



July 8, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on March 2, 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 American Postal Workers Union, Local 270 (union) on November 28, 2009.

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 that may have affected the outcome of the election. Following is an explanation of these findings.

You alleged several instances where the union failed to have adequate safeguards in place to ensure a fair election. Section 401(c) of the Act, 29 U.S.C. § 481(c), states, “[a]dequate safeguards to insure a fair election shall be provided. . . .” Pursuant to the adequate safeguards provision, union elections must be conducted in a manner that does not violate the fundamental precepts of fairness that are essential to the selection of leaders through a democratic electoral process. 29 C.F.R. § 452.110.

First, you alleged that the incumbent president of the union announced at the nominations meeting that a post office box located at the Auburn, Kansas postal facility would be used for the return and storage of the voted ballots, but the Holton, Kansas postal facility was used for that purpose. The investigation disclosed that the Holton, Kansas postal facility was used for the return and storage of the voted ballots because members of the union did not have access to the restricted area of that facility where the returned voted ballots were secured. The Act was not violated.

Next, you alleged that the postal clerk did not require an election committee official to show identification when that official retrieved the voted ballots from the post office for counting and tallying. The investigation showed that when the election committee picked up the ballots for tallying and counting, the postal clerk handed the voted ballots

to an election official without requiring the official to show identification. The investigation revealed, however, that the postal clerk was able to identify the election official because the clerk knew the official on a first name basis. The Act was not violated.

You also alleged that the incumbent president had access to all of the post office facilities in the area, including the Holton, Kansas postal facility. The investigation disclosed that the incumbent president had access only to those postal facilities within union's jurisdiction. The investigation also disclosed that the voted ballots were mailed back to and secured in a post office box that is outside the union's jurisdiction. Thus, the incumbent president did not have unfettered access to this facility. The Act was not violated.

In addition, you alleged that the vote tally for the office of president was incorrect because you received only 23 votes and the Maintenance Director informed you that at least twenty members in a designated work area voted for you. During the investigation, the Maintenance Director denied that he told you that at least 20 members voted for you. Further, the Department's recount of the ballots confirmed the union's tally results. You received 23 votes and your opponent received 93 votes. The investigation did not disclose any evidence of election irregularities. The Act was not violated.

You alleged that after the ballots were picked up from the post office for counting and tallying, they were left unattended in the trunk of the election chairman's car for twenty minutes. The investigation disclosed that, after the election committee picked up the ballots from the post office, the election chairman locked the ballots in the trunk of his car and transported them to the Topeka Processing and Distribution Facility. While the investigation confirmed that this was the case, there is no evidence that anyone gained access to the locked trunk while the election committee was waiting for you to arrive at the tally site. The Department's review of the election records and the ballots did not disclose any sign of ballot tampering or other election impropriety. The Act was not violated.

You alleged that an election official attempted to tamper with the tape that the election committee members had secured around the tray containing the voted ballots. The investigation disclosed that before leaving the lobby of the post office, the election committee members wrapped blue masking tape around the tray containing the voted ballots several times to secure the ballots in the tray. After the tape was wrapped around the tray, you wrote your initials across the tape, as did the election officials who were present at the ballot pick up. The investigation disclosed that when the tray arrived at the tally room, the tape had not been removed from the tray and the initials that had been written across the tape remained intact. There is no evidence that anyone

attempted to tamper with or actually tampered with the tape. Further, the Department's review of the election records and the ballots revealed no evidence of ballot irregularities. The Act was not violated.

You further alleged that observers were seated ten to twelve feet from the table where the ballots were being counted and tallied. The investigation substantiated this allegation. Section 401(c) of the Act, 29 U.S.C. § 481(c), states, "[a]dequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots." In this regard, observers should not be restricted to locations in the tally room that would prevent them from determining the accuracy of the ballot and vote tabulations. The investigation disclosed, however, the union required observers to sit ten to twelve feet from the table where the ballots were being counted and tallied, making it impossible for observers to determine the accuracy of the ballot and vote tabulations, in violation of this standard. However, the Department's recount of the ballot and the vote tallies was consistent with the union's ballot count and tally. The Department's review of the voted ballots and other election records did not disclose any evidence of ballot tampering or other election irregularities. Thus, no violation of the Act occurred that may have affected that outcome of the election.

As a final allegation that adequate safeguards were lacking in the election, you alleged that the election committee was unable to tell you how many ballots were printed, mailed, and unused. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to have adequate safeguards in place to insure a fair election. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that the ballots and all other records pertaining to the election be preserve for one year. *See* 29 C.F.R. § 452.106. During the investigation, the union provided documents that had been prepared by the election committee indicating that 168 ballots were mailed. The documentation also indicated that 6 unused ballots containing the primary races and 6 unused ballots for a clerk craft director office remained on hand after the ballot mailing. However, these ballots were not among the election records. Nor is there any record of the number of ballots printed. Thus, the union violated the adequate safeguards provision of section 401(c) in failing to account for the number of ballots that were printed and the number of unused ballots. The union also violated the record preservation provision of section 401(e) of the Act in failing to preserve the election records accounting for these ballots.

