



July 1, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 15, 2010 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the American Postal Workers Union, AFL-CIO, Local 359 (Local 359 or union's) regular election of officers conducted by mail ballot on November 16, 2009.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that no violation of the LMRDA that affected the outcome of the election occurred.

You asserted that the Local 359 Election Committee (LEC) did not count 32 ballots because the ballots lacked signatures on the return envelopes. You also asserted that the LEC did not mail duplicate ballots to those members who requested one because they forgot to sign their name on the return envelope.

The investigation revealed that neither the union's constitution nor the election rules instructed the member to sign the return envelope. However, the instructions on the ballot told members to sign their name below their return address label on the pre-addressed return envelope that was part of the voting materials sent to each voter. When the union began receiving the returned ballot envelopes and several of the envelopes did not contain a signature, the LEC posted a notice at the worksites to remind members to sign their names on the envelope. Subsequently, two members made requests for duplicate ballots after they learned that because they did not sign the return ballot envelope their votes would not be counted. The LEC denied their requests for a duplicate ballot.

A total of 32 ballots were received in unsigned return envelopes. These ballots were voided and not included in the final tally. The winner of the President's race, Shelton Thomas received 5 more votes than you did and 12 more votes than candidate [REDACTED].

Section 401(e) of the LMRDA requires that every member in good standing shall have the right to vote for the candidate of their choice. 29 U.S.C. 481(e). Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election must be provided. 29 U.S.C. 481(c). This provision is construed as a general mandate of fairness for elections.

Here, there was no bylaw or election rule that required a signature on the return envelope and the return address envelope did not contain this instruction. As such, disqualifying ballots for lack of a signature infringed upon the members right to vote because the voters were not adequately informed that an unsigned return ballot envelope would result in their ballot not being counted. Further, the two requests for duplicate ballots constituted a request to cast the member's vote. The failure to count the ballots in unsigned envelopes and to provide duplicate ballots violated the LMRDA.

Pursuant to this determination, the Department concluded that the 32 ballots should be counted and included in the election results. You were in attendance when the ballots were opened and counted on April 29, 2010 at the Plumbers and Steamfitters union hall in Huntsville, Alabama. You received an additional 8 votes, [REDACTED] received 11 additional votes, and Shelton Thomas received an additional 13 votes. Therefore, inclusion of the additional 32 ballots did not result in a change in the outcome of the election.

Section 402 of the LMRDA provides that the Department shall seek to overturn a union election where a violation has not been remedied and may have affected the outcome of the election. 29 U.S.C. § 482. The opening and counting of the ballots on April 29 remedied the violation and established that the violation did not affect the outcome of the election.

During the investigation it was discovered that LEC Chair [REDACTED] did not retain two e-mails, an e-mail from member [REDACTED] requesting a duplicate ballot and [REDACTED]'s response denying that request. Section 401(e) of the LRMDA requires that ballots and all other records pertaining to the election be retained for one year. 29 U.S.C. § 481(e).

This failure to retain the e-mails, which you could not have been aware of, was a violation of the LMRDA that did not affect the outcome of the election.

Finally, you raised a number of issues in your complaint to the Department that were not raised in your petition to the LEC. These allegations were not properly before the Secretary and were not investigated.

For the reasons set forth above, it is concluded that with respect to each of your specific allegations that no violation of the LMRDA occurred that may have affected the election. Accordingly, I have closed the file in this matter.

Sincerely,

Stephen J. Willertz
Director, Office of Enforcement and
International Union Audits

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