



June 3, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint received by the United States Department of Labor on February 23, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Branch 132, (Branch 132 or branch), National Association of Letter Carriers (NALC), concluded on November 9, 2009.

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

You alleged that your opponent for the position of President used the branch's logo in his campaign literature, giving the impression that the branch and NALC endorsed his candidacy, in violation of section 401(g) of the LMRDA. 29 U.S.C. § 481(g). Section 401(g) of the LMRDA provides, in relevant part, that no moneys received by any labor organization by way of dues shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of the LMRDA. 29 U.S.C. § 481(g). A union's logo may constitute "moneys" where the logo has market value, such as when the logo is protected by trademark, and where the union restricts the use of its logo in some manner. Therefore the use of a union logo may be a violation of section 401(g) of the LMRDA under certain circumstances.

Here, the Department's investigation determined that the branch's logo is not protected by trademark and has never been restricted for official union use only. In fact, the branch logo is freely used by members on their business cards. The election rules did not prohibit the use of the branch logo for campaigning purposes and candidates were not told that use of the branch logo was prohibited. The Department's investigation revealed that the logo was used by your opponent in the last three elections and was also used by a candidate for financial secretary, during the 2007 officer election.

Moreover, your opponents' mailings featuring the branch logo were clearly marked as campaign material and not as an endorsement by the branch or NALC. Therefore, the use of the logo was not a violation of section 401(g) of the LMRDA.

You alleged that the local failed to provide adequate safeguards to ensure a fair election when ballots were mailed to deceased and ineligible members. Section 401(c) of the LMRDA, 29 USC 481(c), provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. As such, a union's wide range of discretion regarding the conduct of its elections is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

A labor organization is obligated to conduct its periodic elections in such a way as to afford all its members a reasonable opportunity to vote. 29 C.F.R. § 452.94. The Department's investigation disclosed that the branch obtained its membership list for the election from NALC. It has used an NALC list in the last three elections. NALC updates its membership database by gathering information from numerous sources including the U.S. Postal Service, individual members, branches, NALC's printer, and the return of NALC's monthly magazine. NALC also receives data from the national change of address program developed by the Postal Service. NALC's membership department believes that its membership data is generally more accurate than membership lists maintained by the branches.

The branch election committee obtained a membership list from NALC in October 2009 which was used for the election. You alleged that 14 deceased members were mailed a ballot. You also alleged that members who were ineligible to vote as a result of non-payment of dues were sent ballots. The investigation established that you were correct in asserting that 14 ballots were sent to deceased members and also found that eleven ballots were cast by individuals who were ineligible to vote as a result of not paying dues.

Section 402(c) of the LMRDA provides that an election may only be overturned where a violation of the law may have affected the outcome of an election. The vote margin between you and your opponent was 126. The smallest vote margin in the election was 51, in the race for financial secretary. Of the 14 ballots mailed to deceased members, only one was returned. That ballot was challenged and not counted, and therefore did not affect the vote count. The eleven ballots cast by ineligible members were cast in violation of section 401(c) of the LMRDA; however, they could not have affected the outcome of the election, because the smallest margin of victory was 51 votes. There were no violations of adequate safeguards that affected the outcome of the election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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