



April 20, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on October 9, 2009. You alleged that a violation 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 Utility Workers Union of America (“UWUA”) Local 246 (“Union”) mail ballot election held on June 1, 2009.

The Department of Labor (“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 of the LMRDA that affected the outcome of the election.

You alleged that members of a separate local union, the San Onofre Firefighters Association (“SOFA”), were improperly denied the right to participate in the election of officers for Local 246. You alleged that SOFA members had the right to vote because they pay union dues to Local 246. The Department investigated your allegation and found that SOFA members were properly excluded from the Union’s election. The Act states that “every member in good standing...shall have the right to vote for or otherwise support the candidate or candidates of his choice.” *See* 29 U.S.C. 401(e). The applicable regulations further state that, “there is an obligation on the labor organization to conduct its periodic elections of officers in such a way as to afford all its members a reasonable opportunity to cast ballots.” *See* 29 C.F.R. § 452.94. The Union was not in violation of the Act because SOFA members are not members of Local 246. SOFA is the exclusive representative of approximately twenty firefighters working onsite with Local 246 members at the employer’s site, SCE Mechanical. SOFA members pay dues to Local 246 which provides administrative, clerical and contract services in exchange for that fee. As an independent labor organization, SOFA has its own constitution, by-laws and separately elected officials. There is no history of SOFA members participating in an election of Local 246 officers, or visa versa. While a collaborative relationship between Local 246 and SOFA exists, SOFA is an independent and separately chartered organization that is merely affiliated with UWUA. Thus, there was no violation of the Act.

You alleged that Local 246 failed to mail ballots to all eligible voting members; thus, members were denied the opportunity to vote. You stated in your complaint that thirteen members filed election protests claiming to have never received a ballot for the election. The Union had recently updated the mailing list using undelivered packages returned after the nomination notice

mailing. The proper addresses of all thirteen members who did not receive ballots were in fact included on the list, which the Union used to mail its election ballots. On April 27, 2009, the Election Committee mailed 823 ballot packages to eligible voting members. There is no indication that the Local did not properly send ballots to all eligible voting members; thus there was no violation of the Union's obligation to afford its members a reasonable opportunity to cast ballots. *See* 29 C.F.R. § 452.94.

You were a candidate in the election and ran as the incumbent Business Manager. In your complaint to the Department, you alleged that the Treasurer of Local 246, Robert Howard, used union records to discredit your campaign. Specifically, you alleged that he used union data to prepare and distribute campaign materials regarding your fiduciary responsibilities with union expenditures. The Act provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy...shall be contributed or applied to promote the candidacy of any person in an election." *See* 29 U.S.C. § 481(g). The Act strictly forbids the use of union funds or resources to support the candidacy of any individual in a union officer election. In connection with this restriction, a union employee using her position to obtain access to information unavailable to other candidates for the purpose of campaigning has been found to violate this provision of the Act. However, the Department's investigation revealed no evidence to support your allegation. Mr. Howard made a statement to the Department denying your allegations that he used union funds to discredit your campaign. He stated that the Union's policy of transparency obligated him to respond honestly to member's questions concerning Union finances including a member's individual inquiry about a line item in his Treasurer's Report. There is nothing in the Act that prohibits a union officer from making such disclosures to interested members. The investigation failed to disclose any evidence that the Treasurer improperly used Union funds to campaign against you; thus, there was no violation of the Act.

You also made an allegation that after the ballot tally, the Election Chair, [REDACTED], improperly stored the election records in the trunk of her car. The Union's Constitution requires the election committee to turn over the election records to the recording secretary for preservation. The investigation revealed that the Election Chair did remove the election records from the union office to the trunk of her car. She did so two weeks after the election because she received a warning that the ballots were being tampered with, and she sought to preserve the records. The investigation revealed that the records were not preserved according to the Union's constitution which requires that the election committee turn over the records to the Recording Secretary for storage. The Election Chair's action constitutes a technical violation of the Act which requires that unions conduct their elections in accordance with the union constitution and bylaws, 29 U.S.C. §481(e). However, this violation had no affect on outcome of the election. The records were removed from the Union office after the election, and the Department performed a reconciliation of the ballots and found no discrepancies between the ballots and the original tally. The LMRDA requires that the Department prove not only the existence of a violation but also that the violation may have affected the outcome of the election, before taking legal action to overturn that election. *See* 29 U.S.C. § 482. The Department finds no violation affecting the outcome of the election which would form the basis for litigation.

You also alleged that the employer, specifically management at SCE Mechanical, engaged in a campaign to propagate false information via email to employees concerning the terms of the Collective Bargaining Agreement (“CBA”), which you were involved in negotiating, in order to create member discontent. You specifically alleged that the emails sent to employees contained misleading details about the terms of the contract. Pursuant to § 401(g), no union or employer funds, facilities, equipment, or other property may be used in a campaign for union office. *See* 29 U.S.C. 401(g). The provisions of 401(g) prohibit use of a union financed publication to promote or discourage the election of any candidate. As an additional safeguard, Section 401(g) also provides that no money of an *employer* is to be contributed or applied to promote the candidacy of any person in an election. *See* 29 C.F.R. § 452.78(a). There was no evidence indicating that the SCE management said or did anything that amounted to campaigning against your candidacy or promoting the candidacy of any individual running for office. You were unable to produce the emails you cited in your complaint and failed to identify any individuals that had knowledge of who sent the emails or whether those emails were sent to influence the election. The discussion surrounding the CBA appears to have been common disputes between management and labor as to the terms of a CBA. Finally, the CBA was not actually finalized until after the election. Thus, there was no violation of the Act.

The investigation failed to disclose any violation of the LMRDA which may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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