



September 11, 2013

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U.S. Department of Labor on April 30, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers for the Court Securities Officers Union (CSOU), completed on January 29, 2013.

The Department of Labor 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 either no violation occurred or that there was no violation that may have affected the outcome of the election.

You allege that the one-day period between the cut-off date for nominations and the mailing of the ballots compromised the nomination process and did not give candidates an opportunity to campaign. The Department's regulation at 29 C.F.R. § 452.79 states:

There must be a reasonable period prior to the election during which office-seekers and their supporters may engage in the campaigning that the Act contemplates and guarantees. What is a reasonable period of time would depend upon the circumstances, including the method of nomination and the size of the union holding the election, both in terms of the number of members and the geographic area in which it operates.

One day would not provide a reasonable period of time to campaign. However, the investigation revealed that CSOU extended the campaigning period and pushed the election from early to late January 2013, thereby remedying the violation of the LMRDA.

You further allege that the LMRDA and the CSOU's Constitution and Bylaws, which refer to the LMRDA, require at least fifteen days to campaign. Both the LMRDA and

the CSOU require that members be provided notice of the election at least 15 days prior to the conduct of the election. However, neither the LMRDA nor the CSOU Constitution and Bylaws require the provision of at least fifteen days to campaign. As stated above, the union must provide a reasonable opportunity to campaign and did so by changing the date of the election to late January. Thus, with respect to the time period allowed for campaigning, there was no violation of the LMRDA that would provide a basis for litigation by the Department.

You also allege that the eleven-day window between the mailing of the ballots and the ballot return deadline, which occurred during the midst of the holiday season, was unreasonable and in conflict with the requirements of the CSOU Constitution and Bylaws and the LMRDA.

The investigation revealed that the mailed ballot served as notice of the election and confirmed that there was an eleven-day window between the ballot mailing and the election. Section 401(e) of the LMRDA requires that notice of the election must be **mailed** to each member at his last known address at least 15 days prior to the election. 29 U.S.C. § 401(e). (Emphasis added.) CSOU's failure to ensure that notice of the election was mailed out at least fifteen days prior to the ballot return deadline was a violation of Section 401(e). However, in order for the Department to seek to overturn an election, there must be evidence that a violation occurred that has not been remedied and that may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, CSOU remedied the notice violation by extending the deadline to return the ballots. Furthermore, you acknowledged that this issue was resolved when the union mailed out new ballot packages on January 10, 2013 extending the deadline to return the ballots by January 28, 2013. Thus, there was no violation of the LMRDA that would provide a basis for litigation by the Department.

You also allege that CSOU Member [REDACTED] was improperly disqualified from running for office. Section 401(e) of the LMRDA provides, among other things, that every member in good standing shall be eligible to be a candidate and to hold office subject to "reasonable qualifications uniformly imposed" and that covered elections shall be conducted in accordance with the constitution and bylaws of the union in so far as they are not inconsistent with the provisions of the LMRDA. CSOU conditions eligibility on good standing. The CSOU Constitution and Bylaws, Article III Section 4 provide that a member in good standing is a member whose application has been submitted and approved and who has paid all dues and other fees."

The investigation revealed that [REDACTED] was not in good standing and eligible to run for office. The union established December 21, 2012, as the deadline for paying all outstanding dues to meet CSOU's good standing requirement. CSOU did not receive [REDACTED] dues payment check for October-December 2012 dues until December 22, 2012.

████████ envelope was postmarked December 20, 2012. The union has always considered payment to be acknowledged by physical receipt of the money. Thus, there was no violation of the LMRDA.

You also allege that the Executive Board violated the CSOU Constitution and Bylaws by its decision to move the election from February to January in order to avoid conflicting with contract negotiations. As stated above, Section 401(e) of the LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. In this case, the CSOU Constitution and Bylaws, Article V Section 1 states: "An election for President, Vice President, Secretary, Treasurer, and Sergeant-at-Arms shall be held once every two (2) years, beginning February 2007, at such time and place as shall be designated by the Executive Committee, or by mailed ballot." In order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). You stated that you did not believe that advancing the election could have affected the outcome of the election. The investigation did not reveal any effect on the election. To the extent that advancing the election by one month was a violation of the LMRDA, it had no effect on the outcome of the election.

You also allege that the voting instructions sent to all members contained errors and failed to provide adequate information concerning the election. Section 401(c) of the LMRDA provides, among other things, "adequate safeguards to insure a fair election shall be provided." Adequate safeguards, as contemplated by the LMRDA, specifically refer to the mechanical, procedural aspects of running an election. CSOU's initial failure to ensure that the voting instructions were accurate and sufficient was a violation of Section 401(c). However, as stated above, in order for the Department to seek to overturn an election, there must be evidence that a violation occurred that has not been remedied and that may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, CSOU remedied the violation by re-mailing the ballot packages with revised ballot instructions. Moreover, you acknowledged in your interview with OLMS that this entire issue was resolved when the union mailed out new ballot packages containing revised voting instructions on January 10, 2013. Thus, there was no violation of the LMRDA that would provide a basis for litigation by the Department.

Finally, you allege that the union president used union resources to campaign when he sent a memorandum defaming candidates with the second ballot package. Section 402 of the LMRDA requires that a member must have "exhausted the remedies available under the constitution and bylaws" of the union in order to file a complaint with the Secretary of Labor. The investigation revealed that you did not internally protest this issue to the CSOU. Thus, that issue is not properly before the Department. 29 C.F.R. § 452.135 and 136(b-1).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that was not remedied and affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Robert Gomez, President
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