

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210



September 30, 2008

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on February 14, 2008. In that complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act or LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by Branch 70, National Association of Letter Carriers (National) on November 8, 2007.

The Department of Labor (Department) conducted an investigation of your complaint. As a result of the investigation the Department has concluded with respect to your specific allegations that no violation of the Act occurred that may have affected the election outcome. Following is an explanation of this conclusion.

You alleged that your slate's campaign materials were to be mailed at the same time as the ballots but that members received your materials much later than they received the ballots. You believe that the post office, which is the employer in this case, intentionally delayed your campaign mailing. The Department's investigation disclosed that a mailing company delivered several bags of mail containing each slate's campaign materials and the election ballots to the bulk mail processing facility at the Carmel Mountain post office on October 19, 2007. The company did not inform the post office that the mail should be processed immediately. In the ordinary course of business, the post office processed your opponent's campaign mailing several hours after it was delivered to the post office on October 19 and your mailing was processed the following day. The investigation did not show, however, that the post office intentionally delayed processing your campaign mailing or that any such delay was an attempt to disadvantage your slate or to influence the election outcome. Further, the investigation disclosed that the post office would have immediately processed each slate's campaign mailing had the mailing company instructed postal officials to do so, but the company did not. The Act was not violated.

You alleged that the incumbents used an official list of union stewards' telephone numbers and a sample ballot that closely resembled the election ballot to campaign, indicating that union funds or facilities were used by the incumbents, in violation of Section 401(g) of the Act. The investigation disclosed that the candidates, including members of your slate, were permitted to campaign on employer property in the parking lots; that the incumbents obtained stewards' telephone numbers during such permissible campaigning; that the incumbents paid a company to create campaign material that resembled the election ballot; and, that no union funds or facilities were used for these purposes. The Act was not violated.

You alleged that members informed you that they witnessed a candidate campaigning at the Point Loma and at the Pacific Beach post offices on union time. During the investigation, the members failed to substantiate that they witnessed any such campaigning and stated that the candidate was at the post offices conducting official union business. The Act was not violated.

You alleged that in 2006, one year prior to the 2007 election, the union permitted members who eventually became candidates on the incumbent slate to write columns in the local's newspaper. The Department's review of the newsletters published from November 2006 until December 2007 disclosed that none of the columns solicited members' votes or showed a preference for a candidate or a slate by criticizing or praising any candidate. Nor did any such publication urge the nomination or the election of a candidate. The Act was not violated.

You alleged that the local failed to update the membership mailing list used to conduct the campaign mailings, in violation of Section 401(c) of the Act. In support of this allegation, you stated during the investigation that approximately 20 pieces of your campaign materials were returned as undeliverable. The investigation disclosed that the local had taken reasonable steps to update its membership mailing list on a periodic basis. In any event, the list used to mail your campaign materials contained the same information that was used to mail the ballots. Of the approximately 2,600 ballots that were mailed to members, only approximately 10 of them were returned undeliverable. The Act was not violated.

Your allegation that the local prohibited all candidates from placing paid campaign advertisements in the local's newspaper would not constitute a violation of the Act, because neither the Act nor the local's constitution and bylaws require that candidates be permitted to use the union newspaper as a forum to express their campaign views to the membership. Further, the prohibition was equally applied to all candidates and was lifted in time for candidates to place advertisements prior to the election. Thus, no candidate gained a political advantage over another candidate. The Act was not violated.

You further alleged that the membership adopted a motion requiring that all campaign advertisements submitted for publication in the local's newspaper be censored by limiting such advertisements to the candidate's name, the position sought, and the candidate's qualification. The investigation disclosed that during a February 2007 membership meeting members passed a rule that limited the information appearing in campaign advertisements but that such rule was never implemented or enforced. The Act was not violated.

You alleged that, in December 2006, the local inflated the price for placing a campaign advertisement in the local's newsletter in connection with the November 2007 election to interfere with your campaign efforts. The investigation disclosed that you did not start actively campaign until May 2007 and that the price the local quoted you in 2006 was only an estimate. Further, the price that was eventually charged all candidates, including you, for campaign advertisements was consistent with the prices the local had charged candidates in previous elections. The Act was not violated.

You alleged that the voted ballots were stored in an unsecured area at the post office, violating the requirement of Section 401(c) of the Act. The investigation disclosed that the voted ballots were placed in postal trays that were stored in a secured cabinet located in the storage area of the post office. The investigation also disclosed that there was limited access to the storage area and the voted ballots remained in the secured cabinet until the day that they were picked up by the election committee for tallying and counting. The Act was not violated.

You alleged that the election committee did not inform your slate of the time and the location of the ballot preparation and ballot mailing and, as a result, you were unable to determine the number of ballots that were printed and mailed. The investigation revealed that neither you nor any other candidate requested to be present during the ballot preparation and the ballot mailing. Further, the investigation showed that the election committee chairperson made information available to you on the day of the vote tally concerning the printing and the mailing of the ballots. The Act was not violated.

You alleged that the local bylaws and the National constitution were violated because nominations were not the first order of business during the meeting at which nominations were conducted. The investigation disclosed that the constitution and bylaws are silent concerning this matter. Further, the National's regulations governing the election procedures provide only that nominations should be a separate order of business at the meeting. The Act, the constitution, the bylaws, and the regulations were not violated.

