



September 28, 2010

[REDACTED]

Dear [REDACTED]

This is to advise you of the disposition of your complaint filed with the Secretary of Labor on July 7, 2010, alleging that violations of Section 401 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in the remedial election supervised by this Agency.

Specifically, you alleged that:

1. No candidate received the majority required for elections under the ASC Constitution.
2. The announced tallies for the election do not provide the results in the manner required by the Regulations and conceal the failure of the election to result in a majority winner.
3. The rerun election was not held timely during the academic year but rather was conducted in the summer when most faculty are dispersed throughout the globe, away from their home mail and often even email access.
4. DOL pre-arranged all election procedures with the AAUP leaders and violated the DOL policies thereby permitting the AAUP leadership to affect the outcome of the election.
5. Candidate statements were not included in the mailed ballots, unlike AAUP past practice.
6. The Election Supervisor refused to have AAUP mail or email the candidates' statements to the full list of voters.

7. Information on how to obtain candidate statements was incomplete and placed near the end of the ballot instructions.
8. On June 3, 2010, the AAUP General Secretary Rhoades and the ASC Election Committee Chair Goldberg withheld email notification of the June 1st mailing of the ballots until June 3rd – on the same day Candidate [REDACTED] campaign email was released and likely the same day that the ballots were received by many voters.
9. On June 3, 2010, the candidate statement from [REDACTED] – with prominent endorsements from many AAUP officers, led by the statement of the AAUP President Nelson – was first sent out from trueballot@electionadmin.com. It was then resent within approximately an hour from election@aaup.org.
10. The use of an AAUP email address, a resource of the AAUP, with its clear suggestions of official promotion, any footnoted endorsers' "disclaimers" notwithstanding, violates AAUP election procedures and constitutional documents as well as DOL regulations.

Our investigation of these allegations did not establish a violation. The investigation revealed:

1. Article IV, Section 3 of the ASC Constitution states: "The officers shall be elected from among the Active Members of the Association by a majority vote of the delegates present and voting at an annual meeting of the assembly." Section II of the ASC Bylaws states: "Election to office shall be by majority vote of those present and voting at the time of the casting of ballots. If there is no majority for an office after an initial balloting, the voting shall take place immediately again. No candidates shall be dropped from the voting unless they withdraw voluntarily." In the voluntary settlement agreement, OLMS and the AAUP agreed that the election could be held by direct election, rather than by delegates from the state conferences. The majority vote provisions in the ASC Constitution and Bylaws apply to elections by delegates. The Election Supervisor determined that it was not practicable for the mail ballot election to be held by majority vote.
2. The initial ballot tally results that were posted on the AAUP website and emailed to all candidates immediately after the counting of the ballots only listed the number of votes received by each candidate. There were nine voided ballots and a number of no votes. The number of voided ballots and no votes was significantly less than the margin of victory. The total number of ballots cast and the number of voided ballots have now been posted on the AAUP website.

