



October 5, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaints you filed with the U.S. 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 February 9, 2022 mail ballot election of officers of the Service Employees International Union (SEIU) Local 521.

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

Local 521 has approximately 53,000 members and represents employees at over 100 employers. Members work in hospitals as janitors, radiology technicians, CT scan technicians, physician assistants, county mechanics, rangers, gardeners, social workers, 911 dispatchers, and mental health professionals. Local 521 itself has over 100 employees that work for and are paid by the union, including union employees that are salaried and earn enough wages to be exempt from overtime pay under the Fair Labor Standards Act (FLSA).

Campaign Leave Policy

You alleged that the union's initial campaign leave policy placed an unreasonable restriction on the right to campaign because it required full-time, FLSA-exempt union employees to take a full 8-hour day of leave if they were to campaign at any point during that day, including before or after work or on a lunch break. You alleged the union threatened discipline for any violations. You also alleged that this policy was unfairly applied between the slates because, during the election period, some candidates and supporters of the incumbent Mendez slate attended an evening campaign event on January 3, a day they worked, and were not disciplined. You further alleged that, two weeks into the voting period, the Election Committee changed the policy to allow campaigning before and after work and on breaks, without taking

leave, which disadvantaged the challenging Gomez slate because it had abided by the initial policy, unlike the Mendez slate.

Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. 29 U.S.C. § 481(e); 29 C.F.R. § 452.82.

Additionally, the union must provide a reasonable opportunity to campaign; what constitutes a reasonable opportunity depends on the circumstances, including the amount of time allotted to campaigning prior to the election, the number of members, and the geographic area in which the union operates. 29 C.F.R. § 452.79.

The union's initial leave policy violated section 401(e) of the LMRDA, 29 U.S.C. § 481(e). This initial policy infringed on members' right to support the candidates of their choice without being subject to discipline, as well as the candidates' reasonable opportunity to campaign, because it improperly prohibited exempt union employees from campaigning on their personal time on days they worked. Section 402(c)(2) of the LMRDA provides, however, that an election will only be overturned where a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). The investigation revealed no such effect. The investigation found that the initial campaign leave policy was equally applied to both slates. All exempt union employees were required to sign election policy forms agreeing to this rule, regardless of which slate they supported. While the investigation determined that three Mendez slate candidates and supporters did violate this policy during the election period by attending an evening campaign event on January 3 after working earlier that day, the Elections Committee requested that each of these employees retroactively submit a leave slip for that day once you brought this violation to their attention. Moreover, the investigation found that Gomez slate candidates and supporters, including you, similarly violated the initial policy during the election period. You admitted that you once passed out campaign literature at the Buena Vista Library on a break during a workday. Kimberly Gomez (Gomez slate candidate for CEO) also admitted to violating this policy, as she attended virtual campaign meetings on weekday evenings after she worked. Neither of you were disciplined or asked to submit retroactive leave slips because the Elections Committee was unaware of these violations. Thus, the initial policy was applied to both slates and did not meaningfully restrain campaigning by either slate.

Furthermore, candidates and supporters of both slates had alternative options to campaign while the initial policy was in effect. The initial policy did not prevent exempt union employees from taking more leave to campaign, from campaigning on weekends, or from having supporters who were not subject to this rule campaign for them before or after work or on breaks. Moreover, both slates had almost three weeks during the election period (January 21 to February 9) to fully campaign after the policy was changed. Finally, some candidates on the slate you supported – the Gomez slate –

won their races, including the races for president and secretary. Overall, both slates were subject to the initial violative campaign leave policy and the amended policy that replaced it. Both slates were also given a reasonable opportunity to campaign prior to the election, and neither slate was meaningfully restricted from campaigning. Accordingly, the initial violation of the LMRDA did not affect the outcome of the election.

Member Contact Information

You alleged that Mendez slate supporters improperly used members' cell phone numbers that they compiled through their union positions and stored in their personal cell phones to campaign. You further alleged that while such use of member contact information was initially prohibited by the union's election policy, the Election Committee reversed this rule on January 14, which disadvantaged the Gomez slate during the election period because it had avoided using such contacts before the reversal.

Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an officer election. 29 U.S.C. § 481(g); *see also* 29 C.F.R. § 452.73. Union officials and employees are thus free to campaign for the candidates of their choice so long as the campaigning does not involve the use of union resources. Any list of members and their contact information compiled by a union officer or representative by virtue of their union position is a list of union members and a union resource for purposes of the LMRDA.

