedures, and Oversight Structures

The organization's existing policies, practices, and structure created fundamental challenges for addressing misconduct by the President and other elected officials. The EEO policy's application to AFGE officers was unclear, and available complaint channels gave the President significant power over the process and staff. Structurally, the only true mechanism for taking disciplinary action against elected officials requires filing charges under the Constitution, which governs AFGE members, but not staff.

Additionally, in practice, the key positions within AFGE responsible for the complaint procedures answered to the direct authority of the President. This led at least some staff to distrust the channels for reporting or to feel inhibited from coming forward. For the individuals responsible for investigating concerns and recommending potential action, pursuing allegations of misconduct against the President required directly confronting their boss, who served as the head of the organization.

AFGE's current EEO policy created ambiguity about the process for addressing complaints made by staff against the President and other elected officials. By its terms, the policy covers "Employees and Applicants," and defines an employee as "a staff member of AFGE – whether full-time, part-time, permanent, temporary, or term – who is paid through the National Office but is not an elected official." This language suggests that the EEO policy does not, as a general matter, apply to elected officers.

However, the statement does provide a procedure for investigating formal complaints against elected officers. The policy states: "If the formal complaint names an elected officer as the alleged discriminating official, a neutral investigator will be hired to conduct said investigation." Our understanding is that this procedure requires the complaint to be provided to the NEC because they must approve the expenditure of funds for an outside investigator. The General Counsel's Office must obtain approval from the NEC for any expenditure over \$5,000, which effectively prevents it from independently beginning an outside investigation. In the only case we know of where AFGE has invoked the option to appoint an outside investigator for an EEO complaint against an elected official, in response to the July 2019 Lannan email, the President approved the expenditure. Regardless, the process means that the only existing mechanism for investigating elected officers requires approval by elected officers.

Moreover, the only apparent means to sanction elected officials is through Articles 13 and 23 of AFGE's Constitution, which include provisions available to members but not employees. Article 23 addresses "Offenses, Trials, Penalties, Appeals" regarding misconduct by members of the Federation, including officers, agents, and representatives of locals or councils. Article 23 outlines misconduct including "[b]ullying, harassment and/or discrimination on the basis of race, color, religion, national origin, sex, age, disability, status as a covered veteran in accordance with federal laws, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, or retaliation for participation in the complaint process concerning such discrimination."

Article 13, Section 7 provides the mechanism for sanctioning national officers. It states that "[a]ny officer of the Federation may have charges filed against him or her for

violations of Article [23]. Any officer of the Federation having charges preferred against him or her may be suspended by a two-thirds vote of the [NEC]." Article 13 states that charges filed against a national officer must be filed in writing with the President, and that the President appoints a committee of investigation. Although AFGE has a standard practice of recusing officials when conflicts of interest arise, this procedure is not written in the Constitution.

While this process is not public, per se, there are no explicit procedures to protect the privacy of individuals raising concerns or other witnesses, and Article 13 or 23 charges appear in the NEC minutes, which are available to any member. This means that employees who have a complaint of sexual harassment or other EEO violations against the President or a member of the NEC must first find an officer or member willing to file charges on their behalf, and then must effectively go on the record against the heads of the organization. Although balancing privacy considerations with investigation procedures is often difficult, having some mechanism for limiting the sharing of information about complaints, and providing some level of privacy or confidentiality, can encourage individuals to report problematic behavior and increase the ability of the organization to learn about and address it.

The NEC, AFGE's leadership body, consists of the three nationally elected officers who work at the D.C. headquarters, and the 12 District NVPs, who are located in their Districts. These positions are elected by AFGE membership for three-year terms: National officers at the National AFGE Convention, and District NVPs at District-level elections. The NEC meets formally in headquarters at quarterly meetings. The District NVPs have much less regular contact with headquarters staff compared to the three nationally-elected officers who are based in national headquarters. The NEC's constitutional duties are broad, including monitoring legislative policies affecting AFGE, organizing new locals, overseeing the pension plan, making rules to govern AFGE matters, and handling the constitutional charge procedure.

Although these structures by their terms enabled the NEC to provide some oversight in cases of Presidential misconduct, AFGE's systems and practices were not sufficient to check the significant formal power of the President. There were no clear options by which staff members could bring significant misconduct concerns directly to the attention of the NEC, short of asking that formal charges be filed. Staff charged with handling EEO complaints for the organization did not routinely brief the NEC on matters of concern, although the NEC has now begun requesting and receiving additional reports on EEO matters.

For staff, in addition to the procedures under the EEO policy, AFGE has a grievance process available to bargaining unit employees, and a separate process for non-

bargaining unit employees. Many staff at the national headquarters are represented by one of two collective bargaining units.¹⁰ The collective bargaining agreements (CBAs) both include brief EEO chapters, and have a grievance procedure for a covered staff member to invoke in order to address harassment or other EEO concerns. Both CBAs have a procedure in place that requires a multi-step process with several levels of escalation. In both CBAs, the President, or the President's designee, is the final AFGE decision-maker. If not resolved at that stage, both CBAs permit parties to invoke arbitration, including a request to the Federal Mediation and Conciliation Service for a list of arbitrators. The procedures for non-bargaining unit staff are similar, except that while appeals of the President's (or President's designee's) decision regarding pay and benefits can go to an external arbitrator, those regarding working conditions, such as harassment, instead go to the NEC. For claims of harassment by staff against the President, the President or the President's designee is the final AFGE decision-maker. Because individuals may not feel comfortable using this process for harassment claims against the President, we recommend that AFGE consider creating additional alternative channels for reporting.

These structural weaknesses and lack of reporting of information about potential EEO concerns to the NEC were particularly problematic in light of the organization's deferential attitude toward the National President's Office. Some witnesses described the power of the President as "absolute," and that Cox was "beyond reproach." Under the AFGE Constitution and organizational practice, Cox had substantial formal and informal power over hiring, firing, grievance resolutions, budgeting, and organizational and communication strategy. Cox centralized decision making in all of these areas, which ran through his Chief of Staff, DeWyngaert. Under this system, the President had the authority to hire and fire the individuals responsible for reporting and making decisions about their resources. This gave the President the means to undermine any efforts to raise concerns or follow up on complaints, in addition to his power within the grievance procedures and his constitutional protection from standard employment tools for discipline or removal. The NEC members had formal power to check the President by bringing charges under the Constitution, but many of them had much less access to information and fewer opportunities to learn about conduct at headquarters. In addition, the President also had a role in allocating staff to support each NVP's District and their District events, and this affected whether and how at least some NEC members raised concerns that challenged the President.

¹⁰ In total, headquarters staff were represented by four unions, but two of the unions are quite small, consisting of three or fewer people. The vast majority of headquarters staff were represented by one of two larger unions.

As a result, the available channels provided limited options for employees to seek assistance in instances of potential harassment or EEO violations committed by the President, because of ambiguity in the EEO policy, the President's authority over the EEO and grievance channels, and the limited access staff had to the NEC and the constitutional procedures.

