

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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June 3, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint dated January 19, 2010 filed with the United States Department of Labor 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 election of officers at the System 102 level ("System Local 102" or "local"), Utility Workers Union of America ("UWUA"), conducted on September 22, 2009.

The Department of Labor ("Department") has conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation that may have affected the outcome of the election.

Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires that union elections be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV. You alleged that the local failed to abide by its bylaws in numerous ways.

First, you claimed that candidate names were not listed in alphabetical order on the ballots, but rather side-by-side. As a result, you alleged that your opponent was given an unfair advantage because when reading from left to right, voters would see your opponent's name first. Article IX, System Election Laws, 1.B. of the local's bylaws, provides that "[a]ccepting nominees for office shall be listed in alphabetical order on the ballot." Because the nominees for office were not listed in alphabetical order on the ballot, the local violated the bylaws. However, the LMRDA requires that a new election need only be conducted where the violations "may have affected the outcome of an election." 29 U.S.C. § 402(c)(2). Here, the investigation revealed no evidence of any purposeful or intentional discrimination with respect to ballot position or any other

effect on the election. Therefore, there was no violation that may have affected the outcome of the election.

Second, you alleged that the bylaws were violated because the union failed to use a post office box in a central location such as Greensburg, PA or Youngwood, PA and failed to secure a permit for the return ballot envelopes to have postage paid by the addressee. Article IX, System Election Laws, 3 provides that “[a] post office box shall be rented at a central post office such as Greensburg, PA or Youngwood, PA ...” The local rented a post office box at the Charleroi, PA post office because it was convenient for the election committee. Because the bylaw provision does not dictate that a specific post office box location be used but rather a “central post office,” the local did not violate the bylaw provision. The same provision requires that the local secure a permit “for return envelopes known as POSTAGE WILL BE PAID BY THE ADDRESSEE addressed to the box.” The local violated this portion of the bylaw provision because it did not use business reply mail. However, the election committee used envelopes with prepaid postage on them. Additionally, while business reply mail offers an additional safeguard of the security of the ballots, because each envelope received is counted by the post office for billing purposes, the local made arrangements with the post office to ensure that no keys were issued for the post office box and that the mail would be picked up on one occasion only upon a showing of proper identification. All three members of the election committee went to the post office to rent the box, signed the rental agreement, and had to be present to open the box. No trips were made to the post office after the box was rented, the keys to the box were maintained by the post office, and the box could only be opened on the day of the tally. Additionally, you had an observer at the tally who did not identify that any tampering of the ballots had occurred. Therefore, although the failure to use business reply mail violated the bylaws, it did not affect the outcome of the election.

Third, you alleged that the local violated Article IX, System Election Laws, 4.A of the bylaws. That article provides that “[a]n election committee of seven (one from each System Vice-Presidents Area) shall conduct the election and mail out the ballots coordinating with the branch locals.” Your allegation that the election committee was improper is without merit, given that seven members were appointed to the election committee, one from each system vice-president area. There was no violation of the LMRDA.

Fourth, you alleged that the local violated Article IX, System Election Laws, 5 of the bylaws requiring the election committee to “prepare or distribute a report on the results of the elections and see that the same are posted in conspicuous places on bulletin boards throughout the system.” The OLMS investigation revealed no evidence to support this allegation. You alleged that members told you they had not seen the election results posted, but you could not recall their names or locations. You also

admit that the election committee sent the election results to all local branches to post and that, as a local branch president, you posted the results. Even if some presidents did not post the election results as they had been told to do, failure to do so would not have affected the outcome of the election.

You also alleged that the local failed to provide a proper notice of election because it did not specify the day, time, and place of the election as well as the offices to be filled. Section 401(e) requires that “[n]ot less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address.” Pursuant to Section 452.99, a notice of election must include a specification of the date, time and place of the election and of the offices to be filled. Additionally, Section 452.102 provides that “[i]f the election is conducted by mail and no separate notice is mailed to members, 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.” A combined nomination and election notice was provided in the January, February, and March national union magazine on page 26, which is mailed to members at their home addresses. The notice only said that elections would be in September. However, consistent with Section 452.102, the ballots contained all the necessary information and were mailed to members fifteen days prior to the date they needed to be mailed back in order to be counted. Therefore, there was no violation of the LMRDA.

In addition, you alleged that the following standards were violated: election officials should inform all candidates of the election rules and procedures and advise candidates of the date, time, and place for the preparation and mailing of the ballots and ballot pick-up and the right to have an observer present. It appears that you are alleging that the local violated recommendations contained in OLMS compliance assistance materials. However, Title IV of the LMRDA does not specify such requirements. Additionally, you had an observer present at the tally who could have accompanied the election committee to the post office to retrieve the ballots had he chosen to do so. Because you did not make any other requests to have an observer present at other stages of the election process, the local did not deny you the right to observe. Accordingly, there was no violation of the LMRDA.

Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), provides that adequate safeguards to ensure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. You alleged that the local failed to provide adequate safeguards in various ways.

First, you alleged that the local engaged in disparate candidate treatment because your opponent was informed of the campaigning rules while you were not. However, the OLMS investigation revealed no evidence to support your allegation. The election chair said he did not have any candidate meetings and did not meet with either candidate

prior to the election. Additionally, your opponent denied that the election committee met with him to review any rules. He received the same rules about campaign mailings that you received. Therefore, there was no violation.

