



June 9, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on August 10, 2010 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by 1199SEIU Healthcare Workers East, Mt. Sinai/NYU Area, on May 1, 2010.

The Department of Labor 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.

You alleged that that you observed several union officials handing out campaign flyers in the cafeteria and public atrium of the Mt. Sinai Hospital on union time. Section 401(g) of the LMRDA provides that no union funds and no employer funds may be contributed or applied to promote the candidacy of any person in an election subject to Title IV. Unless restricted by constitutional provisions to the contrary, union officers and employees retain their rights as members to participate in the affairs of the union, including the right to campaign on behalf of either faction in an election. However, such campaigning must not involve the expenditure of funds in violation of section 401(g). Accordingly, officers and employees may not campaign on time that is paid for by the union, or use union or employer funds, facilities, equipment, stationery, etc., to assist them in such campaigning. Campaigning incidental to regular union business is not a violation. 29 C.F.R. § 452.76.

You identified two members who observed campaigning by these union officers and an employer official. The investigation revealed that one of these members observed two union officials and an employer official standing in the atrium, but she did not observe them distributing campaign flyers in the atrium or otherwise campaigning. The investigation revealed that the other member did not personally witness any campaigning; rather, she only heard about this incident from the first member. The Department reviewed the annual leave records of the union officials involved and the

review confirmed that each took a vacation day on April 15, 2010, to campaign. The investigation established that on this particular day, they all appeared either in the public areas of Mt. Sinai Hospital cafeteria, the atrium or outside of the hospital. The investigation established that two other union officials campaigned in the same areas at Mt. Sinai Hospital while they were on their lunch hours. There was no violation

You further alleged that an employer representative appeared to be campaigning with this group on employer time. The investigation established that the employer representative did not campaign and all of the officers confirmed that he merely greeted a union official in the atrium and left the area. The investigation did not reveal any evidence that the employer representative campaigned on employer time. There was no violation.

You alleged that the initial notice of election that appeared in the union's magazine was mailed late and you never received it. A labor organization may comply with the election notice requirement of section 401(e) of the LMRDA by publishing the notice in the organization's newspaper which is mailed to the last known home address of each member not less than 15 days prior to the election. 29 C.F.R. § 452.100. When this procedure is used, the notice should be conspicuously placed on the front page of the newspaper or the front page should have a conspicuous reference to the inside page where the notice appears. The investigation established that the cover of the December 2009 issue of "Our Life and Times" magazine contained a conspicuous reference to the election insert. The investigation also revealed that the election notice was included as an insert in this issue and mailed to the membership on December 21, 2009, more than 15 days prior to the May 3, 2010 election. You identified two members who you claim did not receive the notice. However, when interviewed, both members acknowledged receiving a timely election notice in the mail. There was no violation.

You alleged that union dues were used to fund the opposition, in violation of Section 401(g) of the LMRDA. The investigation established that Unity in Progress (UP) slate expenditures for campaign literature were paid for with funds from the UP slate checking account. The investigation further established that campaign materials from the UP slate were produced by a vendor that does not work for the union and were paid for entirely with funds raised by the UP slate from the candidates and through a raffle. There was no violation.

You alleged that the union failed to provide adequate safeguards to insure a fair election during the ballot counting process due to ballot tampering, an inaccurate ballot count, and disorderly conduct by an election employee. Sections 401(c) of the LMRDA provides that adequate safeguards to insure 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. The investigation established that during the balloting process, the ballots for

Local 1199 were divided into 52 areas. The tellers opened ballots for one area at a table and then those ballots were put through the scanner. During the scanning process, the scanner caught discrepancies, such as inconsistent slate voting. If a ballot was marked in a matter inconsistent with directions, those ballots were shown to the Election Board for partial or full voiding. The investigation did not reveal any evidence of ballot tampering. There was no violation.

