



January 12, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on October 3, 2011 with the Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the American Postal Workers Union (APWU) Local 1078 on April 29, 2011.

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

You alleged that the opposing slate's literature should not have been mailed since the slate did not present its campaign material with proper postage or return addresses on the envelopes until after the election committee's deadline. The investigation established that candidates were informed that campaign literature would be mailed on April 9, 2011, and were instructed to take their literature to the union office between 9:00 a.m. and 11:00 a.m. on that day so that the election committee could affix mailing labels. Candidate [REDACTED] arrived with her mailing at 11:00 a.m. or a few minutes thereafter. While Election Committee Chairperson [REDACTED] initially stated that [REDACTED] would not be permitted to mail her literature because she arrived after the deadline, Election Committee Judge [REDACTED] accepted [REDACTED] campaign literature for mailing. The LMRDA imposes the duty on the union and its officers to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. 29 U.S.C. § 452.67.

The investigation established that the election committee acted appropriately in accepting [REDACTED] campaign literature. The reasonableness of a candidate's request for campaign literature distribution is not measured by the reasonableness of the union rule concerning distribution but by the reasonableness of the request itself. The investigation revealed no evidence that the request itself was unreasonable. The union could and did comply with the request. Had the literature not been accepted, [REDACTED] would have been improperly denied her right to distribute campaign literature to the union membership. There was no violation.

You further alleged that Election Committee Judge ██████ stuffed envelopes for ██████ campaign mailing while driving to the post office. The investigation did not substantiate this allegation. To the contrary, the investigation determined that ██████ affixed mailing labels to ██████ campaign literature on the way to the post office. Providing and affixing mailing labels was part of the election committee's responsibilities. There was no violation.

You alleged that opposition candidates were permitted to use a conference room of the employer, the United States Postal Service (USPS), to complete their campaign mailings on April 9, 2011. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any person in an election subject to the provisions of Title IV. The investigation revealed that the election committee, after arriving at the post office, realized that some of the mailings had insufficient postage. The election committee permitted the opposition candidates to buy additional postage and affix it to their campaign literature envelopes. The investigation confirmed that USPS management asked the group to move out of the lobby and into a conference room to affix the extra postage. The USPS confirmed that the conference room is not public space, but would be available to any postal employee who wanted to use it. There is no evidence that you requested to use the conference room or that other candidates requested and were denied the right to use the conference room. There was no misuse of employer resources. There was no violation.

You alleged that the opposition slate used the local's letterhead on its campaign literature. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election subject to the provisions of Title IV. Pursuant to section 401(g), union officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. 29 U.S.C. § 452.76. The investigation revealed that the letterhead used by the opposition candidates on their literature was not the official local union letterhead. Further, a review of the literature reveals that the literature is clearly campaign material and not any type of communication from the union. There was no violation.

You alleged that Election Committee member ██████ "actively campaigned in offices" for the opposing candidates. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote the candidacy of any person in an election subject to the provisions of Title IV. Pursuant to section 401(g), union officers and employees may not campaign on time that is paid for by the union, nor use union or employer funds, facilities, equipment, stationery, etc. to assist them in such campaigning. 29 U.S.C. § 452.76.

The investigation determined that [REDACTED], who had volunteered to serve on the election committee, delivered campaign fliers in support of [REDACTED], the winning candidate for clerk craft director, to the Fuquay and Angiers post offices. The investigation established that [REDACTED] was not on union time when she delivered the fliers because she is not paid by the union. She was not on employer time either because she was not on duty when she dropped the fliers off at both post offices. The investigation found that there were four clerk craft members at the two post offices who were eligible to vote for [REDACTED]. Even if [REDACTED] actions could be considered to have been a violation of section 401(g) of the LMRDA, only four votes would have been affected. These eight votes would not have had any effect on the outcome of the election because [REDACTED] was elected clerk craft director by a 43 vote margin.

You alleged that supervisors were mailed ballots and voted in the election even though they are not eligible to do so. In particular, you alleged that supervisors [REDACTED] and [REDACTED] were permitted to vote. The investigation revealed that neither [REDACTED] nor [REDACTED] was among the 322 members listed as returning ballots in the election. Moreover, a comparison of supervisor names with the names of the 322 members who returned ballots confirmed that no supervisor voted in the election. There was no violation.

You also raised issues concerning the improper posting of campaign literature, the return of a handful of undeliverable campaign flyers, and a prohibition on campaign T-shirts. The investigation established that these issues are outside the scope of the Secretary's investigation. These three issues were not timely invoked and exhausted by you in accordance with the local's election protest procedures and the requirements of the LMRDA. See 29 U.S.C. § 482. Consequently, the Secretary lacks the authority to consider the merits of these issues. 29 CFR §452.136(a).

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 am closing our file regarding this matter.

Sincerely,

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Chief, Division of Enforcement

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