



January 4, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your August 18, 2009, complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 – 484, occurred in connection with the election of officers of Local 99 (Local 99 or Local), Service Employees International Union (SEIU), completed on April 23, 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 specific allegations, that no violation occurred that may have affected the outcome of the election.

You alleged that Local 99 failed to follow its constitution and bylaws because the elections committee only had three participating members. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that a union conduct its election of union officers in accordance with the requirements of the union's constitution and bylaws. *See also* 29 C.F.R. § 452.2. Further, section 402(c) of the Act, 29 U.S.C. § 482(c), provides that an election may only be overturned where the violation may have affected the outcome of the election. Article 15, Section 3(B) of Local 99's constitution provides that, prior to February 1 of an election year, the local executive board shall appoint an elections committee consisting of a chairperson and at least four additional members, including at least one member from each industry division. The Local's constitution and bylaws do not address the appropriate procedure to take in the event that elections committee appointees decline or do not respond to their appointments.

The Department's investigation disclosed that the Local appointed five elections committee members, including one from each division, at the local executive board meeting on January 10, 2009. The appointee from the Large Public K-12 Industry Division, however, declined the appointment on January 30, 2009, and the appointee from the Early Education Industry Division did not respond to the appointment or participate on the committee. Acting upon the advice of the Local's executive director, the three-person elections committee decided to proceed with the election rather than requesting the executive board appoint additional members at its next meeting on February 21, which

would not, in any event, comply with the local constitution, which states that appointments shall be made prior to February 1 of an election year. Even if the Local violated its bylaws by conducting the election with a three-member elections committee, this would not have had an effect on the outcome of the election. There is no evidence of any misconduct by the elections committee. Further, the Department recounted four industry division races and found that there was no change in the result of any recounted race. Accordingly, there was no violation of the LMRDA that may have affected the outcome of the election.

You further alleged that the Local failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because members in the Large Public K-12 Industry Division should have been allowed to vote for four candidates in their division's delegate race, but were only allowed to vote for two candidates. Pursuant to Art. 6, Sec. 1(B) of the Local's constitution, the Large Public K-12 Industry Division is entitled to four delegate positions, one for each bargaining unit in the division. Art. 12, Sec. 3 of the local constitution also provides that members in each industry division have the right to vote for the number of candidates that corresponds to the overall number of delegate seats reserved for the division on the executive board.

On the 2009 ballot, members were permitted to vote for each bargaining unit position in their industry division. The ballot instructed members to vote for a maximum of one candidate per bargaining unit position. Of the four delegate positions for the Large Public K-12 Industry Division, one bargaining unit position had no nominees and another unit's position was unopposed. Consequently, because there were only two contested delegate seats for the Large Public K-12 Division, the ballot listed only these two positions, and members were permitted two votes. The union's interpretation of its constitution to permit members to cast the number of votes of contested positions is not clearly unreasonable. 29 C.F.R. § 452.3. While the voting method for these positions used in 2009 differed from the method used in the union's last election in 2006, the union provided a clear rationale for its change in position. Accordingly, there was no violation of the LMRDA.

You also alleged that ballots were removed from and later returned to the ballot tally area without the supervision of the elections committee. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that unions provide adequate safeguards to ensure a fair election. *See* 29 C.F.R. § 452.110(a). The Department's investigation revealed that Rivera, the representative of the third party administrator that conducted the election, removed five sealed return ballot envelopes from the conference room in which tallying was occurring to photocopy the outside envelopes, in order to give Local 99 the updated mailing addresses that members had written on the envelopes. The elections committee chairperson accompanied the representative to the photocopying machine. The five envelopes were still sealed when Rivera returned them to the tallying area, and the ballots inside these envelopes were counted in the tally. There is no indication that there was any misconduct involving the ballots. There was no violation of the statute.

You alleged that employees of the election administrator used masking tape on several ballots, which violated the adequate safeguards provision of Section 401(c). 29 U.S.C. § 481(c). The

Department's investigation revealed that, because of difficulties with an envelope opening machine used during the tally, many ballots were entirely or partially cut and the employees taped the ballots together and counted the ballots. There was no basis to void the cut ballots and no indication that taping the ballots created any unfairness. To the contrary, preserving the ballots in this fashion permitted the counting of members' ballots that, through no fault of the members, had been torn during the tally. There was no violation of the LMRDA.

You further alleged that the persons counting the ballots appeared to have trouble communicating with each other while they tallied the ballots, possibly causing tally errors in violation of Section 401(c) of the Act. 29 U.S.C. § 481(c). You stated that the tally workers seemed to be senior citizens and may have had hearing difficulties. The election administrator indicated that the workers, while elderly, had been employed by the administrator for many years and were experienced ballot counters. Moreover, the Department recounted four industry division races. While there were slight variations between the administrator's tally and the Department's recount, there was no change in the outcome of any recounted race. The discrepancies between the tally and the recount involved which ballots should have been voided rather than counting errors. The Department's investigation did not disclose any evidence to substantiate your allegation. Accordingly, there is no violation.

You also alleged that ballots were left in a locked conference room during a lunch break without the supervision of the elections committee, exposing the ballots to tampering in violation of Section 401(c) of the Act. 29 U.S.C. § 481(c). The Department's investigation revealed that the ballots had not yet been removed from their secret ballot envelopes when the committee took its lunch break. The conference room in which the ballots were kept had two doors, one of which was locked at all times. Rivera locked the other door at the start of the lunch break, and she and her assistant were the only people with keys to the conference room. The elections committee also ate their lunches in an area where they could see one of the conference room doors to ensure no one tried to enter. Rivera unlocked the door once during the lunch break to accompany an employee inside to retrieve her purse and then relocked the door. The ballots were properly secured and there was no violation of the LMRDA.

You alleged that Local 99 failed to follow its constitution and bylaws in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because Rivera consulted with the Local's administrative secretary, instead of the elections committee. Art. 12, Sec. 4 of the Local constitution states that when the services of a neutral third party administrator are engaged, the third party shall consult with and defer to the elections committee regarding matters within its purview. Rivera admitted that she asked the secretary questions until the chairperson of the elections committee told her to stop doing so, at which point she directed all further questions to the committee. However, the local bylaws do not expressly prohibit the third party administrator from posing questions to Local employees. Accordingly, there was no violation of the LMRDA.

You also alleged that a member of the elections committee fell asleep during the tally, in violation of the safeguards provision of Section 401(c). 29 U.S.C. § 481(c). One committee member admitted to falling asleep during the tally because he works the night shift and sleeps during the day. There were, however, two other elections committee members present and

alert to oversee the tallying of the ballots. Further, the Department's recount revealed no problems with the tally that may have affected the outcome of the election. There is no violation of the statute.

Finally, your complaint alleged issues that are not covered by Title IV of the Act and therefore were not investigated. These included your allegations that the elections committee mishandled your election protests and your claim that you were denied due process when the elections committee did not afford you an opportunity to orally present your case to them.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

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