Inasmuch as you were a candidate for the office of Mt. Sinai/NYU Vice President, the Department conducted a hand recount of the Mr. Sinai/NYU ballots. The Department's recount differed only slightly for two of the three races recounted. There was no effect on the outcome of the election. The Department's review also revealed that the union properly voided ballots where voters voted for more than one slate or for individual candidates running against a slate that the voter selected. There was no violation affecting the outcome of the election.

With regard to your disorderly conduct allegation, the investigation revealed that a temporary employee who had not previously worked for the American Arbitration Association (AAA) was talking on her cell phone and not paying attention to the instructions of AAA's supervisor. As a result, an argument ensued, the worker was asked to leave and when she refused, AAA's Vice President, was called over and told her to leave. The investigation did not reveal any evidence that during this incident ballots were displaced, moved or dropped as a result of the argument. Thus, this altercation did not affect the outcome of the ballot count. There was no violation.

You alleged that a large number of Mt. Sinai/NYU Area members failed to receive their ballots. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided to candidates and their supporters. In mailing out the election notice and a ballot, a union must show that it has made reasonable efforts to maintain an accurate and current mailing list. 29 C.F.R. § 452.110. In keeping a mailing address list current, a union must initially take reasonable steps to obtain correct home addresses for all of its members and then must endeavor to keep the addresses that it has up-to-date.

The Department's investigation established that AAA's mail vendor, Precision Marketing Concepts, assembled and mailed ballot packets to over 250,000 members in good standing on April 9, 2010. The investigation revealed that the entire Local 1199 membership list of over 250,000 was coded to allow for separate lists for mailing out correct area ballots. The investigation revealed that of this number, 7,439 ballots were mailed to Health System 8/Mt. Sinai NYU area members. Out of 7,439 ballots mailed to the Mt. Sinai NYU area, 475 ballot packages were returned as undeliverable.

The investigation revealed that Local 1199's Director of Dues and Membership-gathers monthly or bi-weekly dues deduction information from the employers. This information is submitted electronically by employers of 99.8% of the members, and includes the members' addresses. If the address information is inconsistent with the union's existing address records, the member's address is updated. The Dues and Membership Department also receives changes of address from members through change of address forms, or by telephone, email, or in person. The investigation revealed that Local 1199's Benefit and Pension Fund Outreach Coordinator, visits Health System 8 hospitals up to four times a month to review benefit matters with the members and obtains a change of address card from them, if necessary. These changes of address cards are delivered to the National Benefit Fund Department to update the records. The investigation also revealed that during the period prior to the election, a variety of other union officials and the union's attorney made efforts to solicit address changes for members who had moved or were not receiving mail from the union.

The investigation established that Local 1199's Office of Management Information Systems (OMIS) enters new or updated addresses into the membership list on the basis of three union systems: Union Ware (the Dues and Membership Department System), One Voice (the Contact Management System used to send out the election notice in *Our Life and Times*), and the National Benefit Fund System. The investigation revealed that entries into these three systems are dated and compared and the most recent entry is used to update the membership list. The entries into these systems are based on the change of address information obtained from various union sources. The database of names and addresses was compared against the Postal Service's Correctable Address Support System (CASS), a record of known bad addresses. Before submitting the database to the AAA for the entire membership, the list was run against the CASS system. As a result of the bad addresses revealed by this comparison, the union set up a phone bank to call members to get correct addresses prior to the ballot mailing.

The Department's investigation established that 1199SEIU had systems in place to maintain and update the membership list prior to the ballot mailing. In addition to the systems in place to update the members' addresses, the union established a process where members could request duplicate ballots if they did not receive their ballot packages and requests for duplicate ballots were honored. As such, the investigation did not establish that the union failed to take reasonable steps to keep its membership address list up-to-date.

Your protest to the union included other matters which would not violate the LMRDA even if true and, consequently, were not investigated. For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA affecting the outcome of the election. I have closed the file regarding this matter.

Sincerely,

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Chief, Division of Enforcement

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