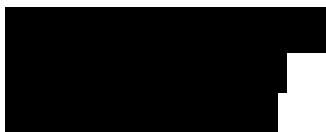




January 30, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your September 29, 2011 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 (LMRDA) occurred in connection with the election of officers conducted by the American Postal Workers Union (APWU), Local 4635 on August 3, 2011. This August 3, 2011 election resulted from a union-ordered rerun of the contested March 21, 2011 election.

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

You alleged that you were denied the right to observe the stuffing and mailing of ballots, in violation of section 401(c) of the LMRDA. The Department's regulations provide that, in any secret ballot election which is conducted by mail, candidates must be permitted to have an observer present at the preparation and mailing of ballots. 29 C.F.R. §452.107(c). Specifically, you alleged that on July 14 the union informed you that ballots would be mailed on July 15, which provided insufficient time for you to arrange to be present at the ballot mailing. The Department's investigation found that you - and all other candidates - received the election rules on July 1, and these rules explained the procedures for making a request to be an observer. The investigation determined, and you do not deny, that you never made a request to observe the ballot mailing. Because you never requested the opportunity to observe the mailing, the union did not deny your request. Accordingly, there is no violation of the LMRDA.

You also alleged that the union failed to provide the right to inspect the membership list, in violation of section 401(c) of the LMRDA. The LMRDA requires that every candidate shall have the right, once within 30 days of the election, to inspect the membership list. You specifically alleged that the Local Election Committee (LEC) failed to provide you with the opportunity to inspect the membership list because the LEC did not provide the procedures for inspecting the list in the election rules.

However, the LMRDA does not require that unions articulate procedures for inspecting membership lists during union elections. The Department's investigation found, and you concede, that you never made a request to the LEC to inspect the membership list. The union did not deny you the opportunity to inspect the list; rather, you failed to make such a request. There was no violation of the LMRDA.

You further alleged that the union failed to timely post notice of the election, in violation of section 401(e) of the LMRDA. Section 401(e) requires that a union mail notice of an election to the last known home address of all members no less than 15 days prior to the date of election. Here, you asserted that the LEC did not ensure that notice of the election was posted on all union bulletin boards by July 12, 2011, as specified in Item 9 of the election rules. The Department found that APWU mailed postcard election notices for the August 3 election on July 15, and LEC [REDACTED] stated that she faxed the notice to approximately 100 facilities with instructions to post the notice. The exact date that the notices were posted at each facility is not clear, but notice posting on union bulletin boards is not a requirement of the LMRDA. Title IV of the LMRDA requires that notice of election be mailed to the last known home address of all members at least 15 days prior to the election and the union fulfilled this requirement. Accordingly, there was no violation of the LMRDA.

In a related allegation, you asserted that the LEC failed to provide notice of the election 15 days prior to the election, and that the notice failed to specify the date and time of the ballot pick-up as well as the location and time of the ballot tally, in violation of section 401(e) of the LMRDA. You alleged that you received notice of the election on July 23, only ten days prior to the August 3 election. As stated above, the Department's investigation found that the union sent postcard election notices on July 15. Section 401(e) only requires that the union mail notice no less than 15 days prior to the election. The fact that you may not have received the notice until July 23 does not violate the LMRDA because the union sent notice well within the 15-day statutory requirement. Moreover, the Department's investigation revealed that you likely mistook the ballot instructions, which were sent in late July, for the notice of election. This confusion explains why you alleged that critical information was not included in the notice of election. The Department reviewed the notice and found that it included the date/time of the ballot pick up as well as the location/time of the ballot tally - the ballot instructions did not, but need not, contain this information. There was no violation of the LMRDA.

You alleged that the union failed to conclude the rerun election within the 60-day timeframe that was originally specified by the National Election and Appeals Committee (NEAC). Failure to follow an NEAC directive, which is not included in the union's constitution and bylaws, is not a violation of Title IV of the LMRDA. Nevertheless, the Department investigated this allegation and found that the NEAC

provided Local 4635 with an extension of time to conduct the new election. The NEAC informed Local 4635 in a June 17 letter that the LEC had 60 days from the date of the letter to complete the election (*i.e.* August 16). The LEC completed the election on August 3, which was within the extended timeframe.

