



December 3, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint to the U.S. Department of Labor, received March 11, 2014, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the November 8, 2013 election of union officers held by National Association of Letter Carriers Branch 2550. ,

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

You alleged that in several instances, the election committee failed to supervise all aspects of the election, in violation of the NALC Regulations Governing Branch Election Procedures (National Regulations) and the LMRDA. Specifically, you alleged that the Election Committee, and not the incumbent candidate for local president, should have secured the local's post office box for the return of voted ballots.

Section 7 of the National Regulations provides that "[a]t least twenty-one (21) days before the election, the President . . . should appoint a committee to conduct and supervise all aspects of the election." Section 401(c) of the LMRDA provides, in relevant part, that adequate safeguards to ensure a fair election shall be provided. Adequate safeguards refer, among other things, to the mechanical, procedural aspects of running an election.

The Department of Labor investigation disclosed that the union acted consistently with the National Regulations and did not violate the LMRDA's adequate safeguards provision with respect to this allegation. The investigation revealed that the incumbent president, under the direction of the election committee chair, rented a post office box at the Inverrary Post Office, to hold voted ballots. The election committee chair had the president secure the box because the president was the only person authorized to use

the local's credit card, which was needed to rent the box. The post office required prospective renters to provide an identification card with the same name as that on the credit card. The election committee properly supervised the rental of the post office box for election purposes. There was no violation.

You also alleged that the local president undermined the authority of the election committee when she directed some of the election committee members to arrive at 9:30 a.m. at the union hall, rather than at 9:00 a.m. at the post office on the day of the election.

The investigation disclosed that the election committee chair directed the local president to take this action because she determined that the election process would be best served by having only one election committee member accompany her to the post office to collect the ballots at 9:00 a.m. while the other election committee members proceeded directly to the union hall, the tally site. Consequently, the election committee chair directed the incumbent president, who was in possession of election committee members' telephone numbers, to inform committee members of her instructions. The election committee chair was in control of the conduct of the election at all times. There was no violation.

You also alleged that the incumbent president had the opportunity to access voted ballots at the Inverrary Post Office because she was at that facility before the election committee arrived and had within her possession at least one of three keys to the post office box. You also alleged that post office box rented for return ballots bore a label with the name of the incumbent president and that of the local.

This allegation was not substantiated. The investigation disclosed that on election day, at the request of a national business agent (NBA), the incumbent president arrived at the post office prior to 9:00 a.m. to meet with the NBA to resolve a grievance. The incumbent president denied any involvement with any election-related matter while on the postal premises, and there was no credible evidence to suggest otherwise. She also denied having possession of any keys to the post office box at any time after the mailing of the ballots. The election committee chair confirmed that the incumbent president provided her with two keys to the post office box prior to the mailing of the ballots on October 18, 2013, and that those keys were in the sole possession of the election committee chair at all times.

In addition, the post office confirmed that it provides only two keys to renters. Finally, neither the election committee chair nor any member of the election committee remembered any labels on the rented post office box. There was no violation.

You made several allegations regarding restrictions placed on observers. Specifically, you alleged that those engaged in the tally process told observers to step away from one of the tally tables.

Section 401(c) affords candidates the right to have an observer at every phase and level of the counting and tallying process, including the totaling, recording and reporting of tally sheets, and the right to note the names of those voting to ascertain whether unauthorized persons voted in the election; observers should be placed so that they do not compromise, or give the appearance of compromising the secrecy of the ballot. 29 C.F.R. § 452.107.

The investigation disclosed that a team of two election committee members directed you and an observer to move away from their tally table. This was quickly brought to the attention of the election committee chair who immediately announced that observers have the right to stand close to the tally tables to observe the tally process. Any violation was remedied and would not provide a basis for litigation by the Department.

You alleged that certain election committee members whispered the votes for each candidate's name rather than announcing it loudly so that observers could hear. The investigation disclosed that election committee members were paired at four tables, with one election committee member announcing, in a normal voice, the candidate selected by the voter. Observers stated they were able to hear the call made by election committee members because of their close proximity to the tables, a proximity that allowed observers to see the marks made in favor of each candidate. There was no violation.

You alleged that the election committee held a recount of the ballots on November 13, 2013, without informing candidates of the date, time and location. The investigation disclosed that the election committee chair, after receiving two requests for a recount, decided to conduct a recount for all offices except delegates and treasurer. On November 13, 2014, the election committee chair, accompanied by several of the members of the election committee conducted a recount of the ballots. It is true that the election committee chair did not provide any notice to candidates regarding the date and location of the ballot recount. However, the LMRDA does not impose an affirmative duty on unions to notify members of the ballot count or recount. Moreover, it was not alleged and the investigation did not disclose any violation of the LMRDA associated with the recount.

The Department of Labor investigation included an inspection and recount of the ballots. Although the Department's recount disclosed differences with the union's recount totals, the same candidates were determined to be the winners.

You alleged that the local failed to provide observers with a voter eligibility list. Neither the LMRDA nor any rule of the national union requires that observers be provided with an eligibility list. The investigation disclosed that observers were able to see the computerized list of eligible voters and the markings made by the election committee that showed who had returned a ballot and voted. There was no violation.

You alleged that an election committee member favored your opponent over other candidates as evidenced by a thumbs-up signal and a hand shake of the husband of the incumbent president. The investigation confirmed that the election committee member in question, after discovering that the person to whom he was speaking was the incumbent president's husband, shook his hand and gave him a thumbs-up signal. However, this action involved no electioneering or any union or employer supported promotion of candidacy prohibited by the LMRDA. There was no violation.

You alleged that the incumbent president's refusal to accept a handful of voted ballots that were in the rented post office box before 9:00 a.m. on November 8, 2013, denied those members the right to vote. Section 401(e) provides in relevant part, that members in good standing shall have the right to vote. Unions have the right to establish reasonable rules that provide its members the opportunity to vote. *See* 29 C.F.R. § 452.94.

The notice of election provided in relevant part, that ballots must be received in the post office box by no later than 9:00 a.m., November 8, 2013. The investigation disclosed that at 9:00 a.m. on November 8, 2013, you and the election committee chair, among others, collected all the ballots contained in two trays in the non-public area of the post office. You accompanied the election committee chair to the public area where the election committee chair opened the rented post office box to show you that no remaining ballots were contained therein. At that point, you both departed the premises.

Approximately a week later, a postal clerk advised you that on November 8th, *after* the 9:00 a.m. deadline, another postal clerk had tried to hand the incumbent president a bundle of returned voted ballots that were on the post office premises but not in the post office box. The incumbent president's action in refusing those ballots did not violate the LMRDA. Rather the incumbent president acted correctly in refusing to accept the ballots because she was not an election committee member and was a candidate for office. Her acceptance and custody of the ballots would have given custody of the ballots to a candidate in the election in violation of the LMRDA's mandate that unions provide adequate safeguards to ensure a fair election. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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