



November 30, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your August 16, 2010 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 or Act), 29 U.S.C. §§ 481-484, occurred in connection with the triennial election of officers for Local 60 of the International Brotherhood of Electrical Workers (IBEW), completed on June 5, 2010.

The Department of Labor (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 violations occurred.

You alleged that incumbent business manager Michael J. Devine used the May 2010 newsletter to campaign. Specifically, you pointed to the clip art "Vote" graphic, which was right below Mr. Devine's name on page one of the newsletter, to support your allegation. You also claimed that the *Business Manager's Report* in the May 2010 newsletter overstated the union's assets in order to support Mr. Devine's campaign.

Section 402(a) of the LMRDA, 29 U.S.C. § 482, requires that a union member follow the union's internal protest procedures prior to filing a complaint with the Department. The Department's investigation discovered conflicting evidence about whether this claim was properly brought before the union. This conflicting evidence need not be resolved, however, because the investigation did not otherwise substantiate your allegations regarding the newsletter.

Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the application or contribution of union funds to promote the candidacy of any person in a union officer election, including the use of a union publication to criticize or praise any candidate. See 29 C.F.R. § 452.75. To ascertain whether a union-financed letter constitutes impermissible campaigning in violation of section 401(g) of the Act, the Department evaluates the timing, tone, and content of such publication.

The May 2010 newsletter was mailed to members approximately a month before the scheduled election of June 5, 2010. Since the newsletter was usually mailed on a monthly basis, the timing was not unusual and therefore does not support an allegation of improper campaigning.

Regarding the tone of the newsletter, the Department's review revealed that the newsletter's tone did not endorse the reelection of the incumbent officers, or discourage the election of the opposition candidates. Rather, the newsletter neutrally reported items of interest and importance to union members, as the newsletters had done in previous months.

With regard to the content of the newsletter, the newsletters from the months previous to the May 2010 newsletter contain a *Business Manager's Report* similar to the one in the May 2010 newsletter, including a similar discussion of the union's finances. Moreover, regarding the clip art "Vote" graphic, previous and later newsletters contain similar clip art graphics. Assistant Business Manager Raymond Vasquez has prepared the local newsletters since 2008. Mr. Vasquez stated that he uses clip art graphics to fill voids in the newsletters. Thus, the evidence does not provide a basis for finding that the tone, timing, and content of the newsletter effectively encouraged or endorsed the candidacy of Mr. Devine or any other candidate in the election. The Act was not violated.

In your complaint you also alleged improper campaigning at the union hall. You claim that assistant business manager Paul Garza improperly campaigned to member "██████████" while Mr. Garza was working at the union hall and that Mr. Garza also provided ██████████ with confidential information concerning you from his union computer.

As previously detailed, section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy of any person in a union officer election. Union officers and employees are thus prohibited from campaigning on union time or using union funds, facilities, stationery, or equipment to assist them in such campaigning. See 29 C.F.R. § 452.76.

This standard was not violated, as the Department's investigation did not substantiate these allegations regarding improper campaigning. It was determined that the member who was allegedly campaigned to was named "██████████," not ██████████. Mr. Garza denied campaigning to ██████████ and stated that he simply responded to questions ██████████ asked him. Additionally, ██████████ stated that Mr. Garza did not campaign to him. Both deny any claim that Mr. Garza showed ██████████ any documents concerning you. Moreover, ██████████ did not vote in the election, so any

improper campaigning would not have affected the election. In short, your allegations have not been substantiated and, thus, the Act was not violated.

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

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