



February 16, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your October 13, 2009 complaint filed with the United States Department of Labor (Department) 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 United Brotherhood of Carpenters and Joiners of America Local Union 113 (UBC) election held on June 4, 2009.

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 of the LMRDA that affected the outcome of the election occurred.

You alleged that Mr. Wilkerson, incumbent business representative and a candidate in the election, had access to the Ohio and Vicinity Regional Council of Carpenters (OVRCC) membership information, including membership information for Local 113, and used that access to send out his campaign literature. You also alleged that the membership information was withheld from the local's recording secretary, Mr. Bailey.

The LMRDA does not provide candidates with a right to copies of the union membership list but does provide candidates with the right to inspect the membership list once within 30 days of the election. 29 U.S.C. § 481(c). The LMRDA further provides that unions should "refrain from discrimination in favor of or against any candidate with respect to the use of lists of members" and that unions must comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense, campaign literature to union members. 29 U.S.C. § 401(c); 29 C.F.R. § 452.67. Section 31H of the UBC Constitution states that where required by law, a qualified candidate for office shall be permitted to examine the membership list prior to the election and that a local union or council shall honor reasonable requests from

candidates to have their campaign literature mailed by the union at the candidate's expense.

The investigation revealed that Mr. Wilkerson had read-only access to membership information through the OVRCC database which tracks dues and membership. He asserted and the investigation confirmed that he never accessed the membership list himself for campaign purposes. The only time membership information was used during his campaign was when he requested a set of mailing labels for the mailing of his campaign literature. Mr. Wilkerson used an outside printing company to produce his campaign literature, which was comprised of a letter and sample ballot. He brought the campaign literature in stamped and sealed envelopes to the OVRCC office. Once there, he asked one secretary to run a set of member address labels and another to place the labels on the envelopes. The secretaries ran and affixed labels on personal time. The secretaries at the OVRCC testified that they would have run and affixed labels for any candidate. No other candidate, including you, requested a campaign mailing. There is no evidence that the union discriminated among members with regard to access to and use of the union list, and there was no evidence that Mr. Wilkerson had special access to the list during the campaign.

Regarding the allegation that the membership list was withheld from Mr. Bailey, the investigation revealed that Mr. Bailey asked Financial Secretary Ted Metz for a copy of the member list and a set of mailing labels in order to mail the election and nominations notice. Mr. Metz also has read-only access to the membership list. Mr. Metz told Mr. Bailey that the local's recording secretary normally takes membership mailings to the OVRCC for labels and that he did not know how to print labels for mailings. He directed Mr. Bailey to ask the OVRCC for help. Upon request, the OVRCC staff printed the labels and assisted Mr. Bailey with mailing the election and nominations notice. The investigation revealed that Mr. Metz never denied Mr. Bailey access to the membership list. There was no violation of the LMRDA.

You alleged that Mr. Wilkerson used the OVRCC's business equipment and resources to address and send out his campaign mailing. You also alleged that Mr. Wilkerson should not have used the OVRCC's address as the return address for his mailing because it implied endorsement by the OVRCC.

Section 401(g) of the LMRDA provides that no moneys received by any labor organization by way of dues, assessment or similar levy shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of the LMRDA. 29 U.S.C. § 481(g). The investigation revealed that Mr. Wilkerson followed the established procedure for conducting a campaign mailing. He took sealed, stamped envelopes to the OVRCC for mailing labels. OVRCC staff provided the labels. The

secretaries who ran the labels and placed the labels on the envelopes did so on their own time during breaks. Mr. Wilkerson paid for the creation and collating of his campaign literature. Because candidates must request labels from the OVRCC in order to do a mailing, it is reasonable to expect that the OVRCC would run the labels and affix them to the envelopes. There was no use of union monies to produce or send the campaign mailing.

Regarding the use of the OVRCC address, the investigation revealed that Wilkerson used his name and the OVRCC office street address as the return address on his mailing. The address did not contain any information identifying it as the OVRCC address. There was no reference to the OVRCC in the campaign literature. Accordingly, there was no violation of the LMRDA.

You alleged that Mr. Wilkerson's slate members were allowed to campaign in the polling area during the election. Specifically, you alleged that members supporting Mr. Wilkerson's candidacy distributed sample ballots inside of the polling place. You alleged that you saw union member [REDACTED] inside the election room with copies of Mr. Wilkerson's sample ballot in his pocket.

The LMRDA prohibits campaigning within the polling place and allows unions to forbid campaigning within a certain distance of the polls. *See* 29 C.F.R. § 452.111. The investigation revealed that Mr. Wilkerson did include a sample ballot in his campaign mailing, although there was no formal slate associated with his candidacy. However, no other witnesses saw [REDACTED] or any other members distributing sample ballots or otherwise campaigning inside the polling area. [REDACTED] stated that he handed out the sample ballots in an area that was 200 feet away from the building where the polling site was located. There was no evidence of improper conduct in the polling area and no corroboration of your allegation. Accordingly, there was no violation of the LMRDA.

You alleged that Mr. Wilkerson had more observers than the rules permitted and that one of his two election observers unduly influenced the election. You objected to the fact that one of Wilkerson's observers, [REDACTED], made his own tally of the election results during the ballot counting. Pursuant to section 401(c) of the LMRDA the union must provide adequate safeguards to insure a fair election, including granting candidates the right to have observers at the polls and at the ballot counting. 29 U.S.C. 481(c). In addition, Section 31H of the union's constitution states that more than one observer may be appointed by each candidate.

The LMRDA does not restrict the number of observers, and the union constitution permitted Mr. Wilkerson to have one or more election observers at the polls. There was no violation of the LMRDA.

The investigation revealed that [REDACTED] did keep his own tally but that there was no evidence that he interfered with the tally process. No member of the election committee complained that he/she was intimidated by Mr. Wilkerson's observers. You were notified that you were entitled to an observer but you decided not to have one. There was no violation of the LMRDA.

For the reasons set forth above, it is concluded that with respect to each of your specific allegations that no violation of the LMRDA. Accordingly, I have closed the file in this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Douglas J. McCarron
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