

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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February 10, 2016



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the Department of Labor on August 13, 2015, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers for the American Postal Workers Union Local 497 completed on May 15, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation occurred that may have affected the outcome of the election.

You alleged that there were several instances where incumbent officers used union equipment and funds for campaigning. Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in a union election. You first alleged Maintenance Craft Director Dave Sarnacki improperly used the March and June 2015 Craft Reports as campaign literature. Specifically you allege that Mr. Sarnacki used the reports for self-praise and as ongoing self-endorsement by describing the monetary awards that he obtained in arbitrations. The investigation revealed that Mr. Sarnacki had produced Craft Reports since 2008, and the reports at issue were similar to past reports, including descriptions of arbitration awards. The reports at issue concerned routine union business and did not mention the election or Mr. Sarnacki's candidacy. There was no violation.

You also alleged that Mr. Sarnacki and Local Recording Secretary Stuart Kibbe used the union's copier to print campaign flyers. The Department's investigation did not substantiate this allegation. You alleged that one member told you that the flyers were made using the union copier, but when interviewed by the Department of Labor that member denied making that statement or witnessing such an event. When questioned about his alleged contradictory statements, the member in question reaffirmed his denial in a signed statement. Mr. Sarnacki and Mr. Kibbe also denied using the union's copier to make the flyers. There was no violation.

You also alleged that Mr. Kibbe improperly posted a campaign flyer on the stewards' office door. Section 401(g) prohibits the use of union resources to campaign. The Department's investigation revealed a campaign flyer was posted there for some time between 11:00 p.m. on April 15, 2015, and its removal at approximately 7:00 a.m. on April 16, 2015. The investigation found that the steward's office was in an area in which few, if any, members working that evening were likely to pass or visit during the relevant time period. Further, after being informed of the flyer on the window, the union took immediate corrective action to have it taken down. In addition, a member of the local's election committee wrote a memo informing members that posting campaign flyers on union bulletin boards and office spaces was not allowed. After that, the union checked the union's stewards' office and bulletin board for campaign materials. Section 402(c) of the LMRDA provides that an election may only be overturned where there is a violation of the law that may have affected the outcome of the election. Section 402(c) of the LMRDA provides that an election may only be overturned where there is a violation of the law that may have affected the outcome of the election. In this case, the evidence does not support a finding that the brief posting of the flyer on the window of the steward's office door affected the outcome of the election.

You also alleged that Local President Christopher Morrison campaigned on union time. Section 401(g) prohibits the use of union resources to campaign. Specifically, you alleged that a mail handler told you that on two occasions, Mr. Morrison and two other individuals dropped off flyers at the Springfield facility after 3:30 p.m. Mr. Morrison stated that his work hours are 7:00 a.m. to 3:30 p.m. and while he did drop off flyers and leave them on benches near the sorting machines, consistent with what was reported to you, he waited until he finished working at 3:30 p.m. He was not on union time. There was no violation.

You also alleged that incumbent officers used union resources and information obtained from union records to create a negative flyer about you. Section 401(g) prohibits the use of union resources to campaign. The investigation did not support these allegations. The investigation found that the information on the flyer relating to your meeting attendance and grievances was obtained without accessing union records. The minutes of union meetings, which include a roll call of officers in attendance, are distributed after each meeting. Mr. Kibbe denied providing sign-in logs to anyone. Mr. Sarnacki acknowledged asking Mr. Kibbe or Mr. Morrison for the number of labor charges that you filed against the Local, but there was no evidence to show that they obtained this information by accessing union records. Finally, Mr. Sarnacki was involved in the grievances mentioned on the flyer and, therefore, had personal knowledge of them. You also alleged that a union steward told you the flyer was produced on the steward's copier. As stated above, during the investigation, the steward denied making this statement and signed a statement affirming his denial. Further, Mr. Sarnacki stated he created the flyer on his home computer and emailed it

to Mr. Morrison who stated that he printed copies of it at his home. There was no violation.

You also alleged that the membership list was not properly updated prior to the election. Specifically, you alleged that the Local should have reminded members to update their addresses before late February 2015. Section 401(c) of the LMRDA requires a union to mail notice of the election to the last known home address of each member. The Department's investigation revealed that the Local posted flyers on union bulletin boards between November 2014 and January 2015 reminding members to update their addresses. The election edition of the union newsletter was mailed to union members in early April 2015. Approximately 15 to 20 newsletters were returned as undeliverable. The union paid to have these newsletters forwarded and used the forwarding addresses received from the post office to update its membership list. The evidence shows that the union took reasonable steps to update the membership lists in complying with its obligation to mail notice of the election to members. There was no violation.

You also alleged that the ballot mailing date was moved up one day to thwart your effort to have your campaign mailing done at the same time as the ballot mailing. Section 401(c) requires a union to "refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organization or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate." The investigation revealed the original Saturday, April 25, ballot mailing date was changed to Friday, April 24, because the printer did not work on Saturdays. Further, the investigation found that your campaign mailing was mailed the same day as the ballots. Moreover, you acknowledged prior to the investigation that you were not negatively affected by the date change. There was no violation.

You also alleged that the local's election chair, [REDACTED], did not properly safeguard the box containing replacement ballots. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. The investigation confirmed that the box containing replacement ballots was misplaced one day in May 2015 for at least 15 minutes. However, the investigation also found that [REDACTED] had controls in place to allow him to determine and ensure that the ballots had not been compromised. [REDACTED] either initialed or signed each replacement ballot and assigned it a control number. Eight members cast replacement ballots, seven of which had the chair's signature on the outer envelope as well as a control number. One had just his signature. Therefore, the evidence indicates that, to the extent that the misplacement of the replacement ballot box constitutes an inadequate safeguard, it did not affect the outcome of the election.

You also alleged that [REDACTED] hand delivered undeliverable ballots in violation of the union's constitution. Section 401(e) requires a union's election to be conducted in accordance with the union's constitution and bylaws. Article X, Section 5 of the union's constitution requires ballots to be mailed and undeliverable ballots to be mailed a second time. The investigation revealed that Election Committee [REDACTED] stated that he hand delivered seven or eight replacement ballots. [REDACTED] acknowledged that hand delivering replacement ballots was technically a violation of the union's constitution, but stated the union's practice was to hand deliver replacement ballots as the election date drew near. The action without some indication of ballot fraud or tampering does not violate the LMRDA. It increases the number of members who may vote in the election. Moreover, the evidence shows that the number of ballots hand delivered was not sufficient to have affected the outcome of the election.

In addition, you alleged that member [REDACTED] name was highlighted by the incumbent motor vehicle craft director on a nonmember list posted on a union bulletin board. This allegation, even if true, would not constitute a violation of the LMRDA.

Finally, your complaint raised issues that were not considered to be properly before the Department because you did not exhaust the remedies available under the union's constitution and bylaws as required by section 402(a)(1) of the LMRDA. Specifically, you first raised the issues of members being denied the right to vote; failure to count ballots for all races on the day of ballot tally; failure to included voting instructions with some ballots; and see-through secret ballot envelopes in your appeal to the National Election Appeals Committee. These issues were not investigated and are not addressed in this Statement of Reasons

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 the outcome of the election. Therefore, I am closing the file in this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

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