You also alleged that the LEC treated the incumbent slate (Workers Choice Slate) favorably by providing incumbents with advance knowledge of the dates that ballots would be mailed, in violation of section 401(c). Section 401(c) prohibits disparate treatment among candidates for union office, and requires that unions provide adequate safeguards to insure a fair election. You have specifically alleged that the incumbent slate had inside information concerning the date of the ballot mailing, allowing the incumbents to send a campaign mailing on July 13 – two days before the LEC mailed the ballots. You stated that your slate (Members First Slate) did not have notice that ballots would be mailed on July 15 until a July 14 candidate conference call. Despite the fact that you had two sets of campaign materials drafted in anticipation of a mailing, you chose not send the material because it would arrive after the ballots.

During its investigation, the Department found that on July 1 all candidates received the election rules, which explained the procedures for requesting to make a campaign mailing. You never contacted the LEC to request a campaign mailing. In contrast, the Department found that the incumbent slate contacted the LEC, requesting to send a campaign mailing shortly after receiving the July 1 election rules. In response, the LEC scheduled the labeling and mailing of the incumbent's campaign material on July 13. The investigation did not reveal evidence of disparate treatment; rather, the evidence established that the incumbent slate requested a campaign mailing and the LEC complied with the request. Although you had drafted materials in preparation for a campaign mailing, you did not make a request to send a campaign mailing nor did you ever ask the LEC for the date of the ballot mailing. As such, the incumbents' campaign mailing does not constitute a violation of the LMRDA.

You alleged that the incumbent slate sent two campaign mailings using union funds, in violation of section 401(g) of the LMRDA. Section 401(g) prohibits the use of union funds to promote any candidate for union office. You alleged that President ██████ mailed two letters on union letterhead, using union funds, which promoted the incumbent slate. In particular, ██████ sent a July 14 letter clarifying the NEAC's reasoning for requiring a new election, and sent a second letter in July entitled "State of the Union," which informed members of the problematic financial condition of the local union. Both letters were sent using union funds. In considering whether a union-funded communication constitutes promotion of a candidate in violation of section 401(g), the Department evaluates the timing, tone, and content of the particular communication. *Chao v. North Jersey Area Local Postal Workers Union*, 211 F.Supp.2d 543,

551 (D.N.J. 2002), quoting, *Donovan v. Metropolitan District Council of Carpenters*, 797 F.2d 140, 145 (3d Cir. 1986).

First, the Department considered the July 14 letter. This letter maintains a neutral tone, without promoting or disparaging any candidates in the election. Further, the content addresses the NEAC's decision regarding the contested March 2011 election. The NEAC's decision to order a new election was factual information – which actually depicted the incumbent slate in a negative light, as the NEAC decision found that the incumbents' improper actions in the March 2011 required the new election. This was information that answered questions and addressed the source of confusion among the membership. Although the July 14 letter was sent during the election period, given the content (*i.e.*, informing members of the reasons for ordering a new election), the timing seems necessary. The Department found that the overall tone, content, and timing did not endorse, promote, or disparage any candidate in the August 2011 election.

Second, the Department considered the "State of the Union" letter, sent in July 2011. This letter contained factual information concerning the serious financial condition of the local union. It explained to the membership that after taking control of the union, ██████ administration inherited substantial debt, requiring the APWU to loan money to the local union. The "State of the Union" letter also explained the NEAC's reason for requiring a new election. The tone of this letter is implicitly critical of the previous administration's financial management of the union. The "State of the Union" does not directly name or disparage any candidate in the August 2011 election and contains factual information that clearly relates to the operation of the union. ██████ used this letter as a second opportunity to provide the membership with the NEAC's reason for ordering a new election (*i.e.*, improper actions of ██████ Workers Choice Slate). Including a discussion of the NEAC's decision certainly does not promote the Workers Choice Slate in the upcoming election. The "State of the Union" letter was sent within one month of the August 2011 election, however, on balance the Department concluded that the letter did not constitute campaigning. Based on the review of both July letters, the Department determined that no violation occurred.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox  
Division of Enforcement  
cc: Cliff Guffey, President

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