



March 22, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your December 16, 2010 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers conducted by the National Association of Government Employees (NAGE) on September 8-10, 2010 at its National Convention.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation occurred which may have affected the outcome of the election.

You alleged that the union denied members a reasonable opportunity to nominate and compete as candidates for office when the union amended its constitution to increase the number of National Vice Presidents and National Executive Board members and then filled these newly-added positions by appointment immediately following the 2010 Convention, in violation of section 401(e) of the LMRDA. Section 401(e) requires that "reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office," subject to reasonable qualifications uniformly imposed.

The Department's investigation revealed that approximately thirty days prior to the NAGE Convention, the union distributed proposed amendments to the constitution that would be put to a delegate vote at the Convention. One amendment at issue proposed increasing the number of National Vice Presidents and the number of National Executive Board members from 10 and 30, respectively, to "a minimum of fourteen (14) National Vice Presidents and a minimum of thirty (30) National Executive Board members." See NAGE Constitution, Art. VII, Sec. 1 (2010) and NAGE Constitution, Art. VII, Sec. 1 (2006). Although this amendment to increase the number of officer positions was passed by a delegate vote at the Convention, the NAGE

Constitution requires that amendments do not become effective until the close of the Convention. See NAGE Constitution, Art. XV, Sec. 12 (2006).

The Department's investigation determined that NAGE conducted its 2010 Convention in accordance with the provisions of the 2006 union constitution, which was the controlling authority at the time of the 2010 election. In this regard, NAGE held an election for 10 National Vice President positions and 30 National Executive Board members at the Convention. Since the amendment increasing the number of offices was not effective until the close of the Convention, the Constitution did not require that there be elections for the additional positions at the Convention. The union filled new positions by appointment at the Executive Board meeting immediately following the Convention, appointing four members who had been elected to the Executive Board to new National Vice President positions, creating three new Executive Board Positions, and appointing five members to Executive Board positions.

The Act regulates the frequency and manner of holding regular periodic elections of officers by a labor organization but does not purport to establish statutory conditions for the creation of new offices or attempt to limit a labor organization's ability to reorganize itself. As such, the Act does not prohibit the union from considering these newly-created offices to be vacancies, which may be filled by appointment to serve until the next regularly scheduled election, at which point any newly-created officer positions must be open to all members for nomination and election. See 29 C.F.R. § 452.25.

As the creation and filling of new officer positions here arose from a constitutional amendment, which is not inconsistent with any requirement of the Act, there is no basis to set aside the appointment of these officers and require an election under the supervision of the Department. Nevertheless, the constitutional provision adopted by the union, which provides for "a minimum of" a certain number of officers in particular positions and which also permits the creation of new officer positions between elections, may be open to abuse. In particular, if the union were to expand its officer corps with appointed officers between conventions and only elect the minimum number of officers provided for in the constitution at its conventions, members could, in effect, be deprived of the right to vote for existing officer positions. However, the union's Constitution provides that newly-created offices "shall become permanent additions." See NAGE Constitution, Art. VII, Sec. 3 (2010). In this regard, the NAGE General Counsel has assured the Department that all officer positions created between Conventions will remain permanent positions open to all eligible NAGE members for nomination and election at the next regular Convention, providing members with the opportunity to fill these positions by election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Ms. Mary Kay Henry, President
Service Employees International Union
1800 Massachusetts Avenue, NW
Washington, DC 20036

Mr. David Holway, President
National Association of Government Employees
159 Burgin Parkway
Quincy, MA 02169

Beverly Dankowitz
Acting Associate Solicitor
Civil Rights and Labor-Management Division