2.6 Implementation of AFGE's Policies and Reporting Practices

The lack of leadership and expertise within, and trust in, the departments that typically serve an EEO function also reduced AFGE's ability to respond effectively. The AFGE EEO policy provides for three channels of reporting. The first two are reporting to individuals in the General Counsel's Office, or to the head of HR, who both report to the President. Structurally this creates only one channel for reporting complaints outside the President's chain of command, the third option to report to an attorney in the Women's and Fair Practices Department, who reports to the NVP for Women and Fair Practices. As a practical matter, the General Counsel's Office handles all internal EEO complaints, and we believe that staff rarely, if ever, utilized the reporting channels through either the Women's and Fair Practices Department or HR.

The current head of the HR department is serving in a temporary acting capacity, in addition to maintaining his duties as a deputy director in another department. The prior permanent head of HR was largely out on extended leave between 2017 and 2019, when he officially left AFGE. Even when the former HR Manager was actively leading the department, the HR team had limited knowledge and expertise about employee relations and EEO functions. In many organizations, HR serves as a point of contact for employees with EEO questions or concerns, handles EEO complaints, and is charged with harassment prevention and other EEO efforts. At AFGE, by contrast, the HR staff primarily serves as an administrative processing center and lacks a formal employee relations function. HR staff reported to us that employees did not come to them with EEO concerns.

This capacity gap contributed to a shift in those responsibilities to the General Counsel's Office, especially over the past several years when HR was operating without a permanent head. The General Counsel's Office described significant challenges as a result, including the difficulty of triaging many complaints, managing this additional workload in light of a substantial litigation docket, and ongoing efforts to fill gaps in policy and training.

The General Counsel's Office described the steps it took to ensure the organization had a policy, as well as a structure and procedure for reporting and training for staff, managers, and the NEC on EEO matters and harassment prevention. In May 2016,

AFGE launched a SharePoint site to provide staff with an internal site for accessing policies, including the EEO policy and the grievance procedure for non-bargaining unit staff and the CBAs. Starting in 2015, AFGE provided a series of live training sessions for all staff on EEO requirements and harassment prevention with several sessions in 2015 for staff and managers, and additional sessions in 2016 and 2017. The General Counsel's Office held EEO trainings for the NEC in 2015 and in 2019. Goldberg noted that it was Cox who initiated EEO training for AFGE in 2015. A number of current employees participated in one of these training sessions. The General Counsel's Office recognizes the need to also include refresher training, and to continue training on a regular annual basis.¹¹

Many individuals we spoke with reported that the General Counsel's Office is seen as an arm of the National President's Office, tasked with representing the interests of the President and the organization, not assisting employees with their EEO concerns and complaints, which affected how willing individuals were to come forward. A number of employees also described having low trust in the option to report outside the Presidential chain of command through the Women's and Fair Practices Department.

While it is undisputed that several EEO complaint procedures existed – the EEO policy, the constitutional process, and the CBA grievance procedures – in practice, these processes did not meet the organization's needs. Current and former employees described a lack of transparency and an absence of tools to educate them about the process. Many individuals stated that they were not aware of the procedure for raising EEO complaints, or had never known that an EEO policy existed, although it was available on the internal website and provided to those staff who had attended one of the training sessions.

Many of those who did know about the policy believed any complaints would not be taken seriously. Some witnesses noted that this was particularly problematic for non-bargaining unit employees, who did not benefit from the guidance of a union steward in the alternate grievance procedure available to them. We heard from several witnesses that they explored complaint options, or tried to make complaints, and felt they were not fully advised of their options.

A second reason the existing policies were not sufficient to hold Cox accountable was the fact that at least Borer and Goldberg stated that they were unable to take action where there was no specified applicable policy (such as a restriction on relationships between supervisors and direct reports, or where conduct occurred outside the scope

¹¹ In January of 2020, Working IDEAL provided live training to AFGE managers on Building a Winning Culture and harassment prevention.

of designated work activities). They characterized a number of the incidents described in this report as outside the scope of any AFGE policy. Regardless of whether this is an accurate reading, it shows a clear need for further education and additional improvements to policy and practice. Ultimately, it is the role of all of the organization's leaders to address the need for new or explicit policies where problematic behaviors have the potential to place the organization at risk. A narrow view of leaders' role in providing oversight and identifying potential risks contributed to significant gaps, which, in turn, impacted the effectiveness of AFGE's response.

A related problem we identified was that a number of those charged with responding to complaints for AFGE did not understand the importance of acting on information about potential EEO violations, regardless of whether an individual submitted a formal written complaint through a specific channel. Waiting until the aggrieved person was willing to come forward, or asking individuals who made verbal complaints to provide a written statement before investigating or even following up about concerns, especially when they involve potentially serious misconduct, can significantly reduce the organization's ability to detect misconduct – potentially putting others in harm's way and allowing problems to persist.

Finally, until recently, there were no set processes to share information that the General Counsel's Office had about existing complaints or EEO compliance with the NEC, outside of reports on formal litigation. This prevented members of the NEC from playing an effective oversight role, which was exacerbated by the limited guidance new NEC members receive about their role and duties.

2.7 Challenges in Coming Forward with Information about Cox's Misconduct

The investigation suggested that AFGE's past treatment of individuals raising concerns likely discouraged employees from coming forward. Many witnesses expressed a fear of coming forward to challenge the President. Multiple witnesses relayed accounts of Cox personally "going after" people he saw as challenging his authority. Multiple witnesses raised concerns about bringing problems to HR and the General Counsel's Office, given that they were tasked with AFGE's legal defense, or were seen as beholden to Cox.

Further, Cox's personal charm, on the one hand, and his verbal abuse on the other, played a role in protecting him from accountability. Those who had positions of power in the National President's Office or the General Counsel's Office believed Cox was doing important work to help the union, and appreciated the good aspects of their relationship. These individuals were also the most likely to be aware of, or to have witnessed or experienced, Cox's verbal abuse. For example, Borer stated that he

suffered a stroke during an incident in which Cox was verbally abusive. Witnesses – even those in senior staff positions – expressed the feeling that they were not in a position to stand up to Cox.

An additional barrier to effective response to complaints and concerns was a lack of action in response to concerns raised and a lack of trust in the complaint process. Some members of leadership indicated that they did not credit information about potential sexual and other misconduct by Cox because they did not trust the source of the information. In some cases, they believed the source had “political” motivations to provide inaccurate or misleading information (i.e. the source was known to dislike him). We heard of instances where another basis was offered to distrust the information, such as the source was allegedly known to gossip, to drink heavily or to exaggerate matters. This tendency to discredit the source of information contributed to Cox’s ability to continue engaging in misconduct without greater accountability. This also reduced the organization’s ability to learn about, respond, and redress misconduct.

