



August 2, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your complaints filed with the Department of Labor on February 9, 2010 and March 9, 2010, alleging 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 election of officers of Local 2233 (Local 2233 or local), American Postal Workers Union, AFL-CIO, conducted on November 12, 2009.

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

You alleged that Arthur Jones, successful incumbent candidate for local president, used union resources to campaign when he posted a letter from a union official and written on union letterhead on his campaign website under the heading of endorsements. Section 401(g) of the LMRDA, 29 USC 481(g), provides, in relevant part, that no moneys received by any union shall be contributed to promote the candidacy of any individual. *See also* 29 C.F.R. § 452.73. Union funds include union facilities, equipment, stationery, etc. 29 C.F.R. § 452.76. The investigation disclosed that in a letter dated June 17, 2009, approximately five months prior to this election, Eastern Region Coordinator Mike Gallaher sent Jones a letter in which he lauded Jones' accomplishments as Local 2233's president and as a rising leader within the National; this letter was written on union letterhead. Jones posted this letter on his campaign website, via a link entitled "endorsements." Jones did not use union funds to create his website.

There is no merit to your claim that Jones' use of the June 17th letter, on union letterhead, constituted a use of union funds to campaign. The Department examines the timing, tone, and content of written materials to determine whether the materials

constitute campaigning in violation of the Act. In terms of timing, the letter preceded the election by almost a half-year. In fact, campaigning for union office had not begun at the time the letter was sent. In terms of tone and content, the letter praised Jones but did not mention the election or urge others to vote for Jones. There was no electioneering. The letter does not meet the test for campaign material. There was no violation.

You alleged that Jones campaigned on time paid for by the union when he campaigned at Doylestown, Pennsylvania on October 16, 2009. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits the use of union funds and resources to promote any member's candidacy. Union officers retain their rights to campaign for office as long as such campaigning does not involve expenditures of union funds, including time paid for by the union. 29 C.F.R. § 452.76. The investigation disclosed that Jones was on leave for the week of October 12 through October 16, 2009. He did not campaign at Doylestown while on union-paid time. There was no violation.

You alleged that Jones used union resources to promote his candidacy when he used the local's camera and posted nine pictures taken with that camera on his website. The investigation disclosed that the local owned a Canon S5 IS digital camera, purchased in 2008 and used to memorialize many union events, including meet-and-greet sessions, conferences, conventions, and meetings with politicians. Such photos were displayed in the local's newsletter, among other places. In addition, the investigation revealed that the local has been given photographs by members who have taken photos of union events using their own cameras. A review of the nine photos showed that three photos were taken with a camera that was not a Canon S5 IS digital camera. The other six photos were taken by a Canon S5 IS digital camera, but it cannot be established that it was the local's camera that was used to take these photos. The Canon S5 IS is a popular and widely-used camera. It cannot be established that there is probable cause to believe that a violation occurred because the six photographs taken with a Canon S5 IS digital camera cannot conclusively be shown to be taken with the local's digital camera.

You alleged that one member voted twice. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires unions to provide adequate safeguards to ensure a fair election. The investigation disclosed that one member was mailed two ballots, and that the member voted and returned both ballots. The local included both ballots in its tally. The local failed to provide adequate safeguards to ensure that each member voted only once, in violation of section 401(c) of the LMRDA. Nevertheless, this violation would not have affected the outcome of this election as the lowest margin of victory for any office was twenty-one votes. There was no violation that may have affected the outcome of the election.

You alleged that several members were denied the right to vote when they were not mailed a ballot. Section 401(e) of the LMRDA, 29 USC 481(e), provides, in relevant part, that every member in good standing shall have the right to vote. The investigation disclosed that ballots for 18 members in good standing were returned to the local as undeliverable. Three of those members requested and were mailed a duplicate ballot. A fourth member received the telephone number to call for a duplicate ballot but chose not to make a request. In total, fourteen members in good standing were denied the right to vote in violation of section 401(e) of the LMRDA. However, the votes of those fourteen members would not have affected the outcome of the election for any race as the lowest margin of victory was twenty-one votes. There was no violation that may have affected the outcome of the election.

You alleged that the local failed to comply with its constitution and bylaws and its election rules when it failed to mail a combined nominations and election notice to all members prior to June 28, 2009. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides, in relevant part, that not less than fifteen days prior to the election, a notice of election is to be mailed to each member at his or her last known address. The local mailed a combined nominations and election notice to members in good standing on August 25, 2009, providing at least 15 days of election notice. Nothing in the Local's constitution mandates that a combined notice of nominations and elections is to be mailed prior to June 28, 2009. Rather, the June 28th date signified the date by which a member had to be in good standing in order to be mailed a combined notice of nominations and election. (Article 7, section 3, B.1 of the Local 2233's Constitution). There was no violation.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: William Burrus, National President
American Postal Workers Union
1300 L Street, N.W.
Washington, D.C. 20005

Arthur Jones, President
APWU Local 2233
1000 E. Germantown Pike, Building K-2
Plymouth Meeting, PA 19462

Katherine Bissell, Associate Solicitor
Civil Rights and Labor-Management Division

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343



August 2, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on February 26, 2010, 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 election of officers of Local 2233 (Local 2233 or local), American Postal Workers Union, AFL-CIO, conducted on November 12, 2009.

