

U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143



February 3, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 28, 2022, complaint filed with the Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by Branch 73 of the National Association of Letter Carriers (NALC) on December 9, 2021.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, (1) that the union's decision to rerun the December 9 election for the trustee positions did not violate the LMRDA, (2) that in light of the union-ordered rerun of the trustee positions, held January 26, 2022, the Department need not investigate your allegations regarding the December 9 trustee elections¹ and, (3) that, with respect to the other races in the December 9 election, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that Branch 73 violated the LMRDA when a candidate who was nominated for a trustee position was left off the ballot. You further alleged that two different ballots for the election were mailed out to members. The investigation revealed that [REDACTED] was nominated for a trustee position at the October 14, 2021, branch meeting. However, incumbent recording secretary Velma Worthy-Lindley inadvertently failed to include [REDACTED] in the list of candidates sent to True Ballot, the company hired by the union to conduct the election. As a result, the ballots sent out by True Ballot did not include [REDACTED] name. After learning of this error, Branch 73 decided to hold a rerun election for the trustee positions. Replacement ballots mailed to members did not include the trustee race, and, on December 9, 2021, it was announced that votes cast for the trustee race would not be tallied and that a separate

¹ To challenge the trustee elections, you would have had to protest the January 26, 2022 rerun election by first exhausting internal union remedies and then filing a complaint with the Department. *See* 29 U.S.C. § 482.

election for the trustee positions would be held on a future date. This election took place on January 26, 2022.

Accordingly, the Department does not need to investigate these allegations because Branch 73 held a rerun election for the trustee positions prior to your filing a complaint with the Secretary of Labor. Moreover, the Department will not seek to reverse a union's remedial decision to hold a new election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable. Here, Branch 73 had a legitimate reason for holding a new election, namely the fact that a candidate was inadvertently left off the ballot. There was no showing of bad faith, and the decision was consistent with the LMRDA. There was no violation.

You also 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 (NALC Regulations) and the LMRDA. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election and prohibits disparate candidate treatment. 29 U.S.C. § 481(c). In addition, Section 401(e) requires unions to conduct their elections in accordance with their governing documents. 29 U.S.C. § 481(e). Section 7.1 of the NALC Regulations states that an election committee should be appointed to conduct and supervise all aspects of the election and Section 10.1 of the NALC Regulations states that the election committee is in charge of the preparation of ballots for the election. Specifically, you alleged that Branch 73's office secretary sent an email to True Ballot, listing the candidates as they should appear on the ballot, and that this list unfairly disadvantaged certain candidates and should have been prepared by the election committee. You also alleged that incumbent president Regal Phillips performed duties required to be performed by the election committee when he gave nominees five days to accept or decline nominations, and a candidate was included on the ballot despite never accepting or declining a nomination. Finally, you alleged that Phillips communicated with trustee candidates to inform them that a candidate's name was left off the ballot, and that the election committee should have been responsible for this communication.

As to your allegation regarding the list of candidates, the investigation found that Worthy-Lindley compiled a list of the offices and candidates as they should appear on the ballot for the December 9, 2021, election. Worthy-Lindley stated that, in creating this list, she utilized her meeting notes and listed the candidates in the order they were nominated. This list was then provided to the office secretary, who emailed it to True Ballot on November 5, 2021.

Branch 73, therefore, failed to follow the NALC Regulations requiring the election committee to prepare the ballots. This violation, however, could not have affected the outcome of the election. In listing the candidates in order of nomination, Worthy-Lindley selected a method that was reasonable and consistent with the LMRDA and all applicable regulations. The LMRDA does not specify how candidates should be positioned on the ballot, and the Department's regulations provide that a union may use any fair and reasonable method as long as it is permitted by the union's constitution and bylaws and does not conflict with any other provision of the LMRDA. 29 C.F.R. § 452.112. Here, Section 10.11 of the NALC Regulations provides that "[a]ny reasonable method for listing candidates on the ballots may be used provided that no candidate is unfairly promoted or disadvantaged." Moreover, the NALC Regulations explicitly state that listing candidates in order of nomination is an acceptable method. Therefore, regarding the non-trustee positions in the December 9 election, no violation occurred that may have affected the outcome of the election.

