



March 4, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor on September 22, 2008, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Service Employees International Union (International) at its convention, held in San Juan, Puerto Rico from June 3- 4, 2008.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded, with respect to each of your specific allegations, that no violation of the LMRDA occurred, that there was no violation of the LMRDA that would provide a basis for litigation by the Department, or that there was no violation that may have affected the outcome of the election.

You alleged that Local 6434 and other locals affiliated with the International inflated their voting strength by including agency fee payer members in the voting strength calculation. Your conclusion was based on the fact that the 2007 Form LM-2 filed with the Department by Local 6434 showed approximately 30,000 fewer agency fee payers than the amended Form LM-2 that Local 6434 filed with the Department later that same year. Section 401(f) of the Act, 29 U.S.C. § 481(f), requires that the election of union officers by delegates at convention be conducted in accordance with the union's constitution and bylaws. *See also* 29 C.F.R. § 452.127. Article IV, section 12 of the International Constitution provides that voting strength is to be calculated by averaging the number of members for which monthly per capita dues payments were received in the twelve months immediately preceding the calendar year in which the convention is held. The provision further provides that a local's voting strength shall not include agency fee payers. The Department's review of Local 6434's per capita forms used by the International to calculate delegate voting strength disclosed that the International calculated the voting strength in accordance with the requirements of the International Constitution. There was no evidence of the manipulation of membership information

to inflate delegate entitlement. Moreover, the calculation did not include agency fee payers. There was no violation.

You alleged that several delegates who supported incumbent International President Stern were allowed to vote despite the fact that their elections were not conducted in accordance with the requirements of Title IV of the LMRDA. Section 401(a) of the LMRDA, 29 U.S.C. § 481(a), provides that an election of national or international officers may be conducted by secret ballot among the eligible members or at a convention of delegates chosen by secret ballot from among the eligible members of the labor organization such delegates represent. The SEIU constitution provides for election of officers by convention of delegates. Thus, the convention delegates were required by section 401(a) to be elected by secret ballot. *See also* 29 C.F.R. § 452.22. The investigation disclosed that as many as 142 delegates from eight different locals were or may have been improperly elected. These eight locals either elected at least some of their convention delegates in violation of section 401 or the Department was unable to ascertain whether every member of each delegation was properly elected. These 142 delegates had a combined voting strength of 130,913 votes. The vote margins of victory for the two contested offices in the election far exceeded 130,913 votes. Thus, the violation could not have affected the outcome of the election.

You alleged that properly elected delegates were not allowed to vote in the election because they opposed the re-election of International President Stern. You provided the name of ██████████, a member of Local 2007, as one who could provide essential details as to the union's actions with respect to Local 2007 delegates. ██████████ stated he was not permitted to vote at the International Convention. The investigation disclosed that ██████████'s local, Local 2007, was a newly formed local that had not yet held an election. Consequently, it had no properly elected delegates to send to the International Convention. The investigation further revealed that at this formative stage, Local 2007 members did retain membership with their previous local, Local 715. However, Local 715 was under trusteeship and eligible only to have guest delegates with no voting rights. *See* Rule 12 of the Standing Rules of the 24th Convention; *See also* 29 C.F.R. § 452.125. As a result, ██████████ attended the International Convention as a guest delegate of Local 715 and was seated, but he was not permitted to vote, in compliance with Rule 12. There was no violation.

You alleged that the seating of Local 1021's delegation was delayed by thirty minutes. The investigation disclosed that the credentials or eligibility to participate of a number of the delegations to the convention, including the Local 1021 delegation, were challenged on the convention floor on June 2, thereby delaying the time within which such delegations were seated. However, the investigation also revealed that after receiving, investigating, and holding hearings on challenges to the seating of such

delegations, the credentials committee agreed to seat all challenged delegations. All were seated prior to the conduct of the election. There was no violation.

