



January 6, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor on August 1, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the April 1, 2011, election of union officers held by National Postal Mail Handlers Union Local 311.

The Department of Labor conducted an investigation of each of your allegations. As a result of the investigation, the Department concluded that no violation that may have affected the outcome of the election occurred.

You alleged that incumbent Local 311 President [REDACTED] was not a member in good standing for the two years prior to his nomination, and that he was ineligible to run for office due to a prior narcotics conviction. Section 401(e) of the LMRDA establishes that all members in good standing may run for office, subject to limitations set forth in section 504(a), and that elections must be conducted in accordance with a union's constitution and bylaws. In relevant part, section 504(a) prohibits any person convicted of a variety of crimes, including a violation of narcotics laws, from serving as a union officer for a period of 13 years following the conviction, unless the person convicted obtains a reduction in the prohibition from the sentencing court. Article V, Section 1, of the Uniform Local Union Constitution (ULUC) of the National Postal Mail Handlers Union requires candidates be in good standing for the two year period preceding nomination. Although union members barred under section 504(a) are prohibited from holding office, this provision does not affect whether they remain members in good standing of the union.

On December 19, 2002, [REDACTED] pled guilty to felony possession of a controlled substance in violation of Texas law. Prior to the Local 311 election, the Office of Labor Management Standards (OLMS) received a complaint alleging that this conviction barred [REDACTED] from seeking re-election. OLMS initiated an investigation concerning

whether [REDACTED] conviction constituted a disqualifying crime under Section 504(a). OLMS also advised the local to keep [REDACTED] name on the election ballot until the investigation determined whether he was eligible to hold office. When the investigation concluded that [REDACTED] was ineligible under Section 504, the local correctly removed him before installing the Local 311 officers on April 25, 2011.¹ There was no violation.

You alleged that the local did not send out a correction notice when the election ballot mailing date changed from March 4 to March 7, 2011, in violation of Article VI, Section 2F, of the ULUC, and that this date change disrupted your strategy of having members receive your campaign literature three days before their ballots. Section 401(e) of the LMRDA requires the local to conduct the election in accordance with its constitution. See 29 C.F.R. § 452.109. Article VI, Section 2F, of the ULUC requires the Judges of Election to give reasonable notice to each candidate and his/her observer, if known, of the time and place of each phase of the balloting process.

The distributed *Rights of Candidates* Notice informed candidates that all ballots “will be mailed on or about March 4, 2011.” The March 7 mailing date fell within this timeframe. Although the actual mailing date caused members to receive your campaign literature roughly six days before receiving their ballots, your mailing request only specified that you wanted your materials mailed on March 1. Despite knowing that the ballots would be mailed “on or about” March 4, you did not request to have your literature mailing date dependent on the ballot mailing date. ULUC Article VI, Section 4A, requires the union to mail ballots to members at least 16 days before they are due. The March 7 mailing date satisfied this requirement because ballots were due by 5:00 p.m. on March 31. There was no violation.

The investigation did reveal that candidates were not given notice of when the Judges of Election intended to pick up ballots that were returned as undeliverable. The local's failure to provide adequate notice violated ULUC Article VI, Section 2F, which requires the Judges of Election to notify each candidate and his or her observer of the time and place of each phase of the balloting process. However, the investigation revealed no evidence of ballot tampering or manipulation surrounding the pickup of undeliverable ballots, or any other facts suggesting that the lack of notice compromised the integrity of the election. The investigation also determined that the election committee did not deny any candidate's request to have an observer present during the collection of undeliverable ballots. Accordingly, although a violation of the local union constitution occurred, it could not have affected the outcome of the election, a finding that is required for the Department to seek to overturn an election. 29 U.S.C. 482(c)(2).

¹ On May 6, 2011, a judge in the 204th Judicial District Court for Dallas County, Texas, granted [REDACTED] petition to reduce the length of his disability to hold union office.