2.8 How Challenges Affected AFGE’s Response to the Incidents in this Report

Copeland’s experience with reporting highlighted a number of AFGE’s shortcomings in its reporting and response procedures. For example, Copeland states he was not aware of the existence of an EEO policy – a sentiment echoed by numerous other witnesses – even though one was in place at the time; AFGE records show Copeland attended an EEO training in 2015, and AFGE states a copy of the policy was provided to all participants. Copeland had access to a member of senior leadership, Cory Bythrow, his former supervisor. Bythrow referred Copeland to the General Counsel’s Office, which was one of the designated entities for handling complaints. AFGE could offer no alternatives for Copeland to bring a complaint against the President that might honor his desire for privacy.

According to Borer, the decision not to pursue further investigation in response to Copeland’s complaint was based on Copeland’s request for confidentiality and his concern about sharing details of his complaint with the NEC. While honoring the wishes of those raising concerns and their preference for privacy is one factor to consider, employers have obligations to prevent and correct harassment, which may require them to fully investigate concerns and make sure there is no ongoing risk of harm. Further, there is conflicting evidence in the record about whether deferring to Copeland’s wishes was, in fact, the only basis for declining to proceed further. Ultimately, Borer did not interview Kabir, or proceed further in determining whether

anyone else in the National President's Office had relevant information about Cox's behavior.

The investigation revealed similar dynamics in the case of Kabir. He held a non-bargaining unit position, but in a fairly junior role. He was unfamiliar with the complaint procedures available to him. Kabir stated that he did not file a written complaint during his employment, at least in part because of how, in his view, the organization failed to effectively address Copeland's complaint — and because he was intimidated about coming forward in light of Cox's role in the complaint process. There is evidence that Kabir told Jacque Simon that he had concerns regarding Cox's conduct. According to Borer, Simon spoke to him a couple of times during the spring and summer of 2018 about Cox and Kabir, but there is conflicting evidence about what information she shared with him. Borer, DeWyngaert and possibly others were aware of potential flags — that Kabir and Cox were alleged to be living in the same place and that Copeland had previously reported incidents of harassment and other misconduct against both himself and Kabir. However, when Lannan relayed Kabir's significant and specific allegations about sexual harassment in July 2019, those allegations were not investigated. The multiple claims presented in the email exchange, and the tendency of some NEC members to view the Cox and Lannan claims in the context of an ongoing political dispute, appear to have obscured the significance of the Kabir allegations to NEC members at that time.

When asked why the Kabir allegations were not investigated, the individuals we spoke with in the General Counsel's Office expressed doubt about the potential merit of these claims and noted that Kabir was no longer with the organization. This decision prevented AFGE from learning more about Cox's misconduct.

Ultimately, the processes in place, along with intimidation and fear by staff of filing complaints against the President, elected officials, or other senior leadership chilled overall reporting, promoted silence, and created barriers to addressing misconduct. The power of the National President's Office, the lack of clear avenues for other AFGE leadership — such as the NEC — to provide effective oversight, as well as the absence of trusted channels for AFGE staff to raise and resolve concerns, hindered the organization's ability to intervene in a timely manner.

2.9 Additional Factors That Impacted Cox's Ability to Engage in Misconduct

Several additional factors may have contributed to AFGE's lack of awareness of the extent of Cox's misconduct and to AFGE's ability to hold him accountable. These include the internal and external challenges facing AFGE over the last several years, a culture of heavy drinking by some, and the opportunities for harassment to occur at

AFGE events that took place at remote locations or outside typical work hours -- along with perceived toleration of inappropriate jokes and commentary and abusive language and disrespectful conduct.

Almost all witnesses acknowledged that the union was undergoing an extremely difficult time, which many described as “unprecedented.” AFGE leadership, and rank and file members, were extremely concerned about the hostile national political climate, particularly the Administration’s disparagement of the federal workforce. Significant union leadership and staff time, and other resources, were being deployed to protect their members from adverse outcomes, such as the loss of legal protections and federal government shutdowns. Many saw AFGE as vulnerable to attack, and were concerned that reports of malfeasance within the union leadership would reflect poorly on the entire union and endanger its members. Many viewed Cox as being one of the few people with the skills to navigate the difficult circumstances and ensure the union would survive. There was also concern about declining membership and a financial shortfall within AFGE. Multiple witnesses described a hesitancy to come forward with complaints about Cox because they wanted to “protect the union.”

Another contributing factor may have been that AFGE, like many unions and other organizations, treated travel and associated social activities, such as receptions with an open bar, as a way to recognize and reward members and staff. We heard from many witnesses about a culture of heavy drinking by some after work and during social activities at AFGE events and conferences. In the absence of policies and practices ensuring responsible use of alcohol, the organization was more vulnerable to inappropriate behavior, including sexual and other harassment.

Another risk factor is that AFGE’s business activities often require working outside the office setting, such as staying at hotels, and conducting work after usual business hours and on weekends. For many people, the expectations for professional behavior and appropriate boundaries are clear as they apply to work conducted in the office during the typical workday. While these professional expectations should apply wherever and whenever work is conducted, they are sometimes forgotten or disregarded when the location – a hotel, bar or restaurant – deviates from the typical office setting. When official activities occur outside the typical office setting or after business hours or on weekends, or when there is unclear delineation between work activities and non-work activities, these dynamics can also interfere with reporting structures and oversight mechanisms, and make it easier to engage in misconduct and avoid detection.

The General Counsel's Office provided training on the expectations for behavior during official work activities, and made clear that official work activities included work performed offsite, such as at hotels, bars, or restaurants, and outside typical work hours. Though the EEO policy applied to official work activity conducted offsite, in practice, AFGE did not appear to have sufficiently robust efforts to monitor offsite conduct or to ensure clear and effective reporting procedures. Notably, the General Counsel's Office did not believe it had the ability to address conduct occurring outside official work activities or hours in the absence of an explicit AFGE policy governing such behavior.

This was further intertwined with an environment that tolerated inappropriate jokes and comments. Many witnesses reported that Cox and other senior leaders would joke about sex workers, adult entertainment, sex, physical appearance, and other unprofessional topics. This behavior also included Cox bringing staff to adult entertainment venues or conducting AFGE business at such establishments. This conduct creates the potential for excluding staff from interactions with the President based on gender, along with other concerns. We could not identify any policy defining legitimate business activities, or any restriction on the location for conducting official business, and we received conflicting answers about whether an AFGE meeting or activity could be hosted at an adult entertainment establishment with AFGE funds.

As AFGE reflects on the best way to move the organization forward to rebuild trust and create accountability, it will need to consider reforms that restructure aspects of their organization's structure, norms, and culture.

III. Recommendations

We have identified a number of recommended actions for AFGE to take in order to promote a safe, respectful, and inclusive workplace that does not tolerate harassment or other forms of discrimination. These recommendations are responsive to the issues identified and feedback shared during our investigation, and they are based on promising practices that have proven effective in preventing and addressing harassment, discrimination, and retaliation. In some cases, we are recommending resources or providing options that may need to be further tailored and evaluated to meet the needs of AFGE's workplace. AFGE leadership has already taken initial steps to implement structural and policy changes that relate to several of these recommendations.