The investigation determined that Mendez slate supporters made campaign calls and texts using members' cell phone numbers that they had compiled by virtue of their union positions, violating section 401(g). However, the investigation also revealed that Gomez slate supporters – including you – similarly made violative campaign calls and texts using members' cell phone numbers that they had compiled by virtue of their union positions, also violating section 401(g). Therefore, both slates' section 401(g) violations were offsetting, and there is no evidence that this activity affected the outcome of the election.

Union Publicity

You alleged that the union unfairly refused to email your article entitled "Contract Enforcement Department (CED) on Your Side" to all members at the union's expense. The union stated that it refused to send the email because it promoted the candidacy of three members of the Gomez slate, and thus emailing it would have been an improper use of union resources to campaign in violation of section 401(g) of the LMRDA, 29 U.S.C. § 481(g).

Section 401(g) prohibits the use of union funds to promote the candidacy of any person in union officer elections. Thus, a union may neither attack nor praise any candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to members. 29 C.F.R. § 452.75. However, publications detailing incumbent union officers' regular activities that are newsworthy to members are not considered campaign material and are thus permissible under the LMRDA. The Department reviewed your article and found that the overall tone, content, and timing of the proposed message endorsed Gomez slate candidates during the election period; thus, the union correctly determined that it could not distribute the article at its own expense, as doing so would have violated section 401(g). Accordingly, there was no violation of the LMRDA.

You further alleged that SEIU violated section 401(g) of the LMRDA, 29 U.S.C. § 481(g), by promoting the Mendez slate through two separate Facebook posts. The Department's investigation determined that the January 25 post was made during the voting period and included a photo of Mendez slate candidates Riko Mendez and Alysia Bonner standing next to Gomez slate candidate Jim Heaney, with a caption indicating that they handed out food to community members in need. You alleged that this post was improper because Mendez and Bonner did not hand out food to community members as the caption stated, and because they were attempting to use the post as campaign material that capitalized on Heaney's popularity.

The investigation determined that the Santa Cruz County chapter was scheduled to go on strike the morning of January 25, but the strike was averted the night before. However, sandwiches for the potential strikers had already been ordered, which union officials decided to donate to a local homeless center. Mendez and Bonner already planned to attend the strike to support the strikers, and thus were on-site for the food distribution and picture with Heaney. Therefore, the tone and content of the post do not indicate that it was campaign material. The focus of the post was the timely aversion of the strike and distribution of the sandwiches purchased with union funds, both of which were newsworthy events of interest to union members. Moreover, candidates from both slates were featured in the picture. Accordingly, there was no violation of section 401(g) of the LMRDA.

You also alleged that a February 4 post improperly capitalized the word "united" in the middle a sentence, alluding to the Mendez slate's campaign slogan "United We Build." The investigation determined that the post was made during the voting period but it is unlikely the word "united" was purposefully capitalized in the post. The investigation revealed that "united" automatically capitalizes on the union's Facebook posts. Additionally, the word "united" was also capitalized on another union post from September 2021 – before the candidate nomination period and campaigning began – indicating that "united" was not capitalized in this post as an effort to campaign. Furthermore, the overall tone and content of the post do not indicate that it is campaign

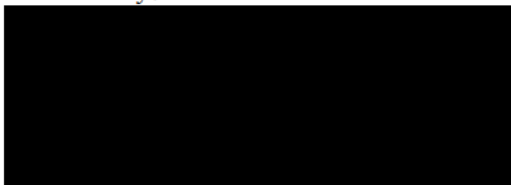
material. The post primarily conveys that members voted to ratify a tentative agreement with their employer, a newsworthy event, and that they stood "united" to win the contract. Accordingly, there was no violation of section 401(g) of the LMRDA.

You further alleged that the union's Communications Director, Victor Gamiz, improperly posted digital photos from the union's archives on the Mendez slate's campaign website and Facebook page, in violation of section 401(g)'s prohibition on the use of union resources to campaign. *See* 29 U.S.C. § 481(g). However, the investigation did not reveal any evidence to support this claim. Accordingly, there was no violation of section 401(g) of the LMRDA.

You also made several other allegations that, even if true, would not constitute violations of Title IV of the LMRDA or that were not properly exhausted. Section 402(a) of the LMRDA requires that a member exhaust the remedies available under the union's constitution and bylaws before filing a complaint with the Secretary of Labor. 29 U.S.C. § 482(a). As a result, these allegations are not properly before the Secretary and are dismissed.

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 in this matter.


Sincerely,



Chief, Division of Enforcement

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