You alleged that the International used union funds to campaign against certain candidates who were members of United Health Workers-West (UHW). You explained that the campaigning included the use of union funds for press releases, press conferences, bad faith lawsuits, flyers, telephone surveys, emails, and the International's website. Section 401(g) of the Act, 29 U.S.C. §481(g), provides, in relevant part, that no moneys received by any labor organization by way of dues, assessments, or similar levy shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of Title IV of the Act. The provisions of section 401(g) prohibit any showing of preference by a labor organization or its officers through the use of union funds to criticize or praise any candidate. *See* C.F.R. § 452.75. The courts have interpreted section 401(g) very broadly, finding that a variety of actions by unions violate the proscription on use of union funds to campaign. *See, e.g., Hodgson v. United Mine Workers*, 344 F. Supp. 17 (D.D.C. 1972); *Hodgson v. Liquor Salesmen's Union, Local 2*, 234 F. Supp. 1369 (S.D.N.Y. 1972).

The Department reviewed hundreds of pages of press releases, press conference text, legal memoranda in suits filed by the International against UHW, flyers, telephone surveys, emails and the International's website, not only those submitted by you but also those obtained in the course of the Department's own investigation. Following are summaries of our findings as the individual documents are too voluminous to recite with specificity.

The Department's review of the ten press releases issued by the International from March 27-May 20, 2008, showed that the press releases did not criticize or attack any candidate, did not mention the upcoming election, or solicit delegate votes. There was no violation.

Regarding the May 5, 2008 lawsuit filed by the International in the months preceding the election period, ten UHW officers, including international vice presidential candidate [REDACTED], were named as having breached their fiduciary duties by transferring moneys to an unauthorized fund. The International sought the return of those moneys along with any interest paid on the account. Article XI, section 6(D) of the International Constitution authorizes the International to take such legal action as it deems necessary to protect the interests of the International, among others. Accordingly, the International had the authority to file the May 5, 2008, suit to protect what it deemed as its members' interests concerning the breach of officers' fiduciary duties involving the transference of union funds to an unauthorized fund. The lawsuit itself was not prohibited campaigning and documents filed in connection with the suit did not address the election or the candidacy of any individual. There was no violation.

In addition, the investigation revealed that the International held a press conference on April 29, 2008, that lasted 28 minutes. The sole topic of that press conference was the lawsuit mentioned above. The press conference informed reporters of the basis for the International's decision to file suit. The International focused on this topic exclusively for ten minutes. The remainder of the conference was devoted to taking questions from reporters. At no time was there any mention of the upcoming election. No candidacy was attacked and none was endorsed. There was no violation.

With respect to the use of union funds for campaign flyers, the investigation disclosed that the International was engaged in a heated debate with members of its UHW local over issues pertaining to the direction of the union. The International titled its platform on these issues Justice for All. The UHW titled its platform on the issues Platform for Change. The International's Justice For All platform was led by International President Stern. President Stern was also a candidate for re-election and headed the Stern Unity Team, the only slate in this election. President Stern ran unopposed for re-election and won by acclamation. The Stern Unity Team won every contested office by vast margins. The UHW's Platform For Change was led by Sal Rosselli, president of UHW and an independent candidate in the election for one of twenty-three Vice President offices. Delegates to the International Convention were to vote on which platform to adopt through proposed constitutional amendments. Both the International and UHW spent substantial amounts of union moneys on the promotion of these two platforms well before and during the election period. Locals received voluminous quantities of flyers from both Stern's Justice for All Platform and Rosselli's Platform for Change during the months before the election. The platform issues were debated up until the time of the convention. The debate over the platform issues intersected with the campaigning for union office.

The investigation revealed that both platforms used their respective union's funds to produce and disseminate these flyers. The investigation further revealed that certain of these flyers denigrated Rosselli's candidacy in violation of the LMRDA. Local 6434 made and paid for extensive mailings to California members including UHW members. Those mailings supported the establishment of one statewide local for long term home care and nursing home workers, a position aligned with the Stern platform, and in direct opposition to UHW's stand on this issue. Local 6434 also disseminated flyers which specifically criticized Rosselli. One flyer stated that while Rosselli denied members of UHW from running for delegate, he declared his candidacy for international vice president. The flyer also asked rhetorically for whom Rosselli was looking out. Another flyer was a post-card like photograph of a beach chair and umbrella at a sea shore with a stand alone sign stating "reserved for Sal Rosselli UHW Members Not Allowed!" While the intent of these flyers may have been to attack the Rosselli platform and not his candidacy, the tone and content of the flyers and the