1. **Make a Leadership Commitment to Building a Harassment-free and Inclusive Workplace.**

Our recommendations begin with the key role of leadership. Leaders play a critical role in building an organizational culture of respect and dignity for all workers that consistently holds accountable those who engage in harassment. This requires a repeated emphasis from senior leaders of their commitment to creating a harassment-free and inclusive workplace. It also includes active engagement at all levels of leadership to model respectful communications. This commitment to building a respectful and inclusive workplace must be embraced and integrated into all levels of the organization's operations. Leaders who work to understand where organizational behaviors foster a culture of silence that can enable harassment and misconduct are more effective at identifying and solving problems. Effective leaders ensure employees understand and can readily access anti-discrimination policies and reporting procedures, and these leaders demonstrate support for those who come forward to raise concerns. Leaders must also ensure those in the organization whose job it is to prevent or respond to harassment are rewarded for doing that job well and penalized for failing to do so.¹²

The U.S. Equal Employment Opportunity Commission's (EEOC) Select Task Force on the Study of Harassment in the Workplace spent 18 months examining how to strengthen organizational response to harassment. The report from the Task Force co-chairs recognizes the importance of leadership:

¹² Chai Feldblum & Victoria Lipnic, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION REPORT OF THE CO-CHAIRS OF THE SELECT TASK FORCE ON HARASSMENT IN THE WORKPLACE 31 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

Leadership must establish a sense of urgency about preventing harassment. That means taking a visible role in stating the importance of having a diverse and inclusive workplace that is free of harassment, articulating clearly the specific behaviors that will not be acceptable in the workplace, setting the foundation for employees throughout the organization to make change (if change is needed), and, once an organizational culture is achieved that reflects the values of the leadership, commit to ensuring that the culture is maintained.¹³

Effective leaders also “back up” the organizational “statement of urgency” about harassment prevention “with two of the most important commodities in a workplace: money and time.”¹⁴ These institutional investments reflect the priorities of the organization. Senior leaders have a critical responsibility: to proactively oversee the harassment policy, the complaint system, and the training procedures, and other efforts to evaluate and to improve upon the organization’s systems, including tracking and reviewing complaint data and records of corrective action for important trends or red flags.¹⁵

Research shows that the single biggest predictor of sexual harassment on the job is the organization’s tolerance of inappropriate conduct.¹⁶ Organizations that do not respond promptly and effectively to inappropriate sexual conduct or bullying by powerful leaders send a message about priorities. Employees are less likely to take the risk of coming forward when they do not believe the organization will take prompt and effective action to address their concerns. Research also shows that where organizations tolerate abusive or disrespectful behavior, or define success as the display of power and control, toxic or problematic leaders can use harassing behaviors to marginalize and dominate others in order to strengthen their own authority.¹⁷ A

¹³ *Id.* at 32.

¹⁴ *Id.* at 33.

¹⁵ See *Promising Practices for Preventing Harassment*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm>.

¹⁶ See NAT’L ACADEMIES OF SCI., ENG’G, & MED., *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* 47 (Nat’l Academies Press, 2018). Available at: <https://doi.org/10.17226/24994>.

¹⁷ Colleen Ammerman & Boris Groysberg, *Why Sexual Harassment Persists and What Organizations Can Do to Stop It*, HARVARD BUS. REV. (Dec. 21, 2017), <https://hbr.org/2017/12/why-sexual-harassment-persists-and-what-organizations-can-do-to-stop-it>. Even where toxic workers do not lead organizations, but are perceived as highly valuable performers, organizations may overestimate their positive contributions and/or underestimate the harm they cause in the workplace. See Michael Houseman & Dylan Minor, *Toxic Workers* (Harvard Bus. Sch., Working

study of the military found that when employees viewed their leaders as working to combat sexual harassment and model respectful behavior, they reported experiencing less harassment.¹⁸ Under this kind of proactive leadership, if employees reported a complaint, they were more satisfied with the result.¹⁹

Leaders can be a powerful driver in building a culture that emphasizes dignity and respect for every employee. We recommend that AFGE leadership, including the members of the NEC and senior management, take a visible and proactive role in strengthening policies and practices, modeling respectful behavior, creating a culture of shared accountability, and working to rebuild trust.

2. Update EEO Statement to Strengthen Reporting Procedures for Employees and Clarify Investigation Practices and Responses.

Effective reporting systems are one of the most critical elements of an effective harassment prevention effort.²⁰ We recommend that AFGE ensure all employees in the organization understand and can access effective and trusted reporting procedures if they have experienced harassment or if they have observed harassment of others.²¹ The AFL-CIO has created resources and models that can serve as a resource for AFGE as it strengthens its program.²²

Many organizations struggle with going beyond surface-level responses to address deeper problems – what leading researchers have described as “symbolic compliance.”²³ As the #MeToo movement has revealed, common approaches to

Paper No. 16-057, 2015), https://www.hbs.edu/faculty/Publication%20Files/16-057_d45c0b4f-fa19-49de-8f1b-4b12fe054fea.pdf.

¹⁸ N. T. Buchanan, et. al, *A Review Of Organizational Strategies For Reducing Sexual Harassment: Insights From The U. S. Military*, 70 J. OF SOC. ISSUES 687, 697 (2014); see also Chloe Hart, Alison Dahl Crossly, & Shelley J. Correll, *Study: When Leaders Take Sexual Harassment Seriously, So Do Employees*, HARVARD BUS. REV. (Dec. 14, 2018), <https://hbr.org/2018/12/study-when-leaders-take-sexual-harassment-seriously-so-do-employees>.

¹⁹ Buchanan, *supra* note 7, at 697.

²⁰ EEOC Report, *supra* note 1, at 40.

²¹ See *id.*

²² *Addressing Sexual Harassment in the Workplace: There is Power in my Union*, AFL-CIO (Feb. 28, 2019), <https://aflcio.org/reports/addressing-sexual-harassment-workplace-there-power-my-union>.

²³ LAUREN B. EDELMAN, *WORKING LAW: COURTS, CORPORATIONS AND SYMBOLIC CIVIL RIGHTS* (2017); Frank Dobbin & Alexandra Kalev, *Training Programs and Reporting Systems Won't End Sexual Harassment. Promoting More Women Will*, HARVARD BUS. REV. (Nov. 15, 2017), <https://hbr.org/2017/11/training->

reporting systems and practices have not proven sufficient to prevent or remedy workplace harassment – and they may be particularly inadequate to handle situations where the president or head of an organization is the perpetrator.

One key element of a strong reporting program is to provide multiple options to raise concerns and report complaints through clearly defined channels, as well as a range of methods and points of contact to support employees who encounter misconduct.²⁴ Where employees can choose the path that is the most trusted or accessible for them, they are more likely to come forward. In cases where the office or person that employees are expected to report to is the source of the harassment, or where that person does not have the power to hold the harasser accountable, having an alternate channel to raise concerns is especially critical. While we recognize that AFGE’s policy sought to provide multiple paths for reporting, in practice those multiple options became one primary source.