Although the union failed to account for and preserve all the ballots and other election materials, there is no indication that these violations may have affected the election outcome. Specifically, the investigation showed that 125 ballots were mailed back in envelopes that contained information identifying the voter. In addition, the voter eligibility list, which was among the election records, contained the names of 125 members who were checked off the list as having voted. Thus, the number of ballots

mailed back by identifiable voters matched the number of names that were checked of the voter eligibility list. In addition, the Department's review of the ballots showed that none of the ballots contained suspicious markings, indentations indicating that they were marked in stacks or on top of one another, or a pattern of erasures for one candidate and corresponding votes for the candidate's opponent. Also, there were no discernible handwriting patterns, evidence of identically marked ballots, or subtle differences in the paper, printing or color of the ballots indicating that ballots may have been duplicated or photocopied for an unlawful purpose. Further, the Department's review of the ballot envelopes did not disclose any indication of election impropriety. Under these circumstances, the evidence does not provide an adequate basis for finding probable cause to believe that a violation of the Act occurred that may have affected that outcome of the election.

In addition, you alleged that the union permitted ineligible members to vote when it counted the votes cast by four retirees. Section 401(e) of the Act, 29 U.S.C. § 481(e) requires a union to conduct its election of officers in accordance the requirements of its constitution and bylaws. The Act does not prescribe voting privileges of retirees. Thus, the right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the union. *See* 29 C.F.R. § 452.93. In this regard, Article III, section 4(c) of the union's constitution and bylaws provides, "members of the union who retire from employment in the APWU bargaining unit may maintain full membership with all rights of such membership by continuing to pay full per capita taxes to the APWU plus whatever local dues may be required by their local union." The investigation disclosed that the ballots were mailed out on October 28, 2009, and that, prior to the ballot mailing; approximately 10 members accepted a buy out offered by the Postal Service, which resulted in their retirement effective October 31, 2009. At the time of the October 28 ballot mailing, all of these individuals were full dues paying members who were current in their dues payments. Therefore, the union mailed these members ballots. The investigation showed that three of these members voted in the election and their ballots were included in the November 28, 2009 vote tally. The investigation further showed that at the time of vote tally, these individuals were full dues paying members and were current in their dues payments and per capita taxes. Thus, they were eligible to vote. Neither the union's constitution and bylaws nor the Act was violated.

You alleged that the incumbent secretary prepared the address labels that were used to mail out the ballot packages but that she should not have been involved in this process. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct its election of officers in accordance with the constitution and bylaws of such union. *See* 29 C.F.R. § 452. The union's constitution and bylaws do not prohibit the incumbent secretary from participating in the preparation of the address labels used to mail the ballots. Nor is this activity prohibited by the Act. Further, the investigation disclosed that the secretary is responsible for maintaining the membership list and, as part of the

secretary's official duties, she was responsible for preparing the address labels used in the ballot mailing. Neither the union's constitution and bylaws nor the Act was violated.

You alleged that the names of those candidates who were aligned with your opponent appeared first on the ballot. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct its election of officers in accordance with its constitution and bylaws. The form of the ballot is not prescribed by the Act. Thus, a determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and other provisions of the Act. *See* 29 C.F.R. § 452.112. Here, the form of the ballot is not prescribed by the union's constitution and bylaws. The investigation showed that candidates' names were listed on the ballot in alphabetical order, although the hyphenated name of one candidate may have been incorrectly positioned on the ballot. The Act was not violated.

You alleged that twelve ballots were not counted because either the address labels identifying the voters that the union had affixed to the return ballot envelopes were missing or the voted ballots were not returned in secret ballot envelopes. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that "every member in good standing shall be eligible to vote for or otherwise support the candidates of his [or her] choice." The investigation disclosed that ballots that were mailed back in envelopes that contained no address labels or other identifying information were voided, as the union was not able to determine the identity of the voters or establish the validity of the voted ballots. The Act was not violated. In addition, the union voided eight voted ballots because they were not returned in secret ballot envelopes. The investigation disclosed, however, that the voting instructions that were included in the ballot packages did not inform members that ballots would not be counted if they were not returned in the secret ballot envelopes. Nor does the union's constitution and bylaws or other rule of equal authority prohibit such ballots from being counted and tallied. Thus, the union denied these eight members a right to vote by voiding their ballots in violation of the Act. However, the Department's tally of the votes cast by these eight voters disclosed that the outcome of the election was unchanged. Thus, no violation of the Act occurred that may have affected the outcome of the election.

You alleged that the union failed to post the vote totals. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that the votes cast by members of each local labor organization must be counted, and the results published, separately. The publishing requirement is to assure that the results of the voting are made available to and known by all interested members. The presentation of the election report at the regular membership meeting and entry of the report in the minutes would normally accomplish this purpose. *See* 29 C.F.R. 542.108 (Publication of Results). The investigation disclosed that the election

minutes contained the name of each candidate and the total number of votes such candidate received. During the December 2009 regular membership meeting, the election chairman published the vote results when he read the election minutes out loud, and announced the name of each candidate and the total number of votes such candidate received, as reflected in election minutes. The Act was not violated.

Finally, you have made several additional allegations which, even if true, are not matters that are governed by the Act and, thus, would not constitute violations of the statute. The Department does not have jurisdiction over these matters and they are dismissed.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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