



January 4, 2011



This Statement of Reasons is in response to your complaint filed on September 23, 2010. You alleged that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481-484, occurred in connection with the American Postal Workers Union (APWU), Local 78, election of officers held on May 26, 2010.

The Department of Labor conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA.

You alleged that ineligible members were allowed to vote in the election in violation of the APWU Constitution. Specifically, you alleged that members receiving workers' compensation from the Department's Office of Workers' Compensation Programs (OWCP) were ineligible to vote and should not have been allowed to participate in the election.

The Department of Labor investigation disclosed that in 2008 the Union amended its Constitution to specifically exclude from good standing those members in "no-pay status" who have not paid dues and are collecting workers' compensation. In the past, members in no pay status, meaning they had not paid dues through automatic payroll deduction because of insufficient earnings, including those receiving OWCP payments, were considered to be in good standing and allowed to vote. Article 3, Section 1 of the APWU Constitution includes the following language highlighting the 2008 amendment:

A member's good standing status shall not be affected by reason of the fact that his/her paycheck for the payroll period in which his/her dues deductions are made is insufficient to permit such dues deductions, by reason of illness, injury **(except for members on the automatic rolls or receiving pay for an approved**

on-the-job-injury from the Department of Labor - Office of Worker's Compensation Programs), military leave, pregnancy leave, lay-off, disciplinary suspension, lockout or strike. (emphasis added).

To apply this new good standing rule, Local 78 members in no pay status who were collecting payments from OWCP would be ineligible to vote unless they had manually paid dues prior to the election.

Generally, under the Act a labor organization may condition the exercise of the right to vote upon the payment of dues as outlined in the Department of Labor regulations. *See* 29 C.F.R. § 452.86. The Act also requires that adequate safeguards shall be provided to insure a fair election, 29 U.S.C. § 481(e), whereby a union's "wide range of discretion regarding the conduct of elections is circumscribed by a general rule of fairness." 29 C.F.R. § 452.110.

The Department's investigation revealed that in practice, the Local could not apply the OWCP exemption fairly. Local 78 does not, nor can it, collect information as to whether a member is being paid through OWCP. The employer is under no obligation to make such a report to the union and, due to privacy law restrictions, OWCP will not release information concerning individuals receiving payments to the union or even to the Department for purposes of this investigation. The only information Local 78 had access to prior to the election was whether a member was in no pay status, not whether that member was also collecting workers' compensation. Enforcement of the new rule with respect to those collecting payments from OWCP requires the member to self-identify and voluntarily pay dues in order to vote.

It is possible that Local 78 violated the APWU Constitution in allowing members in no pay status who failed to self identify as receiving OWCP payments and had not paid dues by cash or check, to participate in the election. However, because neither APWU nor Local 78 had the ability to track the information required for uniform enforcement of the new rule, enforcement would lead to a violation of the LMRDA. Thus, the Local's decision to allow members in no-pay status who may have been receiving OWCP payments to vote was consistent with the requirements of the Act. No violation occurred.

You also alleged that ineligible mail handlers and supervisors voted in the election. The Department's investigation revealed that supervisor members are not eligible to vote under Article 3, Section 4(a) of the APWU Constitution but may remain nonvoting members. The APWU separately codes those members in the dues checkoff report provided to Local 78. The Department's investigation of the dues check-off and voter eligibility records revealed that no supervisor members voted in the election. With

respect to your allegation that mail handlers were improperly allowed to vote, the Department found that mail handlers that are dues paying members of Local 78 are entitled to vote for the local's *at large* officer positions. Regardless, the Department's review of the election records confirmed that no mail handler members voted in the election. No violation of the Act occurred.

Your remaining allegation that ineligible members were allowed to be candidates and serve on the election committee were determined not to be in scope and thus, not investigated by the Department. The nominations for both took place on April 14, 2010. Section 402 of the LMRDA requires that a member must have "exhausted the remedies available under the constitution and bylaws" of their union in order to file a complaint with the Secretary of Labor. 29 U.S.C. § 482. According to the APWU Constitution, under Article 9, Section 9, protests concerning the eligibility of candidates and election committee members must be made within 72 hours of the nominations.

The investigation determined that you did not timely raise these issues with Local 78. Thus, they are not properly within the scope of your complaint to the Department. 29 C.F.R. § 452.136(b-1).

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act. Therefore, there is no basis for bringing an enforcement action. Accordingly, I am closing the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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