We recommend that AFGE ensure there are multiple, defined channels staffed by qualified individuals who can provide a secure and responsive process for those raising concerns. In particular, emerging best practices for reporting and response are “trauma-informed,” a framework that explicitly incorporates the perspective of the individuals who have experienced harm.²⁵

A second important component is balancing the employer’s need to address potentially harmful conduct with an individual’s desire to limit sharing of personal details about a complaint. Providing stronger privacy protections can increase the willingness of individuals to report. Therefore, effective policies must clearly explain what steps the organization can take to protect privacy – and when and how information about their complaint would be shared with others. Establishing a clear

[programs-and-reporting-systems-wont-end-sexual-harassment-promoting-more-women-will](#); Debbie S. Dougherty, *The Omissions that Make So Many Sexual Harassment Policies Ineffective*, HARVARD BUS. REV. (May 31, 2017), <https://hbr.org/2017/05/the-omissions-that-make-so-many-sexual-harassment-policies-ineffective>.

²⁴ EEOC Report, *supra* note 1, at 5 (recommending that employers “offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment”).

²⁵ AMERICAN COLL. HEALTH ASS’N, *Addressing Sexual and Relationship Violence: A Trauma-Informed Approach* (2018). Available at: [https://www.acha.org/documents/resources/Addressing Sexual and Relationship Violence A Trauma Informed Approach.pdf](https://www.acha.org/documents/resources/Addressing_Sexual_and_Relationship_Violence_A_Trauma_Informed_Approach.pdf).

practice of providing information to only those on a “need to know” basis can improve trust, which, in turn, can increase employee confidence in reporting concerns. In some cases, an employer needs to take action to ensure there is no ongoing risk of harm, regardless of whether the person raising concerns wants to move forward or wants the information shared. This policy should be clearly communicated up front in any written guidance to managers and staff, and during associated training.

We recommend that AFGE’s EEO Statement explicitly address when and how information is shared, and how the organization intends to protect the privacy of individuals coming forward. The EEOC Report encourages employers to adopt policies that protect the privacy of individuals coming forward and those accused of harassment “to the greatest extent possible, consistent with legal obligations and conducting a thorough, effective investigation.”²⁶

We further recommend the EEO Statement clarify the obligations of managers and leaders to handle concerns that are reported or known to them. The current policy does not state whether supervisors have obligations to report concerns to the organization, or what supervisors should do when they are aware of potential violations. It is essential that managers and leaders respond appropriately when they are on notice of potentially concerning conduct, regardless of whether it is in the form of a formal, written complaint. Fully evaluating concerns – and, if substantiated, taking prompt remedial action – is critical to stopping any ongoing misconduct and preventing harm to employees who may be at risk. Through policy and associated training, AFGE can also clarify the obligations of managers and leaders when individuals come to them with concerns, and can enable them to provide a clear explanation of the process, including when and how their information would be shared with others.

One approach AFGE could consider is whether and how to create options for more informal conflict resolution and problem-solving support for AFGE employees. Such structures operate not only to surface concerns, but also to provide advice and assistance to employees considering how to best address concerns regarding

²⁶ EEOC Report, *supra* note 1, at 42. See also U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, No. 915.002 (June 18, 1999), <https://www.eeoc.gov/policy/docs/harassment.html> (anti-harassment and complaint procedures should contain assurance that the employer will protect the confidentiality of harassment complaints to the extent possible).

harassment, discrimination, or retaliation. We understand the NEC has been considering how to incorporate alternative dispute resolution into the existing policy, which is one example of expanding options. Ombuds programs are another method to supplement formal reporting channels that enable greater confidentiality. These programs subscribe to formal principles of independence, neutrality, confidentiality and informality, and are particularly helpful in cases where individuals fear retaliation or are uncertain of how to proceed.²⁷ Organizational ombuds offices – and some new technology-based reporting platforms – also can help to identify and elevate information about patterns and trends without requiring individuals to file formal complaints.

We understand that NEC members are working on updated EEO policy language, including removing language from the EEO Statement about potential disciplinary action for false reports. We agree this language may have a chilling effect on employee complaints and recommend that it be removed from the EEO Statement.

We recommend AFGE formalize standards for deciding when to conduct an investigation, ensure comprehensive training for all staff tasked with internal investigations, and dedicate sufficient resources to ensure that workplace investigations are prompt, objective, and thorough. We also recommend AFGE establish formal standards for when and how AFGE should refer matters for external investigation, such as allegations by or against senior leadership, situations where there is an actual or potential conflict of interest, or where there is a specific concern about the objectivity or capacity of the internal investigators. This would include creating a clear process for approval of funds for such external investigations.

To create meaningful accountability, we recommend that AFGE develop procedures to take immediate and proportionate corrective action when it determines that harassment has occurred and that this principle is clearly articulated in the EEO Statement. We also recommend AFGE be prepared to address behavior that may not legally constitute harassment, but if allowed to continue, may lead to harassment.²⁸ This sends a clear message that the organization does not tolerate harassment or

²⁷ *The Use of Ombuds in Federal Agencies*, ADMIN. CONF. OF THE U.S. (Dec, 15, 2016), <https://www.acus.gov/recommendation/use-ombuds-federal-agencies>; *Standards of Practice*, INT’L OMBUDS ASS’N, <http://www.ombudsassociation.org/About-Us/IOA-Standards-of-Practice-IOA-Best-Practices.aspx> (last visited: March 15, 2020).

²⁸ EEOC Report, *supra* note 1, at 37, 43, 67, 68.

other forms of discrimination and makes it more likely that employees will come forward and share concerns in the future.

3. Transition Staffing Responsibility for Responding to EEO Complaints.

We recommend AFGE transition responsibility for responding to EEO complaints out of the General Counsel's Office, and to a new Director of HR, along with any other new NEC committee, staff-level, or external entities developed as a result of these recommendations.

AFGE has already authorized the hire of a Director of HR. We encourage AFGE to move expeditiously to complete this hire and to focus on bringing in a leader with experience in implementing strong EEO policies, building an inclusive workplace culture, and managing effective complaint procedures. AFGE should ensure the HR office has sufficient training and staffing, as well as the authority and autonomy to make decisions, even where senior leaders are found to have engaged in misconduct.

We also recommend that AFGE restructure the role and function of the General Counsel's Office to remove it from the internal complaint reporting process, in light of the General Counsel's role in representing AFGE in EEO matters. We understand that AFGE is already working to restructure its complaint reporting procedures consistent with these recommendations.

4. Consider Options for an Interim External Procedure for Handling Workplace Complaints and Concerns.

AFGE may wish to consider the feasibility of establishing interim external procedures for handling workplace complaints and concerns. In our experience, when an organization is seeking to recover from crisis and to rebuild trust in its systems and practices, working with an external entity for a period of time may encourage staff to come forward with concerns.