timing of their dissemination rendered the flyers campaign material. The Department of Labor recognizes that the union must proceed with regular union business in election years. The Department also recognizes that statements by and about the activities of incumbents and issues facing the union undoubtedly will be made in the ordinary course of union business even in election years. However, union resources cannot be used to promote or denigrate a particular candidate or candidates. The line between legitimate union business and impermissible campaigning on occasion may be a fine one. The test most often articulated in determining when the line has been crossed is whether the overall tone, timing, and content effectively support or attack a candidate in the election and is campaigning.

The content of these flyers includes specific reference to Rosselli, a candidate for office in the election, and one mentions his candidacy. These flyers were distributed within the election period. The tone was critical of Rosselli. These flyers differed from others where no candidate was directly named or negatively portrayed. Local 6434's dissemination of those two flyers violated section 401(g) of the Act.

However, the violation did not affect on the outcome of the election. The investigation revealed that these flyers were disseminated to UHW members only. The investigation also revealed that UHW delegates cast all of their voting strength for Rosselli. The campaigning against Rosselli had no effect on the outcome of his election. There was no violation that may have affected the outcome of the election.

Between April 4, 2008 and May 9, 2008, approximately six robo-calls were made to thousands of UHW members. The topics included garnering support for Intercon security officers, announcements about the \$3 million diversion of UHW funds, UHW's illegal delegate election, and support for the Justice for All platform, among others. None of the robo-calls criticized any candidate for International office, nor identified any candidate by name. These robo-calls for the most part promoted the Justice for All Platform and not the Stern candidacy. However, two of those robo-calls to UHW members were about issues that had been previously publicized numerous times: one call was about UHW's illegal delegate election and the other about the transfer of UHW funds. The International had previously publicized these facts on several occasions. The issues and information concerning the issues were not timely. Resurrecting these events in robo-calls in proximity to the election constituted excessive coverage negatively affecting the election of UHW candidates in the election in violation of section 401(g) of the Act, 29 U.S.C. § 481(g). Given that the robo-calls were directed to UHW members whose delegates unanimously cast their votes for UHW candidates and against the Stern Unity Team, it cannot be said that the violation may have affected the outcome of the election.

The investigation revealed that between April 16 and May 12, 2008, the International conducted two telephone surveys directed at UHW members only. The Department reviewed all of the survey questions. This review showed that the questions were neutral in tone and content as the questions sought to elicit participants' opinions not only concerning UHW's performance but also the International's. There was no electioneering. There was no violation.

The investigation revealed that during the election period, the International did use its email system to communicate with its officers and staff members. None of the emails mentioned Rosselli, the impending election, or solicited delegates' votes. There was no violation. The investigation further revealed that during the election period the International's press releases were emailed to undisclosed recipients. A review of the press releases disclosed that they were strictly related to platform or organizing issues. There was no violation.

Finally, the investigation showed that both platforms used union funded websites to promote their platforms. The content and tone of material on the International's webpage disparaged Rosselli's leadership qualities. In addition, the International's website provided a link to an article authored by SEIU Executive Vice President Mary Kay Henry. The tone of the article was critical of Rosselli and the content blamed Rosselli for sabotaging the organizing efforts of Ohio hospital workers. The timing of the display of these webpages was during the election period. Based on the tone, content and timing of the webpages, they constituted unlawful campaigning and, thus, violated section 401(g) of the Act, 29 USC 481(g). This unlawful campaigning may have affected Rosselli's candidacy. However, the investigation revealed that Rosselli is no longer a member of the International. Therefore he would not be eligible to run for any International office should the International hold another election under the Secretary's supervision to remedy the campaign violations. There was no violation of the Act that would provide a basis for litigation by the Department.

For the reasons set forth above, I have closed the file in this matter.

Sincerely,

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