



August 2, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on April 30, 2010. In the complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the National Postal Mail Handlers Union, Local 305 (union) on January 9, 2010.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that there was no violation of the Act. Following is an explanation of these findings.

You alleged that a letter dated August 17, 2009, which the union's treasurer mailed to the membership, constituted impermissible campaigning. The investigation did not substantiate this allegation. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the application or contribution of union funds to promote the candidacy of any person in a union officer election, including the use of a union publication to criticize or praise any candidate. *See* 29 C.F.R. § 452.75. To ascertain whether a union-financed letter constitutes impermissible campaigning in violation of the section 401(g) of the Act, the timing, tone, and content of such publication is evaluated.

The August 17, 2009 letter was sent five months before the ballots were counted and tallied on January 9, 2010. There is no evidence that members had announced their candidacies or that candidates or their supporters were actively campaigning in August 2009. Thus, the timing of the August 2009 letter does not support your allegation that the letter constituted improper campaigning. Regarding the tone of the letter, the Department's review of the letter revealed that the tone did not endorse the reelection of the incumbent officers, or discourage the election of the opposition candidates. With regard to the content of the letter, the letter explained that the union's financial crisis was "due to the prior

administration and the global financial crisis.” However, none of the opposition candidates was a member of the prior administration. The letter further mentions that, as a result of pay cuts taken by union officials and other budgetary restraints, the union was fiscally sound. However, the pay cuts and budgetary restraints were legitimate, factual matters of interest to the union membership. In addition, the letter did not include any reference to opposition candidates. Nor did it include statements that showed a preference by the union or its officers for a particular candidate by criticizing or praising a candidate. Further, the letter did not solicit members’ votes. Thus, the evidence does not provide an adequate basis for finding that the tone, timing, and content of the letter effectively encouraged or endorsed the candidacy of the incumbent slate or that it criticized the candidacy of the incumbents’ opponents. The Act was not violated.

You also alleged that the return address on the incumbent slate’s campaign literature was the union’s office manager’s home address and that the use of such address suggests that union resources were used in connection with the campaign literature. The investigation did not substantiate your allegation. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the application or contribution of union funds to promote the candidacy of any person in a union officer election. However, unless restricted by constitutional provisions to the contrary, union employees retain their rights as members to participate in the affairs of the union, including campaign activities on behalf of a particular slate or candidate. *See* 29 C.F.R. § 452.76. The investigation disclosed that the office manager is an employee of the union as well as a member of the union. The union’s constitution and bylaws do not restrict the right of union employees/members to engage in campaign activities on behalf of a particular slate or candidate. Further, the investigation corroborated that any cost associated with the campaign literature was paid with the personal funds of the slate members or their supporters. No union personnel, facilities, office equipment or other union resources were used to assist the incumbents in campaigning. The Act was not violated.

Finally, you alleged that a statement printed on the incumbent’s campaign literature encouraged members who had already voted their ballots to request duplicate ballots so that they could cast votes supportive of the incumbent slate. Section 401(e) of the Act, 29 U.S.C. § 481(e), reads in part, “each member in good standing shall be entitled to one vote.” Your allegation, even if true, would not constitute a violation of the Act because you did not allege and the investigation did not disclose that the union counted and tallied more than one ballot for a single voter. The Act was not violated.

For the reasons set forth above, it is concluded that there was no violation of the Act, and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. John Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, Suite 500
Washington, D.C. 20036

Mr. Kenneth Hayes, President
National Postal Mail Handlers Union, Local 305
4907 Fitzhugh Avenue
Richmond, Virginia 23230

Katherine Bissell, Associate Solicitor for Civil Rights and Labor-Management



August 2, 2010

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on May 5, 2010. In the complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the National Postal Mail Handlers Union, Local 305 (union) on January 9, 2010.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that there was no violation of the Act. Following is an explanation of these findings.

You alleged that the handwriting on the outer envelopes containing the voted ballots returned by voters located in the Norfolk, Virginia area was similar. This allegation was not substantiated by the investigation. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to have adequate safeguards in place to ensure a fair election. The Department's review of the outer ballot envelopes that contained ballots voted by members located in the Norfolk, Virginia area disclosed that there were no discernible handwriting patterns or indications that the majority were written by one individual. In addition, none of the envelopes contained indentations indicating that a single person wrote voters' return addresses and identification numbers on multiple envelopes in stacks or on top of one another. Further, when the Department investigator showed you the outer ballot envelopes, you were not able to identify any with a similar handwriting. The Act was not violated.

You also alleged that, during the election, you were an election judge and that a majority of the ballots were organized to coincide with the list used to verify the ballots and that a large number of the ballots contained votes only for the president and the treasurer races. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to have

adequate safeguards in place to ensure a fair election. The Department's review of the election records did not disclose any ballot irregularities or other election impropriety. Further, the Department's review of the ballots showed that only three ballots contained a vote only for the president and the treasurer races. The Act was not violated.

Finally, you alleged that the union failed to account for the number of ballots that were printed, mailed, and unused. The Department's review of the receipt provided by the company that printed the ballots reflected that 4,000 ballots were printed for the election. Further review of the election records showed that 3,592 ballots were mailed in the original ballot mailing, 64 duplicate ballots were mailed, and 342 unused ballots were among the election records ($3,592 + 64 + 342 = 3,998$). Thus, with the exception of two ballots, the number of ballots reflected on the receipt as being printed in the election (4,000) reconciled with the number of ballots that were mailed and unused during the election. The Department's review of the ballots did not disclose any evidence of ballot tampering or other election irregularities. The Act was not violated.

For the reasons set forth above, it is concluded that there was no violation of the Act, and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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