



August 2, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on March 16, 2010. You alleged that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the National Association of Letter Carriers ("NALC") Branch 53 ("Union") mail ballot election held on December 8, 2009.

The Department of Labor ("Department") conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election.

You alleged that Union funds were used to promote the candidacy of the opposing slate because the union published an advertisement in the Union newsletter which made critical statements regarding your candidacy. Section 401(g) of the Act provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy...shall be contributed or applied to promote the candidacy of any person in an election." The Department verified that the Union had a past practice of accepting all campaign advertisements in its newsletter, including your advertisements. There was no promotion of one candidate over another. Further, submissions by candidates were accepted in the Union newsletter at a per page cost. The candidates paid for the ads themselves. There was no violation of the Act.

You also alleged that the Union failed to include a disclaimer in the newsletter stating that the article submitted by the opposing slate contained false statements. The Department investigated your allegation and found that the article contained the statement "Paid political ad by [REDACTED]" on each page of a three page advertisement. Further, the newsletter contained a general disclaimer that read,

“Opinions expressed by those writing articles are not necessarily the official position of Branch 53.” The indication that the article was a paid political ad and the union’s disclaimer statements clearly indicate that the article was a campaign piece and not a news article. As a general rule, the Act would not require the Union to include a disclaimer or to attempt to regulate the contents of campaign literature. “[U]nions may not censor the statements of candidates in any way, even though the statement may contain derogatory remarks about other candidates.” *See* 29 C.F.R. § 452.70. Thus, there was no violation of the Act.

You also alleged that the Union improperly promoted the opposing slate because the timing of the publication did not allow you to respond to your opponent’s accusations. The timing of the Newsletter was not promotional. All candidates had to work within the same time parameters. Your opponents’ advertisement was published in the November issue of the newsletter, and the next issue was not published until after members had voted. The Department found that there was no indication that you were not also allowed to submit political advertisements at a per page cost to the November newsletter, and the investigation revealed that you had paid for advertisements in the newsletter for campaign purposes in the past. There is also no indication that you could not have responded to your opponent’s statements in campaign materials other than a Union newsletter. Thus, the Department found no violation of the Act.

You alleged that the Union improperly voided eligible members’ ballots for failure to sign the signature line on the outside of the return ballot envelopes. The investigation did find a violation when the union voided ballots of otherwise eligible members for failure to sign the return envelope. The Act requires that any “member in good standing ...shall have the right to vote or otherwise support the candidate or candidates of their choice.” *See* 29 U.S.C. § 401(e). A signature line appeared in the upper left corner under each member’s individual pre-printed return address label. The ballot instructions asked that the voter sign the return envelope and “ensure the reply envelope has your name and correct address in the upper left-hand corner otherwise the ballot will be voided.” The Department found that the Election Committee did not actually use the signatures to verify member eligibility. Instead, the Election Committee stated that they used the return address labels to verify voter eligibility. In a mail ballot election, “a union may require members to sign the return envelope if the signatures may be used in determining eligibility. However, it would be unreasonable for a union to void an otherwise valid ballot...if the union does not use the signatures to determine voter eligibility.” *See* 29 C.F.R. § 452.97. Thus, voiding the ballots without return envelope signatures was a violation of the Act as the Union could otherwise determine eligibility. In total, 55 ballots were improperly voided which exceeded the margin of victory in all but two races.

The LMRDA requires that the Department prove not only the existence of a violation but also that the violation may have affected the outcome of the election before taking legal action to overturn that election. *See* 29 U.S.C. § 482. Based on the Department's investigative findings, the Union agreed to open and tally the improperly voided ballots. The new tally, including the 55 unopened ballots, ultimately resulted in the same election outcome. The violation had no effect on the outcome of the election and would not provide a basis for litigation by the Secretary. You also alleged that the signature line requirement discouraged members from voting because an exposed signature could be used for identity theft purposes. There was no evidence that any member was discouraged from voting due to identity theft concerns.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act which may have affected the outcome of the election. Accordingly, I am closing the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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