



May 23, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaints you filed with the Department of Labor (DOL or Department) on September 7, 2022, October 9, 2022, November 10, 2022, and November 19, 2022, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of the American Postal Workers union (APWU or union) conducted on October 5, 2022.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that no violation of the LMRDA occurred. Following is an explanation of this conclusion.

You alleged that the APWU President Mark Dimondstein and Legislative and Political Director Judy Beard sent a campaign mailing with union funds. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in union officer elections. 29 U.S.C. § 481(g). Specifically, you alleged that Dimondstein and Beard, acting as APWU President and Legislative and Political Director, respectively, sent a letter to the entire union regarding the passage of the Postal Service Reform Act (PSRA). You believe that this letter qualified as campaign material because it was sent too close in time to the announcement of Dimondstein's and Beard's candidacies, was sent too long after the PSRA's passage to be newsworthy, was repeating information members had already been informed of, and was in direct opposition to your candidacy and platform.

The Department's investigation confirmed that APWU sent a letter signed by Dimondstein and Beard on April 26, 2022, which celebrated President Biden signing the PSRA into law on April 6, 2022. The investigation found that APWU actively worked on the PSRA for over 15 years, and that the union frequently updated members on the status of the PSRA in issues of *The American Postal Worker* magazine, in APWU news

bulletins, through a dedicated PSRA page on the APWU website, and on APWU's social media accounts. You announced your candidacy on April 11, 2022 and your statement included a discussion of why legislation that the incumbent administration supports is bad for union membership without explicitly mentioning the PSRA. The investigation also revealed that Dimondstein and Beard announced their candidacies on April 20, 2022, and that their statement mentioned the progress APWU has made including "landmark postal service reform legislation."

In assessing whether the use of union resources constitutes campaigning, the Department evaluates the timing, tone, and content of the particular message. Here, the content of the letter was information relevant to the entire union membership, including information about the PSRA's passage and what the legislation does. The letter did not mention the election or any particular candidate. The tone of the letter celebrated the legislation as a victory relevant and attributable to the union as a whole. While the letter's dissemination was close in time to candidacy announcements, it was months away from the election itself. Further, the letter was distributed closely following the PSRA's signing and was part of a larger pattern of union updates about the legislation. As the union had been advocating for the PSRA for years, the letter was still newsworthy. Because the overall tone, content, and timing of the letter does not indicate an attack on one candidate or support of another, there was no violation.

You alleged that APWU President Mark Dimondstein used a union list to send a campaign email to union members. Specifically, you alleged that on September 19, 2022, you received a campaign email from Dimondstein with the word "proof" in the subject line when you did not previously receive any other campaign emails. Because this was the first campaign email you received and because this is not how other campaign emails properly sent from ██████████ looked, you alleged that Dimondstein did not go through the proper channels to send this email, did not pay for the email blast, and therefore had access to a list to send this email that was not available to you.

Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). In addition, section 401(c) of the LMRDA requires a union and its officers to refrain from discrimination in favor of or against any candidates with respect to the use of union lists of members. 29 U.S.C. § 481(c). Further, when a union or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate that requests it. 29 C.F.R. § 452.67. Section VI of the "Rules and Regulations Governing 2022 APWU National Elections" states that "All campaign literature mailings or e-mailing of campaign literature will be handled by ██████████. Any candidate, at his/her own expense, wishing to mail or e-mail literature must submit a written request to ██████████."

The investigation revealed that Dimondstein went through the proper procedure to send out his September 19, 2022 campaign email through [REDACTED]. The investigation found that [REDACTED] accidentally sent Dimondstein's September 19, 2022 campaign email with the word "proof" in the subject line. [REDACTED] notified Dimondstein of the error and offered to either refund the cost of the email or to correct the mistake and send the email a second time. Dimondstein chose to have the email sent out a second time, and the corrected email with the word "proof" removed from the subject line, was sent on September 20, 2022. The investigation determined that Dimondstein did not use a list that he copied or assembled during his time in office and that he paid for the September 19, 2022 campaign email to be sent from [REDACTED] in accordance with APWU Election Rules and Regulations. There was no violation.

Next, you alleged that the incumbent candidates were given an advantage when the election committee put their names first on the ballot per past practice but did not follow past practice by putting the letter "I" next to their names as described in the American Postal Worker magazine article, "Ballot Placement set for Election of APWU National Officers." You believe that this gave an unfair advantage to incumbents by putting them first on the ballot without the potential disadvantage of identifying them as such. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office and requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation confirmed that incumbents' names were listed first on the ballot and did not contain an "I." The investigation revealed that past ballots from 2016 and 2019 did not contain an "I" printed next to any candidate's name. The investigation also revealed that the article you referenced mentioned that an "I" would be placed next to an incumbent's name in the article itself but does not state that an "I" would be on the actual ballot. A determination as to the position of a candidate's name on the ballot may be made by the union in any manner permitted by its constitution and bylaws, consistent with the requirement of fairness and the other provisions of the LMRDA. 29 C.F.R. § 452.112. The Rules and Regulations Governing 2022 APWU National Elections state that "For contested offices, the placement of names on the ballot will follow the past practice of having the incumbent's name at the top of the list of candidates for that office." The investigation found that neither the election rules nor the APWU Constitution require putting an "I" next to the names of the incumbents on the ballot. There was no violation.