You alleged that nominations were reopened after they were closed. The investigation disclosed that candidates unable to attend the nominations meeting were required to submit an acceptance letter to the local's secretary treasurer prior to the meeting. The investigation revealed that a candidate for trustee who believed that she would be unable to attend that meeting submitted an acceptance letter to a local officer prior to the nominations meeting, but the officer failed to provide it to the secretary treasurer. To remedy the officer's failure to submit the acceptance letter to the secretary treasurer, nominations were reopened for trustee after the candidate arrived at the meeting so that she could be nominated to that office. This procedure did not violate any National or Branch 70 rule. The Act was not violated.

You alleged that the results of the vote tally that was posted in the December 2007 local newsletter were different from those posted the night of the tally. The Department's recount of votes cast in the election disclosed that any discrepancies that existed in the vote totals did not change the election outcome. Thus, no violation of the Act affecting the election occurred.

You alleged that posting the incorrect vote tallies in the local's December 2007 newspaper constituted a violation of the section 401(g) of the Act, 29 U.S.C. § 481(g). That provision prohibits the use of union funds to promote the candidacy of a person. Any such posting occurred after the November 2007 election was completed and, thus, it could not have possibly promoted or discouraged the candidacy of any person. The Act was not violated.

You alleged that the election committee was subject to a conflict of interest in carrying out their duties because they were appointed by the incumbent president and they campaigned for him prior to or during such appointment. The investigation did not disclose that any National or Branch 70 rule was violated or that members of the election committee engaged in election improprieties while carrying out their duties. Further, the investigation did not show that members of the election committee continued to campaign after the Branch 70 president issued an October 22, 2007 letter requesting that members of the election committee stop campaigning. The Act was not violated.

You alleged that the incumbent officers failed to correctly interpret the nomination rules in an attempt to interfere with the opposition candidates' nomination to office. The investigation disclosed that, during the nominations meeting, the secretary treasurer inadvertently misinterpreted a nomination procedure, but that this mistake was corrected. No candidates were prevented from being nominated based on the misinterpretation. The Act was not violated.

You alleged that the local included ballots in the vote tally that were enclosed in envelopes that did not contain postmarks. The election notice provided that ballots had to be mailed back to the post office box designated for their return in order for such ballots to be valid. The investigation disclosed that election committee included in the vote tally one ballot that was hand delivered by the voter to the post office. In so doing, the local violated the adequate safeguards provision of the Act, which requires that unions have adequate procedures in place to ensure a fair election. 29 U.S.C. § 481(c). However, the smallest vote margin for any race was 318 votes and, thus, this one ballot did not affect the election outcome.

You alleged that union stewards did not post or failed to promptly post the campaign materials of the opposition candidates at worksites. The investigation disclosed that union stewards posted the campaign materials of all candidates, including opposition candidates, at the worksites within a reasonable time after receiving such materials from the candidates. The investigation revealed that rank-and-file members defaced and removed campaign materials that were posted at worksites. However, the investigation did not disclose that this action was requested or sanctioned by any union steward. The Act was not violated.

You alleged that a union steward made negative remarks about you and members of your slate during a January 2007 membership meeting. The investigation disclosed that the steward made comments about you during that meeting concerning your opposition to certain motions that had been presented to the membership for consideration. None of the comments referenced you as a candidate. In addition, although the comments were made at the January 2007 meeting, you did not start actively campaigning until May 2007, and your slate was not formed until sometime thereafter. Further, the comments were made well in advance of the October 2007 nominations meeting and the November 2007 election. The investigation, therefore, disclosed that the comments were unrelated to your candidacy and that they were not made in the context of the upcoming election. The Act was not violated.

Your allegation that the incumbent president retaliated against two members of your slate by failing to inform them of a training session that was scheduled to be held by the National in November 2007 would not constitute a violation of the Act because any such retaliation, if established, did not deprive members of any rights secured under Title IV of the Act. The Act was not violated.

Your allegations concerning the local's election protest and appeal procedures, the inadequacy of the remedy afforded you pursuant to such procedures, and the manner in which the local handled your protest and your appeal are internal union matters and they are not governed by the union election provisions of the Act. The Act was not violated.

You alleged that partisan campaign literature supportive of the incumbent slate encouraged members to contact a national business representative by phone to verify information concerning you and a member of your slate. The investigation showed that no union funds or union equipment were used to prepare, produce or distribute such literature. Further, the materials did not provide any telephone number for the business agent. In any event, three of the four calls made to the business representative's office in connection with campaign literature were made by you and a member of your slate. The other call was made by an anonymous caller. The business representative did not return any of the telephone calls made to his office concerning the literature. The Act was not violated.

You alleged that the Branch 70 bylaws do not provide sufficient time to campaign due to the geographic dispersion of the membership and the number of postal facilities. The investigation disclosed that the Branch 70's bylaws are silent regarding when members may begin to campaign for union office. Further, a member of your slate stated during the investigation that your slate campaigned several times at each of the postal facilities in Branch 70's jurisdiction during the election. The Act was not violated.

Finally, your allegation that the publication of the first local newspaper that contained candidates' campaign advertisements was delayed would not constitute a violation of the Act, because any such delay similarly affected all candidates and, thus, no candidate gained a political advantage over another candidate. In any event, the publication was received by the members before the ballots were mailed to them. The Act was not violated.

For the reasons set forth above, it is concluded that no violation of the Act occurred that may have affected the election outcome. Therefore, I have closed the file on this matter.

Sincerely,

A handwritten signature in black ink that reads "Patricia Fox". The signature is written in a cursive, slightly slanted style.

Patricia Fox
Acting Chief, Division of Enforcement

cc: Mr. William H. Young, National President
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