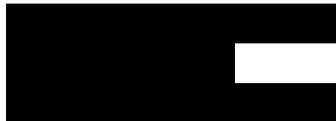




October 13, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on July 22, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for Branch 34 of the National Association of Letter Carriers, AFL-CIO ("NALC"), completed on March 9, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the Act that affected the outcome of the election.

You allege that the Branch used its November-December 2009 newsletter to promote the candidacy of its incumbent officers. Specifically, you allege that the Branch wrongfully published 8 photos of Branch officers with captions briefly describing their work in order to promote their candidacies. Section 401(c) of the Act requires unions to refrain from discrimination in favor of or against any candidate and section 401(g) of the Act prohibits the use of union resources for campaigning. The Act's interpretative regulations specifically prohibit unions from attacking or promoting candidates in a union-financed newsletter. 29 C.F.R. § 452.75. In determining whether a union-financed publication has been used to support or attack a candidate in violation of section 401(g), it is necessary to evaluate whether the overall tone, content and timing of the publication effectively encourages and endorses the election of a candidate.

The Department's investigation determined that the newsletter was mailed to members on December 28, 2009, two weeks prior to the January 12, 2010, nominations and seven weeks prior to the February 16, 2010, ballot mailing. The investigation confirmed that

the Branch published 8 photos of union officers with captions describing the work they were doing. However, neither the photo captions nor other content in the newsletter referenced the nominations, election, or potential candidacy of the officers depicted in the photos or any one else. In this case, the overall tone, content and timing of newsletter does not indicate an attack on one candidate or support of another. There was no violation.

You also allege that the Branch violated Section 17.5 of the NALC Regulations Governing Branch Election Procedures, which requires the election committee to count and record in the voting register the number of used and unused ballots and number of persons who voted, and that the Branch improperly conducted the ballot tally. Section 401(e) of Act requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. Further, Section 401(c) of the Act requires that unions have adequate safeguards to insure a fair election. The Department's investigation confirmed that the Branch failed to count and record ballots and voters as required by the NALC Regulations. This failure constitutes a violation of the Act.

However, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, there is no such evidence. As part of its investigation, the Department reviewed the election records and counted the ballot envelopes and unused ballots. The Department found that the Branch had improperly included 277 ballots from return ballot envelopes containing no voter identification ("unidentifiable ballots") in its tally. The Branch, however, counted these unidentifiable ballots separately and maintained them separately following the election. Thus, the Department was able to correct the total votes for the two closest races, for president and trustee, to exclude these ballots. This review determined that the outcome of these two races would not have changed had the Branch properly excluded these ballots.

The investigation also found that the Branch improperly included in its tally 27 ballots from return ballots envelopes with illegible voter identification ("illegible ballots"), 3 ballots from ineligible members, and 2 ballots from two members who voted twice. The Branch counted and maintained these ballots with the eligible ballots. Therefore, the Department was not able to exclude them from its recount. The Department also found 2,020 ballot envelopes but only 2,012 ballots. This discrepancy raises the possibility that the Branch lost 8 ballots, although the Department found no evidence of this. The maximum effect of these violations is 40 votes (27+3+2+8). This number is not sufficient to have affected the outcome of the election due to the vote margins. Therefore, the violations concerning counting ballots and recording the number of ballots and voters did not affect the outcome of the election.

You also allege that the Branch violated Section 14.3 of the NALC Regulations when it failed to check the name on the return ballot envelopes against a list of eligible voters.

Section 401(e) of the Act provides that every member in good standing is entitled to one vote. As described above, the Department's investigation found that the Branch improperly included 309 (277+32) ballots in its tally. In addition, the election committee did not check off the names of all identifiable voters. These failures constitute a violation of the Act. However, for the reasons set forth above, the Department's recount found that these violations did not affect the outcome of the election.

You also allege that the Branch violated Section 14.3 of the NALC Regulations when it failed to include in the voter instructions a warning that ballots without a name and address in the upper left corner of the ballot return envelope would be voided. The Department's investigation confirmed this allegation. However, as stated above, the inclusion of the 277 unidentifiable ballots in the tally did not affect the outcome of the election.