You alleged that the integrity of the election was also compromised when the Chairperson of the Judges of Election mailed election ballots and collected returned undeliverable ballots without any observer or other election judge present. Section 401(c) of the LMRDA provides, in relevant part, that adequate safeguards to ensure a fair election shall be provided. The Department's interpretive regulation, at 29 C.F.R. § 452.110, provides that section 401(c) of the LMRDA contains a general mandate that adequate safeguards to ensure a fair election shall be provided and that such safeguards are not required to be included in the union's constitution and bylaws. Further, Article VI, Section 2F, of the ULUC states that each candidate is entitled to one or, if necessary, more observers, who may be present at the preparation and mailing of the ballots, their receipt from the post office and the opening and counting of ballots.

The investigation revealed that on March 7, 2011, the Chief Election Judge drove alone to the post office and mailed all of the election ballots. This was consistent with prior election practices. The ballots that were returned as undeliverable were stored in a locked post office box apart from the voted ballots. The Chief Election Judge and another election judge each had a key to this box and took turns collecting these ballots. The LMRDA does not require that more than one individual perform these tasks and the investigation did not reveal any evidence that the fairness of the election was compromised. There was no violation.

You alleged that you were denied the opportunity to send campaign literature to 86 members when envelopes were returned to you because they did not have affixed mailing address labels. Section 401(c) of the LMRDA requires the local to comply with candidates' reasonable requests to mail campaign literature.

At your request, campaign literature was mailed to members on March 1, 2011. The investigation disclosed that the Election Committee failed to put mailing labels on 57 of these envelopes, and the post office returned those envelopes, which had your return address on each envelope, to you around March 6. You then sent these envelopes to the local, which attempted to remedy its oversight by re-mailing the literature to Fort Worth Branch members on or around March 9. As a result of the delayed mailing, 57 members potentially received your campaign literature after receiving their ballots. However, the margin of victory for Local 311 President was 75 votes, and you lost the North Houston Branch President election by 65 votes. Accordingly, to the extent that the late campaign literature mailings constituted a violation, it could not have affected the outcome of the election.

You also claim that 29 envelopes were returned to you as undeliverable on March 14, 2011. This is two weeks after your literature was initially mailed and roughly one week after the 57 envelopes discussed above were returned to you as undeliverable. The investigation revealed no evidence that would substantiate your allegation. To the

contrary, you only submitted three of the alleged undeliverable envelopes to OLMS, and none contained a postmark or other indicia confirming that they went through the postal system. There is also no evidence that you contacted the Election Committee to try and have these envelopes re-mailed. Given the absence of credible evidence supporting this allegation, there was no violation.

You alleged that a high number of members received either an incomplete ballot mailing or no ballot whatsoever. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote. ULUC Article VI, Section 4A, establishes that the union must mail ballots and ballot envelopes to all regular members in good standing.

You provided the investigator with a list of seven individuals who purportedly did not receive ballots. The investigation revealed that five of these individuals voted, and the other two were ineligible to vote. Your witness, [REDACTED] provided three additional names of members, who, the investigation revealed, all voted. You also referred the investigator to [REDACTED], who submitted a list with an additional 52 names. The investigation revealed that only four of these individuals may not have received ballots. In addition, the investigator examined a list of 100 individuals who requested a duplicate ballot. The investigation revealed that 61 of these members voted, and of the remaining members, only one contacted member did not receive a ballot. The union updated its address list before ballots were mailed and made efforts to obtain better addresses. Even assuming that the local failed to properly mail ballots to all of the members that did not receive them, this would not have affected the election outcome because the margin of victory in the Local 311 President election was 75 votes, and the margin of victory for North Houston Branch President was 60 votes.

Finally, the investigation revealed that the local did not preserve the mailing list it used to mail ballot packages. It also failed to keep its list of the members who voted. Although you did not raise this issue, it relates to your asserted violations and you would not have been able to examine the ballot records to discover whether this violation occurred. The Department therefore considered this issue.