This interim approach would provide AFGE with time to create an effective, trusted permanent process applying the principles above. We recognize the reality of budgetary constraints, and there are a range of models that could make such a process more cost-efficient, including partnering with other organizations to share resources, hiring a part-time external ombuds, utilizing third-party reporting platforms,

or using external resources to bolster the emerging new internal protocols through coaching or other supports.

5. Ensure Effective Accountability Structures to Address Misconduct by the President, Elected Officials, and Other Senior Leadership.

Organizations must have systems in place that hold all individuals accountable for engaging in harassment and misconduct, regardless of their role in the organization. Ensuring there is a clear and effective mechanism to hold the President and other elected officials accountable for harassment or discrimination against staff starts with clarifying how the EEO policy applies to elected officials. In particular, the EEO policy must address how staff may bring complaints against elected officials. We recommend AFGE also establish clear, specific practices for recusal or addressing conflicts of interest.

We recommend creating procedures for the Director of HR and others leading offices tasked with handling EEO complaints to periodically report directly to an NEC committee, without the President or senior operational leaders in attendance. This kind of procedure can help to provide early warnings of potential problems. The NEC committee can determine the scope of matters to be brought to its attention – such as concerns of harassment or misconduct by senior leaders, as well as significant or widespread allegations about an individual or office within the organization.

We recommend creating a process for the NEC to receive reports directly, and not just through senior staff, about significant EEO matters and concerns. This would include allegations of inappropriate conduct by the President or other elected officials. The NEC may wish to establish a more private process for employees to raise matters of significant concern directly with a committee of the NEC, without the necessity of a member or officer first formally filing charges. We understand the NEC is already taking steps to develop a new channel for reporting EEO and harassment concerns.

In addition, we recommend strengthening the capacity of the NEC to engage in oversight of the President and senior AFGE leadership. Steps may include improved onboarding for NEC members to ensure familiarity with complaint and investigation procedures, as well as the process to follow should the NEC learn of potential inappropriate conduct by an elected official or senior leader of the organization.

6. Address Other Gaps in Formal Policies and Procedures Identified in This Report.

We identified a number of areas where AFGE would benefit from a clearer statement of acceptable and unacceptable behavior and prohibited conduct in a written policy.

- (1) Responsible use of alcohol.** Workplace cultures that tolerate alcohol consumption at work activities and events provide a greater opportunity for harassment since alcohol reduces social inhibitions and impairs judgment.²⁹ Policy changes could include clear communication in advance of events that excessive alcohol consumption will not be tolerated, use of drink tickets or limitations on the time frame that alcohol will be served, encouraging leadership to limit alcohol consumption and model good behavior, providing ample food and non-alcoholic beverages, and acting to interrupt inappropriate or disrespectful behavior linked to alcohol consumption.
- (2) Intimate or romantic relationships between individuals in direct reporting chains.** Workplace dating or other intimate relationships may create significant issues when they involve individuals who are in a direct reporting chain. Power dynamics, perceptions of favoritism, and the potential for coercion are good reasons for organizations to establish limits on this practice. Policies may call for reporting and then potentially moving one or both parties to positions where they do not report to each other.
- (3) Addressing bullying and ensuring respectful conduct in the workplace.** Bullying and disrespectful behavior can create a climate in which harassing behaviors are tolerated.³⁰ We understand AFGE is working to create a policy to address bullying and promote respectful workplace conduct and recommend they continue that work.
- (4) Safety at AFGE offsite and after-hours events.** AFGE has had a practice of identifying a point of contact for complaints or concerns at conferences or trainings. We recommend they formalize this practice and consider models from

²⁹ EEOC Report, *supra* note 1, at 36; see also National Academies Report, *supra* note 5 at 48 (“permissive norms” about drinking associated with increased risk of sexual harassment”).

³⁰ EEOC Report, *supra*, at 55.

the AFL-CIO and others to further strengthen protocols for handling incidents and concerns that occur at offsite and after-hours events.

(5) No use of AFGE funds or official activity at adult entertainment venues. We recommend AFGE clarify appropriate locations for official events and activities, including a clear statement that there should be no use of AFGE funds or official activity at adult entertainment venues.

(6) Intimate partner violence. We understand AFGE is already working to implement a policy that reflects District of Columbia requirements to ensure nondiscrimination and provide appropriate accommodations for employees experiencing intimate partner violence. We recommend they continue that work.

7. Expand and Formalize Regular Training.

We recommend AFGE expand and formalize a regular training program with annual mandatory training on updated EEO policies and procedures as well as skills development for all staff and leaders to identify, understand and respond effectively to harassment and related misconduct. Training for all employees provides important information about the harassment policy and reporting process, explains avenues for employees to seek support when deciding whether to file a complaint, and by demystifying the process, can help increase employees' comfort level with raising concerns. By providing a common language for talking about inappropriate behaviors and workplace expectations, training can help catalyze discussion and action to prevent harassment. In addition, organizational leaders need training on how to respond to different forms of inappropriate behavior, as well as clear instructions on how to report harassing behavior up the chain of command. Training should also stress the affirmative duties of supervisors to respond to harassing or discriminatory behavior, even in the absence of a complaint.³¹

We recommend a robust regular training program to ensure continuous learning that is ongoing and reinforced in a variety of ways throughout the year, rather than simply through a once-a-year session. This includes allocating sufficient resources and staff time for effective harassment prevention strategies. As the EEOC has recognized, anti-

³¹ *Id.* at 51.

harassment and EEO training should be regular and repeated for all employees, delivered by highly qualified trainers who use interactive methodologies (with live trainers strongly preferred), and be behavior and norms based – as opposed to legalistic and technical.³²

The EEOC has identified promising practices for organizational training programs that may provide a useful guide for expanding and updating AFGE's training to include any of the new policies adopted.³³ Training on respectful workplaces can play a powerful role in setting norms for appropriate behaviors in the workplace. By focusing on skills development, including interpersonal skills training, conflict resolution training, and effective supervisory techniques, these efforts focus on positive action that staff and leadership can take to create and to maintain respectful and inclusive work environments.

Additionally, training on bystander intervention shows promise in building a culture of collective responsibility across the organization for workplace behaviors. By providing employees with the tools to understand how to identify problematic behavior and develop the skills to interrupt or prevent negative behaviors, organizations can prepare and motivate bystanders to step in and take action when they observe conduct that may be harassing or inappropriate. Organizational leaders play an important role in modeling interventions to signal that harassing or disrespectful conduct is unacceptable, as well as in supporting and commending employees who take action.

8. Continue Implementation of the Code of Conduct.

We recommend that AFGE continue developing its Code of Conduct resources to address disrespectful conduct and to improve inclusion in the AFGE workplace and at member events and conferences. We recommend that AFGE update and disseminate the newly adopted Code of Conduct to all employees and members, and that AFGE ensure that the Code of Conduct be read aloud in advance of AFGE National, District, and Local meetings and events. This would include practices for AFGE to address unacceptable behavior promptly and appropriately, protect the privacy of individuals who raise concerns, and ensure no retaliation.

³² *Id.* at 52-53.

³³ *Id.* at 54, 57.