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

You alleged that [REDACTED], successful incumbent candidate for local president, used union resources to campaign when he posted a letter from a union official and written on union letterhead on his campaign website under the heading of endorsements. Section 401(g) of the LMRDA, 29 USC 481(g), provides, in relevant part, that no moneys received by any union shall be contributed to promote the candidacy of any individual. *See also* 29 C.F.R. § 452.73. Union funds include union facilities, equipment, stationery, etc. 29 C.F.R. § 452.76. The investigation disclosed that in a letter dated June 17, 2009, approximately five months prior to this election, the Eastern Region Coordinator Mike Gallaher sent Jones a letter in which he lauded Jones' accomplishments as Local 2233's president and as a rising leader within the National; this letter was written on union letterhead. Jones posted this letter on his campaign website; via a link entitled "endorsements." Jones did not use union funds to create his website.

There is no merit to your claim that Jones' use of the June 17th letter, on union letterhead, constituted a use of union funds to campaign. The Department examines the timing, tone, and content of written materials to determine whether the materials constitute campaigning in violation of the Act. In terms of timing, the letter preceded the election by almost a half-year. In fact, campaigning for union office had not begun at the time the letter was sent. In terms of tone and content, the letter praised Jones but did not mention the election or urge others to vote for Jones. There was no electioneering. The letter does not meet the test for campaign material. There was no violation.

You alleged that Jones used union resources to promote his candidacy when he used the local's camera and posted nine pictures taken with that camera on his website. The investigation disclosed that the local owned a Canon S5 IS digital camera, purchased in 2008 and used to memorialize many union events, including meet-and-greet sessions, conferences, conventions, and meetings with politicians. Such photos were displayed in the local's newsletter, among other places. In addition, the investigation revealed that the local has been given photographs by members who have taken photos of union events using their own cameras. A review of the nine photos showed that three photos were taken with a camera that was not a Canon S5 IS digital camera. The other six photos were taken by a Canon S5 IS digital camera, but it cannot be established that it was the local's camera that was used to take these photos. The Canon S5 IS is a popular and widely-used camera. It cannot be established that there is probable cause to believe that a violation occurred here because the six photographs taken with a Canon S5 IS digital camera cannot conclusively be shown to be taken with the local's digital camera.

You alleged that one member voted twice. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires unions to provide adequate safeguards to ensure a fair election. The investigation disclosed that one member was mailed two ballots, and that the member voted and returned both ballots. The local included both ballots in its tally. The local failed to provide adequate safeguards to ensure that each member voted only once, in violation of section 401(c) of the LMRDA. Nevertheless, this violation would not have affected the outcome of this election as the lowest margin of victory for any office was twenty-one votes. There was no violation that may have affected the outcome of the election.

You alleged that several members were denied the right to vote when they were not mailed a ballot. Section 401(e) of the LMRDA, 29 USC 481(e), provides, in relevant part, that every member in good standing shall have the right to vote. The investigation disclosed that ballots for 18 members in good standing were returned to the local as undeliverable. Three of those members requested and were mailed a duplicate ballot. A fourth member received the telephone number to call for a duplicate ballot but chose not to make a request. In total, fourteen members in good standing were denied the

right to vote in violation of section 401(e) of the LMRDA. However, the votes of those fourteen members would not have affected the outcome of the election for any race as the lowest margin of victory was twenty-one votes. There was no violation that may have affected the outcome of the election.

You alleged that the local failed to comply with its constitution and bylaws and its election rules when it failed to mail a combined nominations and election notice to all members prior to June 28, 2009. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides, in relevant part, that not less than fifteen days prior to the election, a notice of election is to be mailed to each member at his or her last known address. The local mailed a combined nominations and election notice to members in good standing on August 25, 2009, providing at least 15 days of election notice. Nothing in the Local's constitution mandates that a combined notice of nominations and elections is to be mailed prior to June 28, 2009. Rather, the June 28th date signified the date by which a member had to be in good standing in order to be mailed a combined notice of nominations and election. (Article 7, section 3, B.1 of the Local 2233's Constitution) There was no violation.

You alleged that Local 2233 President Jones, acting without constitutional authority, removed member [REDACTED] from the election committee and appointed another member in his stead. The Local President's powers are derived from Local 2233's Constitution and Bylaws (Bylaws). Article VI, section 2, 4(b) of the Local 2233 Bylaws delineates the Local President's appointed powers: "He/she shall have appointive powers to fill all vacancies of [Local 2233] and shall appoint all committees and be an ex-officio member of all committees with the exception of the Election Committee." Clearly, the Local President, under this provision, has the authority to appoint election committee members. Consequently, Local President Jones had the authority to appoint another member to [REDACTED]'s position as well as remove [REDACTED] from the election committee. There was no violation.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: William Burrus, National President
American Postal Workers Union
1300 L Street, N.W.
Washington, D.C. 20005

Arthur Jones, President
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1000 E. Germantown Pike, Bldg. K-2
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