Second, you alleged that the local failed to provide adequate safeguards and engaged in disparate candidate treatment due to a lack of rules about campaigning such that members received your opponent's campaign literature before yours. You telephoned the election chair one week before the ballot mailing about gaining access to members' names and addresses. You mailed your literature on August 17, the same day as the ballot mailing, but chose to mail your literature third class. You waited to mail your literature until a consultant could review it for slander. Therefore, neither the local nor the mailing service caused any delay in voters' receipt of your literature before they voted. Additionally, the same list was used to mail your literature and the ballots. There was no violation.

Third, you claimed that the local failed to provide adequate safeguards because it had no procedures in place for requesting a duplicate ballot or for re-mailing undeliverable ballots. However, you were not aware of any member who spoiled his or her ballot and needed a replacement and were not able to provide the names of those who did not receive a ballot. Although branch presidents had been asked three times a year to update member addresses and they are given lists three times a year to update, eleven ballot packages were not mailed to members because the local did not have valid addresses for them. Additionally, there were eight undeliverable ballots during the election and no efforts were made to find current addresses for these members. They were returned to the union secretary at her home, which is the local's mailing address, and given to the election committee at the tally. The members whose ballots were not mailed or were returned as undeliverable may have been denied the right to vote, which is a violation of Section 401(e). However, the nineteen votes involved did not affect the outcome of the election, because the margin of victory of all candidates was more than nineteen. There was no violation that may have affected the outcome of the election.

Fourth, you alleged that the local failed to provide adequate safeguards because there was no accounting of the ballots. The office secretary copied the ballots the morning of the ballot mailing at the local's office. She stayed by the copier while the copies were being made and the ballots were not out of her sight. There were no leftover ballots after the election committee mailed all of the ballots. Additionally, the return ballot envelopes were purchased from the post office, were postage paid, and all bore the same "Seabiscuit" stamp. There were no extra "Seabiscuit" envelopes after the ballots were mailed. You also complained that the ballot did not contain a watermark. Although OLMS recommends the use of a watermark, Title IV does not require a watermark. Therefore, there was no LMRDA violation.

Fifth, you alleged that the local failed to provide adequate safeguards because the election committee failed to follow guidelines for counting ballots and failed to account for all ballots printed and mailed to the membership. The ballots directed voters to add their name and return address in the upper left hand corner and advised that ballots received without a return name and an address would not be counted. There were no lines or directions on the return ballot envelope for a name and return address. Of the 588 ballots counted, 113 were returned without members' identifying information. However, before deciding to count the 113 ballots, the election committee considered that the ballots were all returned in the prepaid envelopes, with a Seabiscuit stamp, that the election committee provided to voters as the return ballot envelope; that you had raised the issue of members fearing retaliation if they identified their return address on the outer envelope; that the bylaws do not require this information; and, that, during a prior contract vote, ballots had been counted from envelopes without return addresses. Additionally, the local's secretary treasurer said that the list used to mail the ballots contained the names of only members who were eligible to vote. Because there were no duplicate ballots provided, there was no risk that eligible members would return more than one ballot. Under these circumstances the lack of a return addresses does not constitute a lack of adequate safeguards, the absence of return addresses resulted in a lack of complete records of who voted. Therefore, the local violated Section 401(e)'s provision requiring all records pertaining to the election to be preserved for one year. This violation, however, did not affect the outcome of the election. Accordingly, there was no violation that may have affected the outcome of the election.

Sixth, you alleged that the local failed to set the date and time by which voted ballots needed to be received in order to be counted, failed to announce this information in the voting instructions, and improperly used postmarks for determining timely receipt – all allegations pertaining to the receipt of voted ballots. However, your allegations are without merit because the ballot instructions provided that ballots had to be received by Monday, September 21, 2009. Your claim that postmarks were not to be used to determine timely receipt is also without merit given that postmarks were not used for that purpose.

You also contended that the local failed to inform you of your right to inspect the membership list thirty days prior to the election. Section 401(c) requires that every bona fide candidate have the right, once within 30 days prior to an election, to inspect a membership list, but it does not require that the union provide notice of this right. You never asked to inspect the list. Therefore, there was no violation of the LMRDA.

You further alleged that members received your opponent's literature before yours because it was distributed at plants on company time in violation of Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), which provides that no moneys of an employer shall be

contributed or applied to promote the candidacy of any person in an election. The Department's investigation disclosed that your opponent mailed his literature to five supporters and personally gave it to two others and asked them to distribute it to fellow workers. He asked his supporters to distribute the literature on their own time, either after or before working hours, and at employer worksites either at the gates or in the parking lots but not inside work areas. The investigation revealed that one supporter went to work early and distributed literature on members' desks at the worksite. However, doing so does not constitute a violation of Section 401(g) of the LMRDA because such campaign activity did not involve the use of employer time and distribution on employer property did not involve the use of anything of value of the employer nor did it interfere with work performance. There was no violation that may have affected the outcome of the election.

Finally, you alleged that your opponent may have used union or employer funds to make and print his flyers, also in violation of Section 401(g). The Department's investigation disclosed that the flyers were printed at FedEx Kinko. While your opponent paid for the copying with his personal funds, his daughter-in-law, who is a FedEx Kinko employee, received an employee discount of 30% on the copying. Under certain circumstances, a discount offered by an employer to a candidate may be considered an improper campaign expenditure. Discounts not made available on the same terms to other customers are generally considered improper. 29 C.F.R. § 452.78. Although this 30% discount was not available to other customers, the Department's investigation disclosed that it would not have affected the outcome of the election. With the 30% discount, your opponent in effect obtained 330 of the 1100 copies. The investigation disclosed that more than 350 copies of the flyer were not distributed to union members. As any advantage that your opponent might have received was not actually used to campaign, there was no effect on the outcome of the election.

For the reasons set forth above, the Department concludes that there was no violation of the LMRDA affecting the outcome of the election, and I will close the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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