You also allege that the Branch violated Section 14.5 of the NALC Regulations when it failed to count the ballots when it received them at the post office. Section 14.5 states that the tally should be conducted immediately by the election committee. Section 401(e) of the Act requires that the votes cast be counted. Neither the NALC Regulations nor the Act requires ballot counting at the post office. The investigation revealed that the Branch picked up the ballots from the post office and took them directly to the tallying site for counting. There was no violation of the NALC Regulations or the Act.

You also allege that the Branch improperly counted four ballots that were picked up from the post office after the initial ballot pick-up and did not verify them against the voter eligibility list. Article VII, Section 6 of the Branch's Constitution and Bylaws states that the election committee shall collect all returned ballot envelopes from the designated receiving point no later than 9:00 a.m. and that no return ballots will be picked up after the cut off time. Section 401(e) of the Act provides that each member in good standing is entitled to one vote. In addition, Section 401(c) requires that unions have adequate safeguards to insure a fair election. 29 U.S.C. § 481(c).

The investigation found that the four ballots had been delivered to Branch's post office box before 9:00 a.m. on March 9, 2010, but were not placed in the registry cage with the other ballots because three ballots were not in the business reply envelopes provided with the ballot mailing and one had unnecessarily affixed postage to it. These non-conformities caused them to be placed in the Branch's post office box rather than the registry cage. The Branch's decision to pick-up and include these ballots despite the language of Section 6 was in accordance with the democratic purposes of the Act and a proper step to safeguard the fairness of the election. Therefore, to the extent you are complaining about the unscheduled pick-up of ballots from the post office, there was no violation of the Act. Further, to the extent you are complaining about the possible improper inclusion of unidentifiable, illegible or ineligible votes in the tally, the four ballots are either properly cast and counted or among the invalid ballot groups

discussed above, whose inclusion did not affect the outcome of the election. There was no violation of the Act that may have affected the outcome of the election.

You also allege that the Branch violated its Bylaws by failing to seal the ballots and put them in a safety deposit vault after the tally. Article VII, Section 8 of the Bylaws requires the election chairman to tie up the ballots cast after the vote, seal them with the Branch seal, and at the earliest possible moment place them in a safety deposit vault where they will remain until called for by those duly authorized to receive them. Section 401(e) of the Act requires unions to conduct elections in accordance with their constitution and bylaws and to preserve ballots and all other elections records for one year. The investigation found that the election chair did not tie up, seal or deposit the ballots but kept them in his house until the Department's review. The Branch's failure to tie-up, seal and deposit the ballots constitutes a violation of the Act. However, as described above, the Department was able to review the election records and recount the ballots and ballot envelopes and thereby verify the election results. Therefore, this violation did not affect the outcome of the election.

You also allege that the Branch violated Section 10.1 of the NALC Regulations by printing too many ballots. Section 10.1 provides that the election committee may prepare up to 5% more ballots than the number of eligible voters. The investigation found that the Branch had 5,000 ballots printed. It mailed 4,135 ballots to members. The Branch interprets the use of the word "may" in Section 10.1 to create one printing option rather than place a ceiling on the number of ballots it could have printed. The Department accepts "the interpretation consistently placed on a union's constitution by the responsible union official or governing body ... unless the interpretation is clearly unreasonable." See 29 C.F.R. 452.3. In this case, the Branch's interpretation of Section 10.1 is not clearly unreasonable and the Branch's printing 5,000 ballots did not violate the Act. Further, even if your interpretation of Section 10.1 is correct and the Branch is limited to only printing 5% more ballots than eligible voters, the printing of additional ballots had no effect on the outcome of the election.

Finally, you allege that the Branch violated Article VII, Section 6(2) of its Bylaws by failing to notify candidates of the time of the ballot mailing. Article VII, Section 6(2) states that all candidates shall be notified by certified mail of time and place of the mailing of ballots. The investigation found that the Branch notified candidates of the date and place of the ballot mailing in a February 8 letter but did not include a time for the mailing. The failure to inform candidates of the time of the mailing as required by the Bylaws constitutes a violation of the Act. The violation, however, did not affect the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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