



October 24, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on May 19, 2011, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the US Airline Pilots Association (USAPA), on February 18, 2011.

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 allegations, that there was no violation of the LMRDA.

You alleged that [REDACTED] used his title, "PHL Chairman Elect," in two campaign emails sent to members in violation of the Union Operating Manual. The Department of Labor investigation disclosed that the Union Operating Manual is incorporated by reference into the Constitution and Bylaws of the USAPA such that the provisions of the Operating Manual are considered provisions of the union constitution. Section 401(e) of the LMRDA provides that Title IV elections must be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of Title IV. The relevant provision of the Operating Manual/constitution provides that, "[n]o current USAPA Officer, Representative, committee member and/or staff person may use their USAPA titles in, or for, any campaign material(s)."

The investigation disclosed that [REDACTED] was an uncontested candidate for PHL Chairman in the instant election. The union allowed candidates, including [REDACTED] to send campaign literature by email blasts using a third party printer, Allied Union Services. [REDACTED] sent two emails using the service. The first email, sent on January 28, 2011, did not contain any endorsement or campaign information. The second email, sent on February 15, 2011, was an endorsement for vice chairman candidates [REDACTED] and [REDACTED]. In both email blasts, [REDACTED] used the title of "PHL Chairman

Elect.” The Union determined that as [REDACTED] was not a current officer, he was not prohibited from using the title “PHL Chairman Elect.”

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. The union’s interpretation that the Union Operating Manual only prohibits current officers from using their titles in campaign literature and that [REDACTED] was not a current officer is not clearly unreasonable. The union’s interpretation that the provision applies to current officers comports with the plain language of the provision as the reference is to current officers. Additionally, although [REDACTED] ran unopposed, he had not assumed office and could reasonably be viewed as not being a current officer. There was no violation.

You alleged that Vice President Randy Mowrey used his union cell phone to call [REDACTED] to campaign for other candidates. Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. “Officers and employees [of the union] may not campaign on time that is paid for by the union, nor use union funds, facilities or equipment . . . to assist them in such campaigning. Campaigning incidental to regular union business would not be a violation.” 29 C.F.R. § 452.76.

Mowrey concedes that he talked to [REDACTED] on his union cell phone. [REDACTED] and Mowrey both agree that they discussed candidates for the February 18, 2011 election; however, they have differing accounts of the purpose of the call. Mowrey claims that he was returning a voicemail message from [REDACTED] and that the primary purpose of the call was union business. Further, Mowrey claims that he only responded to [REDACTED] inquiry about the election by saying that he liked candidates [REDACTED] and [REDACTED]. [REDACTED] claims that Mowrey called him specifically to discuss candidates in the election.

Mowrey’s union cell phone records revealed that he talked to a total of eight members from the Philadelphia domicile in the two months preceding the election. The Department was able to reach four of these members. Three members claim that the election was not discussed. The other member said that the election may have been mentioned in passing, but that Mowrey did not campaign for any candidate. There is insufficient evidence to support a finding that Mowrey used the union cell phone to campaign for candidates in the election. Even if Mowrey’s discussion of the election with [REDACTED] could be considered prohibited campaigning, only one vote would have been affected. One vote is insufficient to have affected the outcome of the election for any office. There was no violation that may have affected 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 regarding this matter.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

cc: Captain Michael Cleary
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