Section 401(e) of the LMRDA requires designated election officials to preserve for one year the ballots and all other records pertaining to the election. As indicated above, the local did not preserve its mailing list used for mailing ballots or its list of members who voted. These failures violate the duty imposed under Section 401(e) to maintain election records, and the general duty under Section 401(c) to maintain adequate safeguards to ensure a fair election. These deficiencies encumbered the investigation process and required the investigator to contact individual members to determine who received ballot packages. Despite these violations, the investigator was ultimately able to contact enough members to ensure that the number of voters who potentially were

not sent ballots was less than the election margins of victory. These violations could not have affected the election outcome.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file in this matter.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

cc: John F. Hegarty, National President
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January 6, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor on August 8, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the April 1, 2011, election of union officers held by National Postal Mail Handlers Union Local 311.

The Department of Labor conducted an investigation of each of your allegations. As a result of the investigation, the Department concluded that no violation that may have affected the outcome of the election occurred.

You alleged that incumbent Local 311 President [REDACTED] was not a member in good standing for the two years prior to his nomination, and that he was ineligible to run for office due to a prior narcotics conviction. Section 401(e) of the LMRDA establishes that all members in good standing may run for office, subject to limitations set forth in section 504(a), and that elections must be conducted in accordance with a union's constitution and bylaws. In relevant part, section 504(a) prohibits any person convicted of a variety of crimes, including a violation of narcotics laws, from serving as a union officer for a period of 13 years following the conviction, unless the person convicted obtains a reduction in the prohibition from the sentencing court. Article V, Section 1, of the Uniform Local Union Constitution (ULUC) of the National Postal Mail Handlers Union requires candidates be in good standing for the two year period preceding nomination. Although union members barred under section 504(a) are prohibited from holding office, this provision does not affect whether they remain members of the union in good standing.

On December 19, 2002, [REDACTED] pled guilty to felony possession of a controlled substance in violation of Texas law. Prior to the Local 311 election, the Office of Labor Management Standards (OLMS) received a complaint alleging that this conviction barred [REDACTED] from seeking re-election. OLMS initiated an investigation concerning whether [REDACTED] conviction constituted a disqualifying crime under Section 504(a). OLMS also advised the local to keep [REDACTED] name on the election ballot until the investigation determined whether he was eligible to hold office. When the investigation

concluded that [REDACTED] was ineligible under Section 504, the local correctly removed him before installing the Local 311 officers on April 25, 2011.² There was no violation.

You alleged that you were denied the opportunity to inspect the union membership list, and that as a result a large number of your campaign literature mailings were not properly sent. Section 401(c) of the LMRDA provides, in relevant part, that candidates shall have the right, once within 30 days prior to an election, to inspect their union's membership list. ULUC Article VI, Section 2G, similarly afforded candidates this right.

The investigation determined that you dropped off your campaign literature mailing on March 7, 2011. You alleged that when you asked at this time to inspect the membership list, you were told to come back the next day. You further allege that when you returned the following day your literature was already mailed. The investigation revealed numerous factual discrepancies concerning your allegations. Three election judges stated that when you dropped off your mailing, you were given a chance to inspect the membership list, but you responded "I trust y'all" and left. Additionally, as support for your claim that your literature was improperly mailed, you provided OLMS with 26 envelopes that you allege were returned to you through the mail as undeliverable. However, eleven of these envelopes do not have a "received without address" stamp, and none are postmarked March 8 (the date your literature was mailed). In light of the election outcome, however, there is no need to further examine these inconsistencies. While you alleged that 26 envelopes were not properly mailed, you lost the Local 311 President election by 309 votes and the North Texas Branch President election by 45 votes. Accordingly, to the extent that a violation took place, the violation could not have affected the outcome of the election.

While not specifically alleged in your complaint, you stated in your interview that 142 additional campaign literature envelopes were improperly returned to you. The investigation did not disclose any evidence supporting this allegation, and you have not submitted any envelopes with marks indicating they were mailed and returned to you or any other evidence to substantiate this claim. Accordingly there was no violation.