3. The February 4, 2010 voluntary agreement between OLMS and the AAUP stated that OLMS would supervise an election prior to June 30, 2010. The ASC membership was notified starting in April 2010 that a new election was being conducted for ASC Chair. Members were sent numerous emails and notices regarding the election. This information was also posted on the AAUP website. Ballots were mailed on June 1, 2010 and the ballot return date was June 28, 2010. This long ballot period gave members the opportunity to have their mail forwarded, check their email, request duplicate ballots, and an ample opportunity to vote in the election.
4. In an election supervised by OLMS, the election rules and procedures are determined by the LMRDA and the union's constitution and bylaws and past practice as far as lawful and practicable. As happens in all supervised elections, OLMS met with representatives of the union to discuss matters related to the election. None of the parties that OLMS met with prior to the election were candidates in the election. The membership was notified of a pre-election conference that was held on April 20, 2010. At the beginning of the conference call, the participants were told that the purpose of the call was to discuss the election rules and the timetable for the election. Several participants questioned some of the potential rules and there was significant discussion about some of them. There was no violation.
5. The AAUP Election Bylaws, which apply to the ASC Chair election, state: "Each candidate shall be afforded the opportunity to prepare a single statement (not to exceed five hundred words for officer candidates and three hundred fifty words for Council candidates) in support of his or her candidacy, which shall be printed and disseminated at the Association's expense, together with the candidate's relevant biographical information, the length of which will not exceed three hundred words." The AAUP interprets an email informing the membership that the candidate statements were published on the AAUP website as satisfying this provision. Investigation revealed that the AAUP mailed the candidate statements with the ballot packages in national officer elections up through 2008. In 2009 and 2010, the AAUP used an electronic voting method. A link to the candidate statements was included in emails to the membership, but the candidate statements were not included in the election notices mailed to the members. In the 2010 ASC Chair rerun election, an email was sent to the members for whom the AAUP had email addresses that included information regarding where the candidate statements could be found on the AAUP's website.
6. The voting instructions in the ballot package stated that candidate statements could be found on the ASC election rerun page on www.aaup.org. Once the

member clicked on the ASC election rerun link at the top of the AAUP's website, the candidate statements were clearly visible at the top of the page.

7. The information regarding the candidate statement was near the bottom of the voting instructions. Placing this information at the bottom of the voting instructions did not favor any one candidate over any other. There was no violation.
8. An email was sent by AAUP General Secretary Rhoades and Election Chair Goldberg informed the members for who the AAUP had email addresses that the ballots were mailed and that campaign emails were the opinion of the candidates and not the AAUP. The email sent by AAUP President Cary Nelson on June 2, 2010 was not related to the election and was not campaigning. [REDACTED]' campaign email was clearly a campaign email. There was no violation as it was clear that [REDACTED] email was a campaign email.
9. Candidates were permitted to send campaign emails through a vendor hired by the union, True Ballot. Candidate campaign emails were originally sent from trueballot@electionadmin.com. A campaign email was sent from Candidate [REDACTED] on May 31, 2010 and one was sent from Candidate [REDACTED] on June 1, 2010 from this address. Due to some concerns raised from members regarding the emails from this address regarding the emails from this address being flagged as spam, all campaign emails from June 2, 2010 forward were sent from election@aaup.org. A campaign email from Candidate [REDACTED] was sent on June 3, 2010 and one from [REDACTED] on June 24, 2010 (and into the morning hours of June 25, 2010). [REDACTED]' email was originally mistakenly sent to some members from trueballot@electionadmin.com. However, the email was stopped and resent from election@aaup.org. This resulted in some members receiving the exact same message within a short time of the first one. There was no violation.
10. On June 4, 2010, an email was sent to the AAUP members for whom the AAUP had an email address informing them that candidate campaign emails were being sent out. It stated that the first two campaign emails were sent from trueballot@electionadmin.com and gave the dates that they were sent. The email noted that some campaign emails were being flagged as spam and that all candidate campaign emails were now being sent from election@aaup.org. Members were instructed that the fact that the emails were sent from this address does not mean that the AAUP agrees with or supports the information in the campaign emails. The email also informed the members that if they did not see any of the three campaign emails, they should check their spam. [REDACTED] June 3, 2010 email included endorsements from several individuals, some of whom were current AAUP officers. Next to each organization that was identified was

an asterisk that referred to the following statement at the end of the campaign email: "Titles and institutional affiliations are listed for identification purposes only and do not imply any endorsement by the organization." There was no violation.

Based on the results of our investigation, I have concluded that no violation occurred in the supervised election and I am dismissing your complaint.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343



September 28, 2010

[REDACTED]

Dear [REDACTED]

This is to advise you of the disposition of your complaint filed with the Secretary of Labor on July 5, 2010, alleging that violations of Section 401 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in the remedial election supervised by this Agency.