As to your allegation regarding Phillips giving nominees five days to accept or decline nominations, the investigation did not find evidence substantiating this allegation, nor did it find any member who would have sought a nomination if they had known they had five additional days to accept or decline. The investigation also did not find evidence substantiating your allegation that a candidate was included on the ballot despite never accepting a nomination. The investigation revealed that the candidate you identified was nominated for the position of financial secretary at the October 14, 2021, branch meeting, and she verbally accepted the nomination at the meeting. The candidate also emailed a nomination letter after the meeting. There was no violation.

As to your allegation regarding Phillips communicating with trustee candidates, the investigation revealed that Phillips called [REDACTED] as a courtesy when he learned that [REDACTED] name was left off the ballot. Phillips stated that he contacted [REDACTED] because he felt it was his duty to do so. A member of the election committee also communicated with [REDACTED] to inform him that his name was left off the ballot. Phillip's call did not affect the committee's ability to conduct and supervise all aspects of the election. There was no violation.

You also alleged that Branch 73 violated NALC local branch election procedures with respect to the composition of the election committee. Specifically, you alleged that although the committee was required to be comprised of three people, it was comprised of only two people for most of the election period. Moreover, you alleged that Roland Clark, a candidate for sergeant-at-arms, was appointed to the committee.

As noted above, Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization, 29 U.S.C. §

481(e), and Section 7.1 of the NALC Regulations provide 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.” The NALC Regulations further state that the branch may determine the number of election committee members and that no candidate for any office can be appointed to the committee.

The investigation found that sometime in November 2021, at least 21 days prior to the December 9, 2021, election, Phillips selected three people to serve on the election committee. One of the election committee members subsequently stepped down, and Phillips selected Clark to replace this member. Thus, the formation of the election committee conformed to the applicable regulations, as the committee was formed at least 21 days before the election. Although Branch 73 may have had a practice of appointing three members to the election committee, there is nothing in any of the governing documents requiring the committee to be comprised of a specific number of members. Furthermore, the appointment of Clark to the committee did not violate the LMRDA or the NALC Regulations. Clark’s candidacy for sergeant-at-arms was unopposed, and he was elected by acclamation at the October 14, 2021, branch meeting. There was no violation.

Finally, you alleged that Branch 73 failed to use a restricted Post Office box for the receipt and storage of voted ballots because the Post Office box used in the December 9, 2021, election had been used in previous elections and the key to this Post Office box was kept in the union office.

Section 401(c) of the LMRDA requires that unions maintain adequate safeguards to ensure a fair election, and this includes safeguards pertaining to storage and access to mail ballots. 29 U.S.C. § 481(c). The investigation found that voted ballots for the December 9, 2021, election were sent to a Post Office box and undeliverable ballots were sent to True Ballot. The investigation further found that the Post Office box used in the December 9, 2021, election had also been used in the 2019 election, and that the key was stored in the union office, in a location accessible to Phillips and the office secretary. The key was provided to the election committee on the morning of the tally.

Accordingly, there was a violation of Section 401(c) of the LMRDA. The storage of the key in the union office, in a location accessible to Phillips – a union officer and candidate for office – violated the adequate safeguards provision. 29 U.S.C. § 481(c). Nonetheless, there is no evidence that this violation may have had an effect on the outcome of the election. Phillips stated that the key was secured and not used, and the investigation revealed no evidence suggesting that Phillips or any other union officer used the key to open the Post Office box in advance of the election. Furthermore, the investigation revealed no evidence suggesting that Phillips played any role in the

collection of completed ballots, and the Department's review of the ballots did not reveal any indication of tampering.

For the reasons set forth above, the Department has concluded that the union properly ordered a rerun of the December 9 trustee races and, regarding all other races in the December 9 election, no violation of the LMRDA occurred that could have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

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