



March 17, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor (Department) on January 15, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of Local 96 (Local), American Postal Workers Union, AFL-CIO (APWU) completed on May 10, 2008.

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 are properly before the Department that no violation occurred that might have affected the outcome of the election.

You alleged that the final ballot tally for the Vice President BMC Clerks race was incorrect. Section 401(e) of the Act requires, among other things, that votes cast by members shall be counted and the results published. 29 U.S.C. § 481(e). The Department conducted a recount of the VP BMC Clerks race as part of its investigation. The investigation disclosed that the results for that race were the same as that announced at the May 13, 2008 membership meeting, 59 for Davis and 57 for Tate. Additional evidence supported this result. Specifically, the number of ballot identification (ID) envelopes, adjusted for properly voided and blank ballots, matched the total number of votes. Further, the ballot tally sheets from other persons who attended the original ballot count reflected the 59/57 result. There is no evidence of a violation of Section 401(e) of the Act with regard to the ballot tally for the VP BMC Clerks race.

You alleged that BMC Clerk [REDACTED] voted twice and that Editor candidate [REDACTED] brought [REDACTED] ballot to the union office to get an envelope. Section 401(c) of the LMRDA provides, among other things, that "adequate safeguards to insure a fair election shall be provided." 29 U.S.C. § 481(c). The investigation disclosed that

██████████ received two ID envelopes but no return envelope in his ballot package. He put his ballots in one of the two ID envelopes, placed that in the other ID envelope and enclosed all in a personal envelope. ██████████ gave the sealed envelope to co-worker ██████████, who was going to the union office, to deliver it. ██████████ obtained a return envelope from the union office and placed the envelope in the mailbox outside the union office. Election Chair ██████████ was the only person to open the secret ballot envelopes to ensure no member included two ballots for the same office. There is no evidence that ██████████ voted twice or that the secrecy of his ballot was compromised by ██████████'s delivery of it. Further, even if the Local's failure to provide ██████████ with the proper number of envelopes is considered a violation of election safeguards, it had no effect on the outcome of the election. Consequently, there was no violation that may have affected the outcome of the election.

You further allege that General Clerk ██████████ wrongly received a Motor Vehicle Services (MVS) ballot and should have received a BMC Clerks ballot. The investigation disclosed that ██████████ received and cast a MVS ballot for the May 10 general election. Following the general election, a question arose regarding ██████████'s proper craft classification. Due to confusion regarding her status, ██████████ did not receive a ballot for the runoff of the Vice President of MVS (VP MVS) election. Thereafter, it was concluded that ██████████ was properly classified in the MVS craft. The Local's failure to allow McNeil to vote in the first runoff of the VP MVS race was a violation of Section 401(b) of the Act, which requires that members be permitted to vote in local union elections. The first runoff of the VP MVS race resulted in a tie requiring a second runoff. ██████████ received a ballot for the second runoff. Due to the need for a second runoff in which she was able to vote, the violation was remedied and had no effect on the outcome of the election.

You also alleged that Maintenance Control Clerk ██████████ wrongly received a clerk ballot and should have received a maintenance ballot. The investigation disclosed that ██████████ properly received and cast a Maintenance ballot. Malone was in the maintenance craft from February through August 2008. There is no evidence that she cast a BMC Clerks ballot or that a violation occurred.

You also alleged multiple other violations in letters dated June 3, July 14, and August 21, 2008. The Local claims that these allegations were not timely under its constitution and bylaws. Section 402 of the LMRDA provides 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. 29 U.S.C. § 482. Article 12, Section 8 of the APWU Constitution provides that, "[a]ny member who feels aggrieved in connection with the conduct of a local, state or regional election shall file his/her grievance with the election committee within seventy-two (72) hours after his/her grievance arises."

The investigation determined that the issues raised in the letters dated June 3, July 14, and August 21, 2008, were not timely because the allegations were not raised within 72 hours after the matters at issue arose.

For the reasons set forth above, the Department has concluded that there was not a violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

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