Specifically, you alleged that:

1. No candidate received the majority required for elections under the ASC constitution.
2. The announced tallies for the election do not provide the results in the manner required by the Regulations and conceal the failure of the election to result in a majority winner.
3. The rerun election was not held timely during the academic year but rather was conducted in the summer when most faculty are dispersed throughout the globe, away from their home mail and often even email access.
4. DOL pre-arranged all election procedures with the AAUP leaders and violated the DOL policies thereby permitting the AAUP leadership to affect the outcome of the election.
5. Candidate statements were not included in the mailed ballots, unlike AAUP past practice. The Election Supervisor refused to have AAUP mail or email the candidates' statements to the full list of voters. Information on how to obtain

candidate statements was incomplete and placed very near the end of the ballot instructions.

6. The names on the ballot were placed in the random order corresponding to the drawing of straws conducted by the Election Supervisor while the list of the candidates' statements at the AAUP rerun election website used alphabetical order.
7. Two candidate campaign emails, from [REDACTED] and [REDACTED] were sent on May 31 and June 1, 2010, from trueballot@electionadmin.com. On June 3, 2010, AAUP General Secretary Rhoades and ASC Election Committee Chair Goldberg withheld email notification of the June 1st mailing of the ballots until June 3rd - the same day Candidate [REDACTED]' campaign email was released and the same day that the ballots were received by many voters. On June 3, 2010, the candidate statement of [REDACTED] - with prominent endorsements from many AAUP officers -was first sent out from trueballot@electionadmin.com. It was then resent within approximately an hour from election@aaup.org. The use of an AAUP email address, a resource of the AAUP, with its clear suggestion of official promotion, any footnoted endorsers' "disclaimers" notwithstanding, violates AAUP election procedures and constitutional documents as well as DOL Regulations. On June 4, 2010, an unsigned email was sent from election@aaup.org communicating to those voters with email accounts only that there was a problem with spam blocking of candidate messages from trueballot@electionadmin.com. Many voters, perhaps the majority of those participating, voted between June 3 and June 6, 2010.
8. On June 4, 2010, an unsigned email was sent from election@aaup.org communicating to those voters with email accounts only that there was a problem with the instructions on the ballot which could affect the validity of a cast ballot.
9. The DOL permitted the AAUP leadership to engage the services of True Ballot, its usual vendor for election administration, thus failing to ensure that the election would be conducted independently of undue influence from the AAUP.
10. Candidate [REDACTED] prepared and paid for email distribution of four candidate statements; however, only one distribution was effectuated.
11. In conformity with DOL-promulgated ASC rerun election rules, [REDACTED] submitted a candidate statement at 9:09am, Tuesday, June 22, 2010 for distribution as soon as possible and, in accordance with AAUP policies and the LMRDA, disclaimed any use of election@aaup.org for transmission but his

message was sent using the official AAUP email address and was subjected to repeated attempts at censorship of the contents of the statement by the representative of True Ballot.

12. The email notice for the possibility to distribute flyers at the June 2010 AAUP Annual Meeting was sent out to candidates by the AAUP Senior Counsel two and a half days before the meeting.

Our investigation of these allegations did not establish a violation.

