



May 5, 2014

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on September 18, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the Association of Flight Attendants (AFA), Local Executive Council 23089, Communications Workers of America (CWA), on April 2, 2013.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that Section IX, E.1 of the constitution and bylaws requires the Ballot Certification Committee (committee) to rerun the balloting process when previously certified ballots are voided and that the committee failed to comply with this requirement. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The investigation disclosed that Section IX,E.1 of the AFA-CWA policy manual, which is a part of the CWA constitution and bylaws, provides that the committee must rerun the balloting process when the committee fails to certify a ballot or a ballot previously certificated by the committee is voided. During the investigation, the AFA-CWA International Secretary-Treasurer explained that the union interprets this provision as

requiring the committee to conduct a new election only when the AFA determines that there was a violation that could have affected the outcome of an election.

The investigation disclosed that during the original ballot tally on April 2, 2013, the committee erroneously indicated on the last page of the tally sheets that there were 30 voided ballots instead of correctly indicating that there were 38 ballots that contained no votes for the LEC representative race. This clerical error did not change the election results. Under these circumstances, the committee was not required under Section IX,E.1 of the AFA-CWA policy manual to rerun the 2013 election. Neither the LMRDA nor the constitution and bylaws were violated.

You alleged that observers were not permitted to witness the ballot validation process. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process. 29 C.F.R. § 452.107.

The investigation disclosed that on the day of the ballot tally, while in the tally room located on the first floor of the AFA-CWA building, [REDACTED], AFA-CWA Director of Membership Services, discovered that some of the outer ballot envelopes returned by voters did not contain the voter's membership number. [REDACTED] and his staff took the envelopes to the Membership Services office located on another floor in the AFA-CWA building to obtain the membership numbers from the computer database. Staff kept the observers informed of the progress the union was making in locating the membership numbers. After all the missing numbers were located, [REDACTED] and his staff remained in the Membership Services office and validated voter eligibility while the observers remained on the first floor of the AFA-CWA building. The observers first learned that the validation process already had taken place in the Membership Services office when [REDACTED] and his staff returned to the tally room to conduct the ballot count and tally.

The ballot validation process is a phase of the election that observers have a right to observe. However, in order for the Department to find a denial of the right to observe, an observer must have requested to observe that phase of the election. The investigation disclosed that the AFA observer guidelines received by the complainants and other observers acknowledged the right of observers to witness the union's validation of the ballots prior to the ballot tally. However, during the investigation, the evidence indicated that none of the observers present at the AFA-CWA office to observe the ballot tally requested to observe the union's validation of voter eligibility.

Under these circumstances, there was no denial of the observers' right to witness the validation process. However, the investigation showed that the union failed to properly count the ballots. The union permitted two eligible members to vote twice when the original ballot and the duplicate ballot voted by each member were included in the vote tally. Section 401(e) of the LMRDA provides, "each member in good

standing shall be entitled to one vote.” Thus, a violation occurred when the union included more than one ballot in the vote tally for each member. However, the smallest vote margin was 19 votes; thus, the inclusion of the two additional ballots in the vote tally did not affect the outcome of the election.

You alleged that cover letters containing instructions on how to contact membership services, pay dues and obtain duplicate ballots were not contained in the ballot packages that the union mailed to members. The investigation disclosed that neither the union’s constitution and bylaws nor the election rules require the union to include information in the ballot packages on how to contact membership services, pay dues and obtain duplicate ballots.

Further, the Department’s review of the election records showed that one side of the ballot contained the notice of the election and included information concerning the purpose of the ballot, how to mark the ballot, how to use the ballot envelopes, and the ballot return date. The union sent an email to all members that provided the telephone number to call to request a duplicate ballot. The LMRDA was not violated.

