



October 1, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on June 7, 2010 with the Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the American Postal Workers Union, Local 366 on February 27, 2010.

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

You alleged that observers at the ballot tally were not able to observe the tally process. Under section 401(c) of the LMRDA, each candidate must be permitted to have an observer at the polls and at the counting of the ballots. *See* 29 C.F.R. § 451.107. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the election. The observers should be placed so that they do not compromise or give the appearance of compromising the secrecy of the ballot. *See* 29 C.F.R. § 451.107.

Investigation established that an improper restriction was placed upon candidate observers, because they were required to remain behind a line that was at least six feet from the table where the opening of ballot packages and the ballot count occurred. The placement of the observers behind this line at a distance such that they were not able to observe the work of the tellers prevented effective observation and constituted a violation of section 401(c) of the LMRDA.

The Department may only seek to set aside an election where the violation at issue may have affected the outcome of the election. 29 U.S.C. § 482(c); 29 C.F.R. § 452.136(b). As part of its investigation, the Department interviewed witnesses who were present at the ballot counting, conducted a ballot recount of all races, conducted a ballot verification and reconciliation, and reviewed the ballots themselves for unusual markings, patterns of markings used by voters to cast their ballots, and the color/type of ink used.

The recount of the ballots by the Department resulted in a different margin of victory for the secretary-treasurer, director of industrial relations, and auditor races. The difference in the margins of victory for these three races appears to have been due to errors made by the election committee in adding the totals contained on tally sheets for each stack of ballots, because the numbers on each tally sheets matched the number of votes on ballots associated with the tally sheet; however, the difference in the margins of victory did not affect the outcome of any of the races

The Department also performed a ballot verification and reconciliation. The investigation found that there were a total of 447 returned ballots. The election committee notes, however, indicate that a total of 446 ballots were returned. The discrepancy in the returned ballot totals was due to the election committee's error in counting a stack of returned ballot envelopes. An eligibility review of the returned ballot envelopes by the Department revealed that all of the union members noted by the Department as having returned ballots were also checked off by the election committee on the union's eligibility list as having returned ballots.

The investigation revealed that the election committee properly disqualified nine of the 447 returned ballots. The review of the returned ballot envelopes by the Department revealed that of the 438 ballots counted in the tally, 414 contained information on the return envelopes showing that the ballots were processed through the U. S. Postal System (USPS). These ballots did not appear to have been returned in any kind of pattern which could indicate that any one person completed and returned ballots for other members. The remaining 24 ballots returned without any USPS identifying processing information, even if suspect, would not have affected the margin of victory of any of the election races.

All ballots were reviewed for unusual markings, patterns of markings used by voters to cast their ballots, and the color/type of ink used. This review found no evidence of voter misconduct.

In sum, the Department's investigation, ballot recount, ballot verification, and ballot reconciliation disclosed no evidence of ballot tampering or improprieties, other than a few minor ballot count discrepancies that did not change the outcome of any race.

Thus, while the improper observer restriction was in violation of section 401(c) of the Act, the violation did not affect the outcome of the election.

Your protests dated January 19, February 19 and 24, 2010, were not investigated. Inasmuch as these protests were not made within the 72 hours requirement of the union's election protest procedures, the Secretary has no authority to consider the merits of these protests.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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