11. Article IV, Section 3 of the ASC Constitution states: "The officers shall be elected from among the Active Members of the Association by a majority vote of the delegates present and voting at an annual meeting of the assembly." Section II of the ASC Bylaws state: "Election to office shall be by majority vote of those present and voting at the time of the casting of ballots. If there is no majority for an office after an initial balloting, the voting shall take place immediately again. No candidates shall be dropped from the voting unless they withdraw voluntarily." In the voluntary settlement agreement, OLMS and the AAUP agreed that the election could be held by direct election, rather than by delegates from the state conferences. The majority vote provisions in the ASC Constitution and Bylaws apply to elections by delegates. The Election Supervisor determined that it was not practicable for the mail ballot election to be held by majority vote.
12. The initial ballot tally results that were posted on the AAUP website and emailed to all candidates immediately after the counting of the ballots listing the number of votes received by each candidate. There were nine voided ballots and a number of no votes. The number of voided ballots and no votes was significantly less than the margin of victory. The total number of ballots cast and the number of voided ballots have now been posted on the AAUP website.
13. The February 4, 2010 voluntary agreement between OLMS and the AAUP stated that OLMS would supervise an election prior to June 30, 2010. The ASC membership was notified starting in April 2010 that a new election was being conducted for ASC Chair. Members were sent numerous emails and notices regarding the election. This information was also posted on the AAUP website. Ballots were mailed on June 1, 2010 and the ballot return date was June 28, 2010. This long ballot period gave members the opportunity to have their mail forwarded, check their email, request duplicate ballots, and an ample opportunity to vote in the election.
14. In an election supervised by OLMS, the election rules and procedures are determined by the LMRDA, and the union's constitution and bylaws and past practice as far as lawful and practicable. As occurs in all supervised elections,

OLMS met with representatives of the union to discuss matters related to the election. None of the parties that OLMS met with prior to the election were candidates in the election. The membership was notified of a pre-election conference that was held on April 20, 2010. At the beginning of the conference call, the participants were told that the purpose of the call was to discuss the election rules and the timetable for the election. Several participants questioned some of the potential rules and there was significant discussion about some of them. There was no violation.

15. The AAUP Election Bylaws, which apply to the ASC Chair election, state: "Each candidate shall be afforded the opportunity to prepare a single statement (not to exceed five hundred words for officer candidates and three hundred fifty words for Council candidates) in support of his or her candidacy, which shall be printed and disseminated at the Association's expense, together with the candidate's relevant biographical information, the length of which will not exceed three hundred words." The AAUP interprets an email informing the membership that the candidate statements were published on the AAUP website as satisfying this provision. Investigation revealed that the AAUP mailed the candidate statements with the ballot packages in national officer elections up through 2008. In 2009 and 2010, the AAUP used an electronic voting method. A link to the candidate statements was included in emails to the membership, but the candidate statements were not included in the election notices mailed to the members. In the 2010 ASC Chair rerun election, an email was sent to the members for whom the AAUP had email addresses that included information regarding where the candidate statements could be found on the AAUP's website. The voting instructions in the ballot package stated that candidate statements could be found on the ASC election rerun page on www.aaup.org. Placing this information at the bottom of the voting instructions did not favor any one candidate over any other. There was no violation.
16. All candidates were given an opportunity to write a campaign statement to put on the AAUP website. All candidates wrote a campaign statement and all were included on the website. The candidate statements were placed on the website alphabetically by the candidates' last name. The order of the campaign statements on the website did not favor any one candidate over any other.
17. Candidates were permitted to send campaign emails through a vendor hired by the union, True Ballot. Candidate campaign emails were originally sent from trueballot@electionadmin.com. Due to some concerns raised from members regarding the emails from this address being flagged as spam, all campaign emails from June 2, 2010 forward were sent from election@aaup.org. A campaign email from Candidate [REDACTED] was sent on June 3, 2010 and one from you was sent on June 24, 2010 (and into the morning hours of June 25,