You alleged that members may have been confused about the date by which ballots had to be returned and the date ballots would be counted because these dates changed three times during the election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

The investigation disclosed that a union posting made to the AFA website in December 2012 indicated the election closing date was March 28, 2013. In addition, a December 30, 2012 email to members showed that same date as the election closing date and a ballot count date of April 1, 2013. The information provided in the posting and the email was a tentative schedule for an election to be conducted by internet voting. Subsequently, the union decided to conduct the election by mail ballot. The election notice, which the union was required to mail to the last known home address of each member, *see* 29 C.F.R. § 452.99, was printed on one side of the mail ballot and stated that ballots had to be received by April 1, 2013, to be counted. The other side of the mail ballot stated that the ballots would be opened and tallied on April 2, 2013. The election notice printed on the ballot served as the official notice of the election, not the website posting or the email that referenced a tentative schedule for internet voting. There is no evidence that the change of the ballot return date confused members. The LMRDA was not violated.

You alleged that the membership roster was not current and, as a result, members did not receive ballots. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for and or otherwise support the candidate or candidates of her choice. 29 C.F.R. § 452.84. In mail ballot elections, a union satisfies its obligation to mail notice of the election and a ballot to each member where it makes reasonable efforts to maintain a current mailing list.

The investigation disclosed that AFA took reasonable steps to keep its membership list current. The investigation disclosed that the AFA worked closely with the employer to ensure that the mailing list was current and that prior to the April 2013 election, the union updated the mailing list to include the names of those members who had transferred into the union and those members who were scheduled to complete their probation period on or before the ballot count. In addition, the company that the AFA hired to conduct the ballot mailing compared the AFA membership list with the U.S. Postal Service national change of address database to determine whether new addresses for members were listed in the database. The database automatically updated the old addresses of any member who had registered a new address with the U.S. Postal Service; ballots were mailed to those new addresses.

The union also had a system in place for mailing new ballot packages to members whose ballot packages were returned by the post office with a yellow sticker containing a new address. New ballot packages were mailed to the addresses printed on the yellow stickers. Also, the union attempted to obtain better addresses for members whose ballots packages were returned as undeliverable by comparing the address on the returned ballot package with the address in the CWA database. Further, the union sent an email to members that provided the telephone number to call to request a duplicate ballot. In any event, of the 2,282 ballot packages that were mailed, only seven of them were returned as undeliverable. However, the investigation showed that one of these members requested a duplicate ballot on two separate occasions and did not receive either ballot in the mail because the ballot packages contained the correct street name but the wrong house number. This member did not vote in the election and, thus, was denied an opportunity to vote in violation of section 401(e) of the LMRDA. However, the smallest vote margin was 19 votes and, therefore, this violation did not affect the outcome of the election.

You alleged that the CWA did not use the same standard ballot return envelopes for all of the ballot packages in that membership information was pre-printed directly on some of the envelopes and labels containing that information were affixed to other envelopes. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

The Department's review of the ballot return envelopes among the election records revealed that membership information was pre-printed directly on all the envelopes, including the envelopes returned by both of you. Neither the LMRDA nor the constitution and bylaws were violated.

You alleged that the CWA printed an excessive number of duplicate ballots. Section IX.F.3c of the AFA-CWA policy manual provides that a specified number of ballots are to be printed to provide for the "replacement for lost or mismarked ballots in an amount sufficient to provide *at least* a number equal to five percent of the active

members of each domicile. . . .” (Emphasis added). Thus, the union was required to print a minimum of 114 extra ballots (the number equal to five percent of 2,282 active members). This provision is silent regarding the maximum number of duplicate ballots to be printed. The investigation showed that the union printed 300 extra ballots; thus, the union complied with Section IX.F.3c of the AFA-CWA policy manual. Neither the LMRDA nor the constitution and bylaws were violated.

You alleged that blank ballots were not mailed to the Local Executive Council, as required by the constitution and bylaws and, as a result, the union could not expeditiously handle duplicate ballot requests. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The investigation disclosed that Section IX.F.4 of the AFA-CWA policy manual provides that the blank duplicate ballots should be mailed to the president of the Local Executive Council. However, the adequate safeguards provision in section 401(c) of the LMRDA requires a union to have adequate protections in place to ensure fair election. Permitting an incumbent officer to have unsupervised control and access to blank ballots during an election would violate the adequate safeguards provision of section 401(c) of the LMRDA. Section IX.F.4 of the AFA-CWA policy manual requiring that blank duplicate ballots be mailed to the president of the Local Executive Council is inconsistent with section 401(c) of the LMRDA; thus, the union was not required to comply with that provision of the AFA-CWA policy manual.

