



December 4, 2014



Dear [REDACTED]:

This Statement of Reasons is in response to your April 3, 2014, complaint filed with the U.S. Department of Labor, 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 conducted by Branch 41 of the National Association of Letter Carriers (NALC) on December 4, 2013.

The Department 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 no violation occurred that may have affected the outcome of the election.

You alleged that Branch 41's nomination notice for the December 4 election did not comply with NALC's applicable election rules or the Department's regulations. Section 401(e) of the LMRDA requires that members have a reasonable opportunity to nominate candidates for office prior to an election. The Department's regulations provide that nomination notices may be given in any form reasonably calculated to reach all members in good standing in enough time for those members to nominate candidates of their choice.

Under the Department's regulations, these notices also must comply with the union's constitution and bylaws. Article 5, section 4 of NALC's Constitution and Bylaws requires that a notice that states the time, place, and manner of nomination and election be mailed to each member no fewer than 45 days before each election. A union may satisfy this requirement by timely publication of a notice in *The Postal Record*, NALC's national magazine for members. NALC's Regulations Governing Branch Election Procedures largely match the constitutional requirements, adding that the notice must state the offices to be filled. Branch 41's Constitution and Bylaws directs the branch's Financial/Recording Secretary to use *The Postal Record* for nominations.

The Department's investigation determined that former Branch 41 President Angelo Magnano directed you to place a notice in *The Postal Record*, the method Branch 41 had used for at least 35 years. The notice, printed in the election notices section of the magazine, announced that "nominations for all officer positions will be held at the regular membership meeting on October 8. All elections will be conducted in accordance with Article V of Branch 41 bylaws."

Prior to the October 8 meeting, Branch 41 also sent out a notice posted on all designated NALC bulletin boards at postal facilities that included an announcement that the meeting would include nominations for all officer positions. These notices met the requirements of the LMRDA and the Department's regulation. They are reasonably calculated to reach all Branch 41 members via publication in a dedicated elections section of the union's national magazine for members and posting on a dedicated union bulletin board. To the extent that the notices fail to comply with certain specific requirements of the NALC constitution or bylaws, there is no evidence that these deficiencies in any way confused or prevented any member from seeking nomination for office. Thus, even if there was a violation of the union's constitution and bylaws, there was no effect on the election.

You next alleged that Branch 41 unfairly favored your opponent by allowing him to post fliers on employer property when you were pressured to remove fliers you had posted at postal stations. You also alleged that your opponent posted materials on employer property after union officials directed him on October 29, 2013, not to do so.

Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office, and requires that unions provide adequate safeguards to insure a fair election. Section 401(g) of the LMRDA bars the use of employer resources to promote a candidate. Section 452.67 of the Department's regulations requires that, if candidates distribute materials on employer property for one candidate, then all other candidates must be afforded an opportunity, if requested, to distribute campaign materials on employer property under the same conditions.

The Department's investigation concluded that there was no official union instruction prior to October 29 for you or your opponent to remove fliers from postal station bulletin boards. The union also did not allow your opponent to post new fliers after October 29 and he did not send out flyers to be posted after that date. Therefore, there was no violation of the LMRDA.

You also alleged that campaign letters from outgoing [REDACTED] and incoming President George Mignosi in favor of the "Mignosi-Murphy Team" of candidates were improperly sent in printed envelopes used to transmit official union business.

Section 401(g) of the LMDRA provides that union resources may not be used to support a particular candidate's campaign. The investigation determined that Mignosi and [REDACTED] paid for the mailing out of personal funds. The printer, without consulting anyone, assumed that the union's non-profit status applied to the mailing and used the same type envelope that had been used in the past for official mailings from the union. The printer also did not charge the candidates tax.

No union moneys or other resources were used in the production of the mailing, and the content of the mailing does not imply it is an official union endorsement of the candidates. The envelope, while used in the past for official union communications, does not bear the union insignia and only indicates that it is from the office of Branch 41's president. Union officers are allowed to campaign for candidates and an officer noting his or her title in campaign materials is not a violation. The printer's incorrect application of the tax does not constitute use of a union resource.

You further alleged that your opponent improperly used the NALC logo on a flier distributed to union members in advance of the election. Under the LMRDA, the use of union logos on campaign materials is considered to be a prohibited use of union resources if: (i) the union restricts use of its logos in union elections; and, (ii) voters may confuse the logo's use in campaign materials as an official union endorsement of a candidate.

The investigation found that your opponent believed that the NALC logo was in the public domain. NALC takes the position that its logo is the union's intellectual property. However, NALC also ruled that the mere fact that a candidate included the union logo on campaign material does not necessarily invalidate a branch election. The use of the logo here would not have been confused with an official endorsement. The logo was merely used at the top left corner of the flier and the text of the flier was clearly an individual endorsement. There was no indication from the logo's presence that NALC as an entity had endorsed your opponent's candidacy. Accordingly, there was no violation.

You also alleged that the order of the ballot was not randomly chosen, as required by NALC election rules. The LMRDA does not contain any requirements for choosing the order of candidates on a ballot and the Department's regulations provide that the union should use a fair and reasonable manner permitted by the union's constitution and bylaws that does not conflict with any other provision of the LMRDA. 29 C.F.R. § 452.112. NALC rules allow for random drawings to determine ballot order. You alleged that the drawing occurred out of the view of candidates, and you alleged that the drawing might have been rigged for your opponent, whose name preceded yours on the ballot.

The investigation concluded that Branch 41 election officials determined ballot order at the October 29 meeting in which candidates and officials discussed campaign materials. The investigation disclosed that all candidates left the meeting prior to the determination of the ballot order. Election officials then determined the ballot order by a random drawing. No evidence suggests election officials used another method or an improper method. Because a random drawing is a reasonable method of selection allowed by NALC rules, and no other provisions of the LMRDA are implicated by the use of a drawing here, there was no LMRDA violation.

Finally, you alleged that the Branch 41 failed to provide adequate safeguards by using only one vote recorder. Neither the LMRDA nor the Department's regulations require the use of more than one vote recorder, and there is no indication that this method undermined the fairness of the election. Regardless, although the Department's recount of the tally found several minor tallying errors, these errors did not affect the outcome of the election. There was no violation of the LMRDA.

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 on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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