9. Identify a New Outside Entity to Lead a Culture and Climate Review.

We recommend that AFGE work with a new outside entity to conduct a culture and climate assessment. This assessment can assist AFGE in more fully understanding the needs and concerns of the workforce with the goal of identifying strategies to create a more respectful inclusive and equitable culture and climate at AFGE. Although Working IDEAL had initially contemplated conducting a second phase culture and climate review, we recommend AFGE work with a different entity for this assessment. This will facilitate a clear end to the investigation process, better protect the confidentiality of the information shared with the investigation, and will enable AFGE to move forward to strengthen its organizational practices and culture. The assessment could evaluate measures to ensure accountability as well as assess risk factors for harassment, discrimination, and retaliation. Regular assessments of organizational climate serve as an effective proactive effort to intervene and prevent harassment and other forms of discrimination.³⁴ Regular assessments can also serve as a catalyst for organizational change and a baseline to measure progress.

10. Apply Principles of Accountability and Transparency in AFGE's Efforts to Strengthen its Workplace.

Measurement, accountability, and transparency are important ways to ensure inclusive, equitable, and harassment-free workplaces.³⁵ One strategy that in our experience is particularly effective is developing written strategic plans with objectives, milestones and measures, and a structure for regular and transparent reporting of progress.

We recommend that AFGE develop a work plan to address a set of improvements to strengthen culture and climate, as well as reporting, recordkeeping, training, and governance based on the findings and recommendations in this Report. The plan should also include the results of the broader climate and culture assessment. A transparent process to report back to staff and members on AFGE's progress in implementing this work plan will increase urgency, accountability, and engagement across the organization.

³⁴ Buchanan, *supra* note 7, at 698.

³⁵ IRIS BOHNET, WHAT WORKS: GENDER EQUALITY BY DESIGN (2016); Frank Dobbin, Alexandra Kalev & Erin Kelly, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589 (2006).

Appendix 1: About the Investigation Team



Jenny R. Yang, Esq. is a Partner at Working IDEAL. Before joining Working IDEAL, she led the nation's enforcement and public policy

response promoting equal opportunity as Chair of the U.S. Equal Employment Opportunity Commission. She has decades of experience championing and monitoring reforms to address systemic workplace discrimination – including widespread sexual harassment and sex discrimination.



Cyrus Mehri, Esq., is a cofounder of Working IDEAL and a founding partner of the law firm of Mehri & Skalet. Mr. Mehri has well over two decades of experience successfully

implementing innovative reforms at major U.S. corporations and large and small employers across the private, public, nonprofit, labor and higher education sectors. Mr. Mehri is the originator of the "Rooney Rule" diverse candidate slate requirements that have become best practices.



Pamela Coukos, JD, PhD, is the CEO and cofounder of Working IDEAL. Pam is an expert on the use of data and statistical analysis in

identifying workplace discrimination, and on research-driven best practices for building equitable and inclusive workplaces and addressing unconscious bias. She advises private companies, universities, government agencies, nonprofits and unions on gender equity, pay equity, diversity and inclusion, affirmative action and leadership development.



Ellen Eardley, Esq., served as the first Title IX Coordinator and Assistant Vice Chancellor for Civil Rights and

Title IX at the University of Missouri, where she founded the first institutional equity office. She practices anti-discrimination law at Mehri & Skalet and consults through Working IDEAL on fair employment practices and equal educational opportunity.



Anurima Bhargava, Esq. is the Founder and President of Anthem of Us, a strategic advisory firm promoting dignity and justice

in the building of our schools and communities. From 2010-2016, she served as the Chief of the Educational Opportunities Section of the Civil Rights Division at the U.S. Department of Justice, where she led federal enforcement of civil rights laws in schools and institutions of higher education nationwide. She served on the White House Task Force to Prevent Campus Sexual Assault and the White House Council on Women and Girls. Prior to joining the DOJ in 2010, Ms. Bhargava was counsel and Director of the Education Practice at the NAACP Legal Defense Fund.



Sarah Crawford, Esq. has over two decades of experience as a litigator, advocate, and advisor in the field of equal employment

opportunity. As the principal of Crawford Consulting, Sarah provides advice to ensure compliance, training customized to meet the needs of clients, and research to promote sound policies and practices that work. Sarah served as a senior attorney advisor to Chair Jenny R. Yang of the U.S. Equal Employment Opportunity

Commission. She also directed the Workplace Fairness Program at the National Partnership for Women & Families.



Desiree Langley, Esq. joined Mehri & Skalet in 2019 as an Associate Attorney. She represents people who have experienced race discrimination, sex

discrimination, sexual assault, and other civil rights violations in the workplace, in addition to whistleblowers in all types of matters including bringing qui tam lawsuits under the False Claims Act. Prior to joining Mehri & Skalet, Desiree worked as an Assistant Public Defender in Maryland, where she represented indigent clients charged with misdemeanors and felonies.



Peach Soltis, Esq. is a senior advisor at Working IDEAL and has over a decade of civil rights and employment law experience in public policy and

government. Previously, she has held positions at the U.S. Commission on Civil Rights, the U.S. Equal Employment Opportunity Commission, and in the White House Domestic Policy Council's Office of Urban Affairs, Justice, and Opportunity. Before that, she was senior counsel for labor and economic policy for U.S. Senator Al Franken.

Appendix 2: Frequently Asked Questions

This is the text of the FAQs provided by Working IDEAL to individuals we interviewed.

Frequently Asked Questions About Working IDEAL's AFGE Investigation

Who is Working IDEAL? [Working IDEAL](#) is a consulting firm founded by people who have a long history representing and supporting workers and building inclusive workplaces. We provide trusted, effective and innovative advice on inclusive workplace practices, harassment-prevention, diverse talent, and fair pay to large and small companies, universities, progressive non-profits, unions and other organizations across the nation. We also conduct third-party audits and investigations of workplace practices and complaints, including harassment. You can learn more about Working IDEAL at workingideal.com.

Who is on the Investigation Team? Jenny R. Yang of Working IDEAL, and a former Chair of the U.S. Equal Employment Opportunity Commission, is leading the investigation, joined by her Working IDEAL partners [Pamela Coukos](#) and [Cyrus Mehri](#) (who is also a founding partner of the law firm of [Mehri and Skalet, PLLC](#)). Our investigation team includes Mehri & Skalet Partner [Ellen Eardley](#) and attorney [Anurima Bhargava](#), a former official in the United States Department of Justice, Civil Rights Division who consults with Working IDEAL. You may also be contacted by or speak with other attorneys and paralegals from Working IDEAL and Mehri & Skalet. We all have many years of experience representing and working on behalf of workers, and helping organizations address racial justice, gender equity, sexual harassment and sexual violence. You can find our bios at the end of this document.

What is Mehri & Skalet? What is their prior relationship with AFGE? Mehri & Skalet has a long history of representing workers in race and gender discrimination cases, wage and hour cases and other employment issues. Mehri & Skalet has represented AFGE members in the past in several sexual harassment and wage and hour cases. The firm is still counsel of record on a longstanding collective action regarding whether federal employees' wages were improperly withheld during the October 2013 government shutdown.