During the investigation, CWA Secretary Treasurer Kevin Creighton stated that in prior elections there were allegations of incumbent officers inappropriately using duplicate ballots. The president and other incumbent officers of the Local Executive Council were candidates in the 2013 election. To prevent the officers from having unsupervised control and access to blank ballots, the CWA Membership Services office retained possession of the blank ballots and handled all duplicate ballot requests. The investigation did not disclose that the manner of handling the duplicate ballot requests caused any delay lack of access to duplicate ballots. The LMRDA was not violated.

Finally, you alleged that the local union president requested that the CWA provide her with all the information reflected on the ballot tally sheet but the CWA refused to do so. The investigation disclosed that the local union president requested certain information on April 26, 2013, because the certificates of the election did not contain all of the information required by the constitution and bylaws. However, the required information was listed on the certificate of the election results dated May 1, 2013. The president had access to that certificate. In addition, the CWA provided the president an online link to access such information in an April 30, 2013 email. The LMRDA was not violated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA 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

cc: Kevin Creighan, International Secretary-Treasurer
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Catherine Bossi, President
Flight Attendants, CWA, Local Executive Council 23089



Christopher B. Wilkinson
Associate Solicitor for Civil Rights and Labor-Management



May 15, 2014

Ms. Susan Udvari
105 Wessex Hills Drive
Moon Township, Pennsylvania 15108

Dear Ms. Udvari:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on September 18, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the April 2, 2013 election of union officers conducted by the Association of Flight Attendants (AFA), Local Executive Council 23089, Communications Workers of America (CWA).

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 of the LMRDA. Following is an explanation of this conclusion.

You alleged that your termination from employment unfairly interfered with your ability to campaign because after you were terminated you were prevented from accessing restricted areas at the airport to campaign. The investigation disclosed that on March 8, 2013, you were suspended with pay and the employer revoked your employee identification badge because you had sent an email to 425 to 450 members in which you criticized the terms of a tentative collective bargaining agreement and encouraged a work slowdown. As a result of you sending the email, the employer terminated your employment on March 15, 2013.

During the investigation, you stated that because the employer revoked your employee ID on March 8, you did not have access to crew lounges and points beyond airport security, such as food courts and, therefore, you were prohibited from campaigning in those areas. You also stated that prior to your employee ID being revoked you and the candidates associated with your campaign used the "meet and greet" approach to campaign in restricted areas. You stated that you were no longer able to gain access to such areas after your employee ID was revoked.

The investigation disclosed that the candidates affiliated with your campaign continued to meet and greet members in the restricted areas, including the crew lounges, after

your employee ID was revoked. The investigation also disclosed that you and the affiliated candidates purchased business cards to promote their candidacies. A member of your team placed the business cards in the employee mail boxes located in the crew lounges. Also, the affiliated candidates had access to the bulletin board located in the crew lounges and could have placed your campaign literature on the bulletin board on your behalf. Moreover, during the investigation, management stated that it would have considered permitting a union representative to accompany you to the crew lounges to campaign if you had requested this. However, you never asked management to permit you to enter crew lounges to campaign after your employee ID was revoked.

The investigation further disclosed that you and the candidates associated with your campaign did not take advantage of the campaign email blast system offered by the union or request the union mail campaign literature on your behalf. There was no violation of the LMRDA.

You also alleged that the employer prevented you from discussing your termination from employment, limiting your ability to campaign. The U.S. Airways Human Resource Director stated during the investigation that she advised you at a March 8 meeting, prior to your March 15 termination from employment, not to talk to anyone about the details of the investigation. The Director also stated that, after the termination, there was no restriction on the extent to which you could discuss the circumstances surrounding your termination, since you were no longer employed by the company and the company could take no further action against you. Thus, you and the candidates affiliated with your campaign could have issued a campaign statement to members after March 15 concerning your termination. The LMRDA was not violated.

Finally, you alleged that you were wrongfully terminated from employment. Matters concerning wrongful termination from employment are not governed by the LMRDA. Therefore this allegation is dismissed.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA 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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