



January 21, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on July 30, 2009. In the complaint, you alleged that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, was violated in connection with the election of union officers conducted on April 18, 2009, by the National Postal Professional Nurses, American Postal Workers Union (APWU).

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 specific allegations that no violation of the Act occurred or no violation of the Act occurred that may have affected the election outcome.

You alleged that the ballots were not kept in the postal box secured by the union for the return of the voted ballots but were kept underneath a counter of the window where the postal clerk was located. Section 401(c) of the Act, 29 U.S.C. § 481(c), provides that a union must provide adequate safeguards to insure a fair election. The investigation disclosed that upon arriving at the post office to retrieve the voted ballots for tallying, one of the election committee members approached the window where a postal clerk was located. The election committee member asked the clerk to bring the contents of the post office box to the counter because none of the election committee members had a key to the post office box. The investigation also disclosed that the election committee members and observers witnessed the clerk gather the ballots from the post office box, carry the ballots to the counter, and then place them in a container. The investigation did not disclose any evidence that would suggest that the ballots were not in the post office box or otherwise not properly secured at the post office. The investigation, which included a review of the ballots, revealed no evidence of ballot tampering or other election impropriety. The Act was not violated.

You alleged that the documents the election committee chairperson used to determine voter eligibility at the ballot tally were not current. Section 401(c) of the Act, 29 U.S.C. §

481(c), requires that a union provide adequate safeguards to insure a fair election. *See* 29 C.F.R. § 452.96. The investigation disclosed that adequate safeguards were lacking during the challenged election, in violation of section 401(c) of the Act. In particular, the investigation showed that the election committee conducted the ballot tally on April 18, 2009. The information that the election chairperson relied on at the tally for determining membership and voter eligibility was an October 14, 2008 dues check off list, a typed list from the APWU, and four new member applications. During the investigation, based on the April 18, 2009 ballot tally date, DOL obtained an early April 2009 dues check off list. A comparison of the lists revealed the names of eleven individuals that were on the April 2009 list but that were not included on the lists used in the election. The investigation showed that six of these individuals did not vote in the election. The investigation also disclosed the name of one individual whose name was on the October 2008 list but not on the April 2009 list who voted in the election. The vote margins for the challenged election ranged from 25 votes to 36 votes. Thus, any violation that may have occurred with respect to the six individuals who did not vote and the one individual who voted would not have affected the outcome of the election.

You alleged that the election committee chairperson gave some members permission to submit their voted ballots in outer-ballot envelopes that did not contain the last four digits of the members' social security numbers but that other members were not afforded that opportunity. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation disclosed that the election was conducted by mail ballot and that the union used a double envelope system for the return of the voted ballots with the necessary voter identification appearing only on the outer-ballot envelope. The investigation also disclosed that the voting instructions required members to place their ballots in the outer-ballot envelopes that were included in the ballot packages and to write the last four digits of their social security number on such envelopes. The investigation revealed that several members were concerned about identity theft and, for that reason, they contacted the chairperson and stated that they did not want to write the last four digits of their social security numbers on the outer-ballot envelopes. The investigation revealed that the chairperson informed the members that if the required information was not on the outer-ballot envelopes the members risked the possibility that their ballots would not be counted. To avoid that risk, the voters wrote the last four digits of their social security numbers on the outer-ballot envelopes as required by the voting instructions. The voters then sealed the outer-ballot envelopes bearing the last four digits of their social security numbers in plain envelopes so that the identifying information on the outer-ballot envelopes would not be visible. The Act was not violated.

Finally, you alleged that the election committee chairperson may have campaigned during telephone conversations the chairperson had with nurses residing in the state of New York. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits campaigning by

union officials when such officials are being paid by the union. The investigation disclosed that no such campaigning occurred. In particular, members who participated in the conversations with the election committee chairperson stated during the investigation that the chairperson did not campaign during such discussions. The Act was not violated.

The remaining allegations you raised are not addressed in this Statement of Reasons because either they were not properly exhausted in accordance with the remedies available under the union's constitution and bylaws or such allegations, even if true, would not constitute violations of the LMRDA.

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

Sincerely,

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Chief, Division of Enforcement
Office of Labor-Management Standards

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