



January 11, 2012



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint received by the Department of Labor on March 7, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) occurred in connection with the election of officers of Professional Staff Association (PSA), conducted by on-site polling on November 11, 2010, and with the runoff election conducted by mail ballot on December 22, 2010.

The Department conducted an investigation of your allegations. As a result of that investigation, the Department has concluded that there was no violation of the LMRDA. The basis for the Department's decision follows the recitation of each of your allegations below.

You alleged that the union should have permitted absentee ballots for the November 11, 2010 on-site polling election because many members lived far from the polling site. Section 401(e) of the LMRDA provides, in relevant part, that

in any election required by this section which is to be held by secret ballot, *a reasonable opportunity* shall be given for the nomination of candidates and every member in good standing shall . . . have the right to vote . . .

Section 401(e) of the LMRDA mandates that members be given a reasonable opportunity to vote. 29 C.F.R. § 452.94. In assessing whether distance from the polling site denies members the reasonable opportunity to vote in violation of section 401(e), the weight of the case law supports application of a totality of the circumstances standard. Courts have rejected a bright line mileage rule, and at least one court has stated that 350 miles is not a "wholly impracticable" distance for an election held once every three years. In applying the totality of circumstances standard in this case, the

Department of Labor investigation revealed that distance from the polls did not operate to deny members a reasonable opportunity to vote.

The investigation disclosed that the arrangements made by the union were reasonable, allowing union members the opportunity to vote. At the time of the election, the union had 226 members, geographically disbursed over four regions. Members in Jamestown, New York, at approximately 350 miles, were farthest from the polling site in Albany, New York. The union arranged to hold the election on a day when the schools were closed, so that the union's membership, all of whom are New York State United Teachers Staff Representatives, would not experience any conflict with their professional obligations. The union arranged to have all attendees receive paid leave; members who chose not to attend were required to report to work or take leave. In addition, the union paid for many travel expenses, including gas mileage for those traveling by car, and meals and lodging expenses for those members living outside the immediate vicinity of the Desmond Hotel in Albany, New York, the site of the election. The union also paid for lodging for those in Albany who wanted accommodations the day before the election, and paid for a group lunch for members present on election day. The union expended approximately \$22,000 to remove as many impediments as possible to ensure that the site chosen for the election did not prevent members from participating in the election. The union, by design, does not provide for absentee ballots, heavily favoring on-site voting to encourage members to listen to each candidate's campaign statement, participate in the question and answer session that follows the candidates' statements, and to inform members of current events affecting the union. The investigation revealed that there was a high level of membership participation in the election. Of the union's 226 members, 200 members voted at the on-site location, an 88.5% participation rate. Among those who attended were all the members from Jamestown, New York, the furthest travel distance from the voting site. Given these arrangements, and 88.5% membership participation in the election, it cannot be said under a totality of the circumstances standard that the actual arrangements made by the union were so lacking in democratic principles and so unfair, that the union denied members a reasonable opportunity to vote. There was no violation of the LMRDA.

You alleged with respect to the run-off election, that the union should have allowed all members to vote, thus, the union should have mailed ballots to all members. The Department's investigation revealed that the November 11, 2010 election of Executive Vice President resulted in a tie with each candidate receiving 99 votes. Unfortunately, by the time the union learned of the tie, approximately one-third of the members had already left the premises. The LMRDA does not mandate a procedure to follow when an election results in a tie vote. Unions may establish rules for resolving tie votes in their governing documents. Absent a procedure in the governing documents, unions may employ any reasonable method, including a coin toss, to determine the winner. Neither the PSA Constitution nor the PSA Bylaws address a situation where an election results in a tie. To resolve this issue, the union held a council meeting on December 1, 2010. All members of the council present at the meeting agreed to conduct a runoff

election by mail ballot. After debate, a majority of the council agreed to adhere to the PSA Constitution and Bylaws as closely as possible and to condition voter participation in the run off on eligibility to vote in the original election, *i.e.*, those who had voted in person in the original election were eligible to vote in the runoff election held by mail ballot. The union's decision to limit its runoff election to those eligible to vote in the November 11, 2010, election was not unreasonable. The runoff election was an extension of the primary election, and the union treated the runoff as such. Those eligible to participate were the same members who had a month earlier heard the candidates' campaign statements, participated in the question and answer session, and heard the latest information concerning the union. It was not unreasonable for the union to follow as closely as possible the provisions of its Constitution and Bylaws governing an election, in the absence of any guidance on resolving a tie between candidates. There was no violation.

For the reasons set forth above, it is concluded that your complaint to the Department with regard to the above allegations is dismissed, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. Derek J. Lewis, President
Professional Staff Association
c/o New York State United Teachers
800 Troy-Schenectady Road
Latham, NY 12110

Christopher Wilkinson, Associate Solicitor
Civil Rights and Labor-Management Division