



September 11, 2013

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on February 20, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the mail ballot election for the contested races of National Area Representative for the Eastern, Northeast, and Central Areas conducted by the Postal Police Officers Association, on August 29, 2012.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the membership list used to mail the ballots was not current because it contained the names of retirees and, as a result, retirees were mailed ballots. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. 29 C.F.R. § 452.84. The right of retiree members to vote, however, may be restricted if the restrictions are provided in the constitution and bylaws of a labor organization. 29 C.F.R. § 452.93.

The review of the union's bylaws disclosed that they are silent regarding the right of retirees to vote and do not expressly prohibit retirees from voting. Thus, the bylaws do not restrict the right of retirees to vote. In any event, the investigation did not disclose any evidence that ineligible voters voted in the election. Neither the union's bylaws nor the LMRDA was violated.

You alleged that the union permitted a member holding a higher level supervisory position to run for office, in violation of the union's bylaws. Section 401(e) of the

LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. 29 C.F.R. §§ 452.2, 452.109.

The investigation disclosed that the union's bylaws provide, "all union stewards, officers, officials, local or national are prohibited from engaging in higher level [supervisory] work or holding any higher level [supervisory] position." The bylaws, however, are silent concerning such prohibition with respect to a candidate who is not a union steward, officer, or other official and is engaged in such work or holding such position. In any event, during the investigation the union's president stated that the union has consistently interpreted this provision as requiring a candidate who is not a union official and is engaged in higher level work or holding a higher level position to resign from such work or position only if elected to union office; the provision does not prohibit such a candidate from running for union office. Further, the candidate you mentioned resigned from his supervisory position before the election so that he would be eligible to hold union office if elected; the candidate was not elected to office. Neither the union's bylaws nor the LMRDA was violated.

You alleged that members received their ballots in the mail after the deadline for returning voted ballots. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. The statutory protection of the right to vote implies that there is an obligation on a labor organization to conduct its election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. 29 C.F.R. § 452.94.

The investigation disclosed that the voting instructions printed on the ballot stated that ballots had to be postmarked no later than August 10, 2012, in order to be included in the vote tally. The Department surveyed members eligible to vote for the Eastern, Northeast, and Central Areas National Representatives who did not vote, to determine whether they received their ballots in a timely manner. None of those surveyed stated that he or she did not return a voted ballot because the ballot was not received in time to vote. However, one member who did not participate in the survey stated during the investigation that he received a ballot for the East Area National Representative the day after the August 10th deadline by which ballots had to be postmarked and, for that reason, did not vote. Thus, the union did not afford this member a reasonable opportunity to cast a ballot, in violation of section 401(e) of the LMRDA. However, the LMRDA provides that a new election is only ordered where the violation may have affected the outcome of the election. 29 U.S.C. § 402(c)(2). The vote margin for that race was 5 votes; thus, this one vote could not have affected the outcome of the election for that race.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Christopher Vitolo, President
Postal Police Officers Association



Christopher B. Wilkinson
Associate Solicitor for Civil Rights and Labor-Management