You also alleged that Mark Dimondstein sent campaign emails and text messages from APWU accounts to members regarding the Cost of Living Adjustment (COLA) and "Union Pride Day." Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). Specifically, you alleged that Dimondstein used an APWU list to send an email and a text message blast to members promoting the COLA increase that was part of the most recently

approved contract with United States Postal Service (USPS) and advertising a “Union Pride Day,” to celebrate the COLA. You believe that Dimondstein used these APWU resources that you did not have access to and timed the COLA messaging and Union Pride Day to fight your campaign’s platform about how bad the COLA was for union members.

The Department’s investigation revealed that, similar to the PSRA discussed above, the September 2022 COLA had a big impact on APWU members. The investigation confirmed that because of this, APWU discussed the contract ratification and COLA throughout 2022, including in the March/April 2022, May/June 2022, and September/October 2022 issues of *The American Postal Worker* magazine, in articles on the APWU website, in email blasts, in flyers, and on social media. The investigation revealed that the union’s contract, which was ratified in February 2022, had a provision for two COLAs to be paid in March and September 2022. The text message blast was sent on September 11, 2022; the email was sent on September 12, 2022; Union Pride Day was held on September 15, 2022; and the APWU election ballots were mailed on September 15, 2022. The investigation determined that APWU did not set the date when the COLA was going to affect the members’ paychecks and it was a coincidence that the COLA affected paychecks only days after the ballots were mailed out. Union Pride Day was scheduled for the Thursday before the payday that included the September 2022 COLA increase.

As discussed above, the overall timing, tone, and content must be evaluated to determine whether the material effectively supports or attacks a candidate in the election. Here, the Department’s review showed that the content and tone of the COLA increase and Union Pride Day communications was neutral in terms of the union officer election. The various communications from Dimondstein and APWU about the COLA increase and Union Pride Day included information relevant to the membership regarding the contract ratification, the upcoming COLA increase, and how the COLA will affect different categories of employees. Although some of the communications included a quote from Dimondstein, his comments concerned how valuable the COLA increase was and how the union should be proud that it fought hard and prevailed. The various publications about the COLA and Union Pride Day did not mention the election, any particular candidate, or attribute the success of the union to any one individual. Further, as the President of APWU, Dimondstein had to carry out his duties as an officer which includes sending out communications to members about union news and events. Regarding timing, Union Pride Day was scheduled to promote a legitimate and notable event. Communications about the COLA were ongoing throughout 2022, including during the election period. The timing of Union Pride Day was also during the election period because it was related to the legitimate union business of the COLA increase and the Union’s success on that issue. The investigation

did not demonstrate that the timing of the increase or celebration was set to oppose your election campaign. There was no violation.

Additionally, you alleged that Mark Dimondstein produced a campaign video that used footage – created and paid for by APWU – showing him at APWU events while he was a union officer, and that the videos created and paid for by APWU were not made available to you. Section 401(g) of the LMRDA prohibits the use of union funds – including money, facilities, equipment or supplies – to promote the candidacy of any person in union officer elections. 29 U.S.C. § 481(g). The investigation found no evidence that union resources were used to prepare the campaign video. Rather, Dimondstein hired a professional videographer to produce his campaign video. The investigation revealed that Dimondstein was personally invoiced for the creation of this video and that all the clips used in the campaign video were available in the public domain and therefore accessible to you to use throughout your campaign. There was no violation.

You alleged that APWU failed to maintain an accurate mailing list that resulted in members not receiving ballots and your campaign literature. Section 401(e) of the LMRDA provides that every member in good standing be afforded an opportunity to vote. 29 U.S.C. § 481(e). The union must have a procedure in place for obtaining current mailing addresses for its members on a periodic basis and must make reasonable efforts to keep the address information on its membership mailing list current prior to the election. Further, as noted above, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Specifically, you alleged that when you sent 29,000 campaign postcards to retirees, 800 were returned as undeliverable. Further, you alleged that ballot packages were mailed to members in large envelopes and that these were not run through the postal machine to mark them as undeliverable.

The Department's investigation found that APWU made reasonable efforts throughout the year to keep membership mailing list up to date. The APWU Secretary-Treasurer's office works with the IT department and the membership database vendor to update the database with addresses when the union receives returned mailings or when a member contacts APWU with a new address. Locals are also instructed to direct members to the national Secretary-Treasurer's office for assistance with updating addresses. The investigation revealed that the union had accurate address information for more than 95% of its membership. The American Arbitration Association (AAA) mailed over 192,429 ballots to members via first-class mail and only 4.8% of them were returned undeliverable. Contrary to your assertion, most of the returned ballots were marked as undeliverable with a white or yellow sticker. An even smaller number of ballots (2.72%) were returned as undeliverable as of October 7, 2022, which was after the election had already ended. The investigation also revealed that AAA re-mailed

ballots to members whose original ballots were returned with a forwarding address. As a result, the union re-mailed 69 ballots to new addresses provided by the postal service. The relatively low percentage of ballots returned undeliverable indicates that the union engaged in reasonable efforts to maintain an accurate mailing list and then continued to make reasonable efforts to correct bad addresses by re-mailing the returned undeliverable ballots for which new addresses were provided. Finally, APWU had a well-publicized procedure in place for members to request a duplicate ballot if they did not receive their original ballot. At least 500 members requested and were sent a duplicate ballot. There was no violation.

Your additional allegation was determined to be not covered by the LMRDA.


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. Accordingly, I have closed the file on this matter.

Sincerely,




Chief, Division of Enforcement

cc: Mark Dimondstein, National President
American Postal Workers
1300 L Street, NW
Washington, DC 20005



Murphy Anderson PLLC
1401 K Street NW, Suite 300
Washington, DC 20005



, Associate Solicitor
Civil Rights and Labor-Management Division