2010). [REDACTED]' email was originally mistakenly sent to some members from trueballot@electionadmin.com. However, the email was stopped and resent from election@aaup.org. This resulted in some members receiving the exact same message within a short time of the first one. On June 3, 2010, an email was sent from AAUP General Secretary Gary Rhoades and ASC Election Chair Stephen Goldberg advising that ballots were mailed out on June 1, 2010. The email also stated that the members would be receiving email messages from candidates for the position and the views expressed in the messages were those of the candidates. On June 4, 2010, an email was sent to the AAUP members for whom the AAUP had an email address informing them that candidate campaign emails were being sent out. It stated that the first two campaign emails were sent from trueballot@electionadmin.com and gave the dates that they were sent. The email noted that some campaign emails were being flagged as spam and that all candidate campaign emails were now being sent from election@aaup.org. Members were instructed that the fact that the emails were sent from this address did not mean that the AAUP agrees with or supports the information in the campaign emails. The email also informed the members that if they did not see any of the three campaign emails, they should check their spam. [REDACTED]' June 3, 2010 email included endorsements from several individuals, some of whom were current AAUP officers. Next to each organization was an asterisk that referred to the following statement at the end of the campaign email: "Titles and institutional affiliations are listed for identification purposes only and do not imply any endorsement by the organization." The email sent by AAUP President Cary Nelson on June 2, 2010 was not related to the election and was not campaigning. The membership was given specific information regarding how to locate each campaign email if they had not received it and several messages made it clear that the campaign emails were from the candidates and were not the views of the AAUP. There was no violation.

18. The ballot instructions informed the voters to "sign your name where indicated on the stub which was on the bottom of these instructions..." There was nothing on the stub to indicate where a member should sign. An email was sent on June 4, 2010 (three days after the ballots were mailed) to the members for whom the AAUP had an email address informing members that they could sign anywhere on the stub. The email also informed the members that their ballot would be counted even if they did not sign the stub as long as there was information on the stub to identify the voter. This information was also posted on the AAUP website under the ASC election rerun link. The ballots in all returned ballot packages in which the voter could be confirmed as an eligible voter were counted. No ballots were voided because they did not have a signature on the stub. There was no violation.

19. Decisions as to whether a union uses a balloting service to conduct an election and which balloting service will be used are left solely to the union. AAUP hired True Ballot as the balloting service for the ASC Chair rerun election. However, OLMS supervised all phases of the election. No actions or inactions by True Ballot affected the outcome of the election.
20. All candidates were informed on several occasions that they could send campaign mailings and campaign emails. The election rules informed candidates to contact the Election Supervisor to conduct them. Candidate ██████ paid for four campaign emails. ██████ sent one email to the Election Supervisor for distribution. This email was sent by True Ballot to all members for whom the AAUP had email addresses on May 31, 2010. No other campaign mailing requests were made by Pieczenik. There was no violation.
21. The election rules required all campaign emails be sent to the Election Supervisor. You submitted a campaign email to the Election Supervisor on June 22, 2010. You stated that you wanted to review the campaign email before it was sent and you did not want anyone from the AAUP to see the email before it was sent to the membership. The Election Supervisor advised you that the representative of True Ballot that sends the campaign emails to the membership was out on a family emergency. You were asked whether you wanted someone from the AAUP to send the email on June 23, 2010 or wait until the representative of True Ballot returned and have the email sent out on June 24, 2010. You informed the Election Supervisor that you wanted to wait for the representative of True Ballot to send the email on June 24, 2010. There were some errors in the drafts of your campaign email by True Ballot. However, none of those drafts were sent to the membership. You then made an additional change to your campaign email before it was sent out late in the evening on June 24, 2010 and into the morning on June 25, 2010. The campaign email that was sent was the same as the one that you originally sent to the Election Supervisor, with the exception of what you changed just prior to it being emailed to the membership. As noted above, a decision was made to send all campaign emails beginning on June 2, 2010 from election@aaup.org. All campaign emails sent after June 2 were sent from this email address. There was no violation.
22. The AAUP decided to give the ASC candidates the option of having the Election Chairman put their campaign literature on a table at the AAUP Annual Meeting. The AAUP was under no obligation to provide this opportunity to candidates. All candidates were provided the same email notice of the option and given instructions on where to send the campaign literature. No candidates were treated unequally. There was no violation.

Based on the results of our investigation, I have concluded that no violation occurred in the supervised election and I am dismissing your complaint.

Sincerely,

Patricia Fox
Chief, Division of Enforcement