



January 15, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your August 26, 2008 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA"), 29 U.S.C. §§ 481 - 484, occurred in connection with the April 25, 2008 mail-ballot election of union officers held by the Northwest Illinois Area Local 7140 of the American Postal Workers Union ("Local 7140" and "APWU," respectively).

The Department of Labor conducted an investigation of each of your allegations. As a result of the investigation, the Department of Labor concluded that no violation of the LMRDA that could have affected the outcome of the election occurred during the 2008 election.

You alleged that Local 7140 failed to maintain all records pertaining to the election. Section 401(e) of the LMRDA provides that unions "shall preserve for one year the ballots and all other records pertaining to the election. 29 U.S.C. § 481(e). The Department of Labor's investigation revealed that the union maintained all the voted ballots, return ballot envelopes, challenged ballots, election totals reports, and membership lists. The only records missing were the secret ballot envelopes. Failing to maintain the secret ballot envelopes was a technical violation of Section 401(e) of the LMRDA, 29 U.S.C. § 481(e). However, there was no allegation and no evidence that ballot secrecy was not maintained or that ballot fraud or tampering occurred. The violation did not affect the outcome of the election.

You alleged that Local 7140 failed to protect members' rights to inspect all returned ballots as required by the "APWU Constitution." The LMRDA provides that unions must conduct their elections in accordance with the constitution and bylaws. 29 U.S.C. § 481(e). The APWU National Constitution governs national elections and the Northwest Illinois Area Local Constitution ("NWIAL Constitution") governs Local 7140's elections. However, the NWIAL Constitution does not state that all members may inspect the return ballots and election records. Section 401(c) of the LMRDA does give candidates

the right, upon request, to have an observer present at every phase of the balloting process. 29 U.S.C. 481(c); *see also* 29 C.F.R. §452.107. The Department of Labor's investigation revealed that you did not request to observe the returned ballot pick-up or eligibility determinations with respect to returned ballots. There was no violation of the LMRDA.

You alleged that Local 7140 failed to safeguard the election as required by the constitution. You alleged a failure to safeguard the election based on the way the ballots were retrieved from the post office. The NWIAL Constitution states that the election committee shall follow guidelines set forth in the "Election Committee Rules and Procedures" guide. The guide states that the election committee should obtain two post office boxes and pickup for duplicate ballot requests should only occur twice. During the March 9, 2008 nominations meeting, the Election Committee Chairperson passed out a letter to the candidates stating the election rules and the times when duplicate ballot requests would be picked up at the post office. The Election Committee obtained two post office boxes. One was for voted ballots and was not accessed until ballot pickup at noon on April 25, 2008. The box for duplicate ballot requests was accessed on March 31 and April 9, 2008. No one showed up to observe the pickup of the duplicate ballot requests and only a few observers were in attendance for the pickup of voted ballots. The election committee took several measures to ensure the post office boxes were not accessed at any other times or by an unauthorized person. No violation of the LMRDA occurred.

You alleged that the 990 ballots that were not returned in Local 7140's mail ballot election should be available for inspection. The LMRDA does not require this, and as a practical matter, the union can not make these ballots available for inspection because, as you stated, they were not returned. You believe there was some "wrong-doing" related to the number of unreturned ballots, but you are not aware of any member who did not receive a ballot or who returned a ballot that was not counted. The percentage of ballots returned was similar to the percentage in past elections, and the investigation did not find that any ballots were improperly intercepted or tampered with in any way. There was no violation of the LMRDA.

You inquired whether the Election Committee followed the constitution and bylaws in handling late ballots and closing the post office boxes. The constitution and bylaws do not address this issue. Both boxes were closed after the ballots were picked up at the noon deadline on April 25, 2008. All ballots received after the deadline were returned to the sender. There was no violation of the LMRDA.

You made several allegations in your May 10, 2008 appeal to the APWU National Election Appeals Committee and your complaint to the Secretary of Labor that were not included in your initial protest to the Local 7140 Election Committee Chairperson. The

APWU National Constitution and the Northwest Illinois Area Local Constitution, Art. 11, § 6 require that you file election grievances with the Local 7140 Election Committee within 72 hours after the grievance arises. You never alleged to the Local 7140 Election Committee that candidates' names were not on the ballot or that craft level employees did not receive the proper ballots. With respect to these allegations, you failed to properly exhaust the remedies available under the constitution and bylaws. Consequently, the Secretary of Labor is precluded from bringing an enforcement action against the union based on these allegations. *See* 29 U.S.C. §§ 481 (a), (b); 29 C.F.R. § 452.135(a).

For the reasons set forth above, the Department of Labor has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox  
Acting Chief, Division of Enforcement

cc: Katherine E. Bissell, Associate Solicitor for Civil Rights and Labor-Management

Mr. William Burris, President  
American Postal Workers National Union  
1300 L Street, NW  
Washington, DC 20005

Ms. Jackie Engelhart, President  
American Postal Workers Union Local 7140  
Northwest Illinois Area Local  
194 W. Lake Street  
Elmhurst, IL 60126