



September 8, 2014



Dear [REDACTED]:

This Statement of Reasons is in response to your April 10, 2014 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), as made applicable to elections of federal sector unions by 29 C.F.R. §458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. 7120, occurred in connection with the election of officers of the National Treasury Employees Union (NTEU) Chapter 137, conducted from November 22 to December 10, 2013.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation affecting the outcome of the election.

You alleged that Chapter 137 incumbent President Daniel Nieto and union office manager Rene Garcia violated the LMRDA by using union time, records, and resources to obtain members' personal email addresses for a campaign email sent November 29, 2013. Section 401(g) of the LMRDA prohibits the use of labor organization funds to promote union election candidates. The investigation disclosed that both Garcia and Nieto were on annual leave on November 29. Garcia advised that prior to working for the union he obtained member email addresses outside of the workplace when he was a trainer of new recruits for the U.S. Customs and Border Patrol. He used his personal computer to send the November 29 campaign email. There was no evidence indicating that union time, records, equipment, or facilities were used to obtain members' personal email addresses. There was no violation.

You next alleged that Chapter 137 denied your request to obtain the email addresses that the incumbent officers used to send a campaign email and instead offered to permit you to review the list of members. Section 401(c) of the LMRDA prohibits unions from discriminatorily denying candidates access to member mailing lists. That section further provides that candidates have the right to inspect union lists of members and their last-known address. However, there is no candidate right to obtain a list of

members' email addresses from union records. As described above, no evidence substantiated your claim that Chapter 137 gave the incumbent officers members' personal email addresses to campaign. Therefore, you were not discriminatorily denied a union list of members and their email addresses. There was no violation.

You further alleged that Nieto, Garcia and [REDACTED] violated Section 401(g) of the LMRDA by promoting their candidacies on union time at a 2013 Meet and Greet in Miami International Airport. However, no witnesses at that Meet and Greet reported hearing any officer mention the election, or observe any officer pass out campaign materials. There was no violation.

You also alleged that on November 29, 2013, Nieto violated Section 401(g) by posting a campaign email, "The Truth About Izzy," on Facebook using union resources. As discussed above, the investigation substantiated that Nieto was on leave, not union time, on November 29. Nieto also used his own computer and personal Facebook page to post the campaign email. There was no violation.

You alleged that Chapter 137 violated its constitution and bylaws and the LMRDA by failing to give members sufficient time to vote after ballots were mailed to members. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Further, Section 401(e) requires unions to follow their constitution and bylaws in election proceedings.

The investigation confirmed that on November 15, the union failed to include secret ballot envelopes in its ballot mailing to members. Secret ballot envelopes and new ballots were mailed on November 22 with instructions to return the ballot by December 10, eighteen days later. Although the NTEU National's "Elections Manual" has a check list recommending that local unions prepare ballots for mailing three weeks before the return deadline, the Manual is merely a guide and is not incorporated into the constitutions or bylaws. Neither the Chapter 137 nor the National NTEU constitutions or bylaws specifies a time period between the mailing and return of ballots.

The Department's regulations provide that in mail ballot elections "the ballots must be mailed to the members no later than fifteen days prior to the date when they must be mailed back in order to be counted." 29 CFR § 452.102 The union's eighteen-day ballot return window did not violate the union's constitution or bylaws or Sections 401(c) or Section 401(e) of the LMRDA.

You alleged that Chapter 137 denied members working in pre-clearance in the Caribbean region the opportunity to vote. Section 401(e) of the LMRDA guarantees members the right to vote in officer elections. Chapter 137 organized a manual ballot

election for about forty members working in Aruba, Freeport, Bermuda, and Nassau because mail service to this international region is unreliable.

The investigation confirmed that at least thirty-three of the forty Caribbean members voted at the Aruba, Freeport, Bermuda, and Nassau sites, with the Nassau polls open for two days. Thus, there was no evidence that members working in pre-clearance in the Caribbean region were denied the opportunity to vote. No violation occurred.

Finally, you alleged that the union denied [REDACTED] and [REDACTED] the right to vote. The investigation disclosed that [REDACTED] moved in February 2013 and had not informed the union of his address change despite the election committee chair's July 18, 2013 email to members requesting address updates for the upcoming election. When [REDACTED] failed to receive a ballot in the mail, he went to the tally to try to vote but was not permitted to vote because he had not timely requested a duplicate ballot. [REDACTED] admitted that he received his ballot but did not send it until December 9, too late to be received in time for the December 10 submission deadline. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. As to allegations in your complaint to the Department not addressed in this Statement of Reasons, these issues were not raised in your internal protests and are not properly before the Department. Accordingly, the office has closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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