Are you working for AFGE? AFGE's National Executive Council (NEC) has hired us for a specific role:

- to conduct an independent, thorough, and impartial outside investigation of allegations of misconduct by President Cox;
- to evaluate AFGE's policies and practices related to preventing and responding to workplace harassment; and
- to make recommendations on ways AFGE can strengthen its workplace.

How can I contact you if I have information to share? You may contact us directly by email at afge-inquiry@workingideal.com or by calling **202-446-1897**. No one at AFGE has access to any information provided through this email address and phone #.

What kinds of concerns are you investigating? At this time, our investigation is focused on allegations of harassment or discrimination involving President Cox. We would like to speak with you if you have any relevant information regarding these allegations or similar concerns regarding his conduct or the organization's response to such allegations. If you would like to raise concerns about incidents that concern AFGE national headquarters and/or national leadership, you may contact Working Ideal at afge-inquiry@workingideal.com or call 202-446-1897. AFGE employees may also report using the procedures set forth in the AFGE Equal Employment Opportunity policy. Members may also use the reporting process set forth in the AFGE National Constitution under Article XXIII. For matters involving local issues, you should follow your local office reporting process.

Who are you interested in speaking with? We would like to speak with anyone who has information to share, including current and former AFGE employees, members or any others. Please feel free to encourage anyone you know who has information to share related to this investigation to reach out to us.

Who do you represent? AFGE (and the NEC) is our client for purposes of the investigation, workplace assessment and recommendations, but we have a specific agreement with them about our role. That agreement says:

- We will make our own independent judgment of the facts.
- We will make our own independent judgment about whether or not to share information we learn with AFGE.
- Working IDEAL and Mehri & Skalet do not represent any individual workers, members or other individuals who may have claims against AFGE.
- In addition, we are not representing AFGE in any existing legal case related to defending these allegations, and we do not intend to defend AFGE in any future litigation about these allegations.

We do have an attorney-client relationship with AFGE. This means that AFGE owns the attorney-client privilege over any information we collect. They can decide whether to waive the privilege and may disclose information we share with them. AFGE does not have to notify you if they decide to waive the privilege.

What makes this investigation independent? Our job is to take a fair and objective look at all of the facts and determine, to the extent we can, what happened and whether changes to the organization's, policies, procedures or practices may be warranted. AFGE has agreed that the investigation findings will be solely Working IDEAL and Mehri & Skalet's conclusions, and that they will not be influenced by AFGE or the NEC. Our job is not to protect any AFGE leader. No one at AFGE will dictate who we talk to, what information we look at or how we manage the investigation. We will decide what information to share with AFGE in furtherance of a fair and impartial investigation. We have a track record of acting with fairness and integrity.

What happens to the information I share with you? Our goal is to provide an opportunity for you to speak with us in private and share any information you have. The information you share will become part of the investigation. If requested, we will protect your information and identity to the extent possible -- although we may need to share some limited information with others in order to conduct a full and fair investigation. We are happy to answer any questions you have about privacy when you reach out to us, and before you share any information with us. The information you share will also be used to provide legal advice to the company about its compliance with the law.

When and how would my information be shared with others? Your information will be shared with the other members of our investigation team. We may need to share information with individuals outside that group in order to investigate specific incidents. If we can verify your information through other sources -- including documents -- we may not have to share your name or details that would identify you in order to investigate incidents you share with us. In some cases, sharing information about the incident, even without names or identifying details may be likely to identify the source of that information. Based on our agreement, we are not sharing our interview notes with AFGE. If you request that we keep your information as private as possible, we will do our best to limit who else we share your identity or information with. But in some instances, protecting your identity may mean we will not be able to investigate or take action on your allegations. And we will need to share information where there may be a risk of harm to others or potential criminal activity. If there is ever a lawsuit, government investigation or criminal case that relates to the

information you provide, your information may be shared with law enforcement or legal authorities or other third parties as required by law.

What actions can you take based on your investigation? Our role is to conduct an investigation of the alleged conduct and try, to the best of our ability, to determine what happened. Our role also includes making recommendations to AFGE about changes to strengthen policies, practices, programs or culture going forward. **If you want specific action taken on your behalf or relief provided to you as a result of your coming forward, and to protect your rights under the law, you would need to act. This could include:**

- Registering a formal complaint through the AFGE EEO policy or AFGE National Constitution under Article XXIII, and/or
- Filing an external complaint or charge with a federal or state agency and/or court.

Under workplace anti-discrimination and other laws there are strict time limits for filing complaints or charges to preserve any rights you may have under existing law. You can find out about how to get help from the EEOC here:

<https://www.eeoc.gov/employees/index.cfm>. Workplace Fairness

(<https://www.workplacefairness.org/>) is a good resource for learning more about the relevant requirements and options for your state. You may also wish to consult with an attorney of your choosing.

Will we learn about the results of your investigation? We expect that there will be a public report of our investigation that reflects a summary of what we learned. We will make best efforts to limit the use of names and identifying details in any public report where individuals are concerned about confidentiality and privacy.

I'm worried about retaliation, being treated differently or harmed by sharing information. AFGE is prohibited from retaliating against individuals who provide information to us or who otherwise report concerns. AFGE has committed to redoubling its efforts to ensure individuals throughout the organization feel comfortable speaking up about any issues. When people come forward to share their experiences, they are taking an important step toward building a stronger workplace. AFGE has also committed to preventing interference that might impede a full and fair investigation. We encourage individuals to let us know about any concerns of retaliation or interference, and we will investigate such allegations that we learn about through our review.

Can I share the information I provided to you with others? We request that you do not share information about conversations or interviews with the investigation team, because we want to conduct a fair and objective inquiry. We do not want your information to influence what others tell us. In addition, our conversation is covered by our attorney-client privilege with AFGE and we ask you not to disclose it for that reason. You may have certain legal rights to share information, including on matters of public concern, and we do not intend to limit those rights in any way.

Is there also a review of climate, culture, policies and practices? Conducting a thorough and fair investigation of the allegations against President Cox is our immediate priority, but we are also committed to conducting a broader evaluation of culture and climate, and the organization's policies and practices, to ensure a fair and inclusive working environment. We will use that information to make recommendations to improve the AFGE workplace.

For this phase, our team will also include [Rene Redwood](#), CEO of Redwood Enterprise, a national expert on racial and gender justice and workplace transformation, and [Doris Quintanilla](#), Executive Director of The Melanin Collective, who works to educate, empower, mentor, and effect change in the lives of women of color. You can read their bios below. In the coming weeks, we will be providing more information about how you can participate in that broader review and share your thoughts, perspective and experiences with us.

[Working IDEAL](#) provides trusted, effective and innovative advice on inclusive workplace practices, diverse talent, and fair pay to large and small companies, universities, progressive non-profits, unions and other organizations across the nation. You can learn more about Working IDEAL at workingideal.com.