



September 24, 2010

Dear |||||:

This Statement of Reasons is in response to your complaint received by the Department of Labor on May 25, 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 28, American Postal Workers Union conducted on December 4, 2009.

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

You alleged that an individual who did not provide a social security number was nevertheless permitted to serve as ballot counter. Section 401(e) of the LMRDA provides, in pertinent part, that unions conduct their elections in accordance with their constitution and bylaws. No provision in the LMRDA, the Local 28 Constitution and Bylaws, or the National Constitution requires a ballot counter to provide his or her social security number as a condition of serving in that capacity. There was no violation.

You alleged that a ballot counter exited the polling area without an escort, in violation of the rules announced by the election committee. The investigation disclosed that at the time the ballot counter exited the polling area, the ballots were not yet in the possession of any of the ballot counters. There was no violation.

You alleged that the eligibility of one voter was not verified when the election committee included that member's ballot in the tally. Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall be eligible to cast a vote. The investigation disclosed that the election committee chair opened two outer envelopes and commingled the two ballots in a ballot box, prior to determining that one of the two ballots was cast by an ineligible member. Because the election committee but did not know which of the two secret ballot envelopes belonged to the ineligible

member, it counted both ballots. The inclusion of a ballot cast by an ineligible member violated section 401(e) of the LMRDA. However, the Department may only seek to set aside an election where the violation at issue may have affected the outcome of the election. 29 U.S.C. § 482(c); 29 C.F.R. § 452.136(b). Here, it does not appear that the violation may have affected the outcome of the election because the lowest margin of victory was 22 votes, far in excess of the one ballot that should not have been counted. There was no violation that may have affected the outcome of the election.

You alleged that retirees were denied the right to vote when their ballots were not included in the tally. Section 401(e) of the LMRDA provides in relevant part, that every member in good standing shall have the right to vote for his or her candidate of choice. Article 3, section 2 of the Local 28 Constitution and Bylaws permits retirees to vote as long as they continue to pay dues. The investigation disclosed that 17 retirees who were eligible to vote were not permitted to do so. Their ballots' exclusion from the tally violated section 401(e) of the LMRDA. However, none of the general officer positions could have been affected by the violation because the lowest margin of victory was 22 votes for Secretary. With respect to the delegate positions, seven delegates who achieved fewer than the 20 votes needed to be a delegate would have attained at least 20 votes had all 17 of the retiree votes been cast in his or her favor. However, there is no reason to open and count those 17 ballots and add these votes to each delegate's total votes. All seven of those candidates for delegate qualified to be a delegate in some other manner, either as a State Delegate or by holding an officer position in which a State Delegate position is automatic. There was no violation that may have affected the outcome of the election.

Finally, you raised issues in your complaint to the Department that had not been raised in your protest to the union. As these issues are not within the Department's authority, they have not been considered.

For the reasons set forth above, I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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

Jessie Gobunquin, President
APWU Local 28
132 SW 153rd Street
Burien, Washington 98166

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