You alleged that in violation of ULUC Article VI, Section 2F, the local did not notify candidates of the March 7 ballot mailing date or when the Election Committee planned to pick up the returned, undeliverable ballots. Section 401(e) of the LMRDA requires the local to conduct the election in accordance with its constitution. *See* 29 C.F.R. § 452.109. Article VI, Section 2F, of the ULUC requires the Judges of Election to give reasonable notice to each candidate and his/her observer, if known, of the time and place of each phase of the balloting process.

² On May 6, 2011, a judge in the 204th Judicial District Court for Dallas County, Texas, granted [REDACTED] petition to reduce the length of his disability to hold union office.

The distributed *Rights of Candidates* Notice informed candidates that all ballots “will be mailed on or about March 4, 2011.” The March 7 mailing date fell within this timeframe, and therefore candidates received proper notice of this event. The investigation did reveal that candidates were not given notice of when the Judges of Election intended to pick up ballots that were returned as undeliverable. The local's failure to provide adequate notice violated ULUC Article VI, Section 2F, which requires the Judges of Election to notify each candidate and his or her observer of the time and place of each phase of the balloting process. However, the investigation revealed no evidence of ballot tampering or manipulation surrounding the pickup of undeliverable ballots, or any other facts suggesting that the lack of notice compromised the integrity of the election. The investigation also determined that the election committee did not deny any candidate's request to have an observer present during the collection of undeliverable ballots. Accordingly, although a violation of the local union constitution occurred, it could not have affected the outcome of the election, a finding that is required for the Department to seek to overturn an election. 29 U.S.C. 482(c)(2).

You alleged that the integrity of the election was also compromised when the Chairperson of the Judges of Election mailed election ballots and collected returned undeliverable ballots without any observer or other election judge present. Section 401(c) of the LMRDA provides, in relevant part, that adequate safeguards to ensure a fair election shall be provided. The Department's interpretive regulation, at 29 C.F.R. § 452.110, provides that section 401(c) of the LMRDA contains a general mandate that adequate safeguards to ensure a fair election shall be provided and that such safeguards are not required to be included in the union's constitution and bylaws. Further, Article VI, Section 2F, of the ULUC states that each candidate is entitled to one or, if necessary, more observers, who may be present at the preparation and mailing of the ballots, their receipt from the post office and the opening and counting of ballots.

The investigation revealed that on March 7, 2011, the Chief Election Judge drove alone to the post office and mailed all of the election ballots. This was consistent with prior election practices. The ballots that were returned as undeliverable were stored in a locked post office box apart from the voted ballots. The Chief Election Judge and another election judge each had a key to this box and took turns collecting these ballots. The LMRDA does not require that more than one individual perform these tasks and the investigation did not reveal any evidence that the fairness of the election was compromised. There was no violation.

Finally, the investigation revealed that the local did not preserve the mailing list it used to mail ballot packages. It also failed to keep its list of the members who voted. Although you did not raise this issue, it relates to your asserted violations and you

would not have been able to examine the ballot records to discover whether this violation occurred. The Department had therefore considered this issue.

Section 401(e) of the LMRDA requires designated election officials to preserve for one year the ballots and all other records pertaining to the election. Although you did not raise this issue, it relates to your asserted violations and you would not have been able to examine the ballot records to discover whether a violation occurred.

The investigation revealed that the local did not preserve the mailing list it used to mail ballot packages. It also failed to keep its list of the members who voted. These failures violate the duty imposed under Section 401(e) to maintain election records, and the general duty under Section 401(c) to maintain adequate safeguards to ensure a fair election. These deficiencies encumbered the investigation process and required the investigator to contact individual members to determine who received ballot packages. Despite these violations, the investigator was ultimately able to contact enough members to ensure that the number of voters who potentially were not sent ballots was less than the election margins of victory. These violations may not have affected the election outcome.

For the reasons set forth above, it is concluded that no violation of the LMRDA or ULUC occurred that may have affected the outcome of the election. Accordingly, the office has closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John F. Hegarty, National President
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