



August 22, 2011

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Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on May 3, 2011. You alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481-484, occurred in connection with the American Postal Workers Union (APWU), Local 181 election held on November 30, 2010.

The Department of Labor conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA affecting the outcome of the election.

The Department’s investigation determined that the union inadvertently failed to include the position of Area Vice President on the ballot. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires unions to take adequate safeguards to ensure a fair election. Section 401(e) of the Act, 29 U.S.C. § 481(e), gives members the right to vote for the candidate of their choice. Failing to include the race for Area Vice President on the ballot violated these provisions of the Act. The union, however, promptly remedied the violation when it sent a second, separate ballot for the Area Vice President’s race four days after the first ballots were mailed.

In your complaint, you alleged that Local 181 improperly deprived supervisory employees in the Internal Mail Facility (IMF) of their right to vote for the position of Area Vice President. You specifically alleged that although Local 181 sent a second, separate ballot for Area Vice President, the local did not mail that ballot to IMF supervisors. You asserted that, had supervisors received the second ballot, you may have won the election.

Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires unions to conduct officer elections in accordance with the union constitution. Article 3, Section 4(a) of the APWU Constitution states: *“Local unions shall be granted the right to allow members of their organization who . . . may have been promoted to positions exercising supervisory authority, the right to maintain their membership without voice or vote.”* Therefore, while supervisory employees may keep their membership in Local 181, they are not permitted to vote. Since supervisory members of APWU may not vote, Local 181 complied with the

APWU constitution when it did not mail ballots containing the Area Vice President position to the supervisory IMF employees. There was no violation of the LMRDA.

Because 20 supervisors improperly received the first ballot, the Department examined voting records to determine whether supervisors were improperly permitted to vote. That examination revealed that, of 20 supervisors who received the first ballot, only 1 returned a ballot. That one ballot was counted. The union thus allowed an ineligible member to vote in the election in violation of section 401(e) of the LMRDA. *See* 29 U.S.C. § 481(e). However, section 402(c)(2) of the LMRDA provides that a union election will only be overturned where a violation may have affected the outcome of the election. *See* 29 U.S.C. § 482. Based on the Department's investigative findings, impermissibly counting the vote of one supervisor would not have had an effect on the outcome of the election, as that single vote would change only the margin of victory.

Finally, the Department's examination of the election records revealed that one temporary supervisory member returned a ballot that was counted. However, members who occupy temporary supervisory positions are permitted to vote in APWU officer elections. Therefore, there was no violation.

The investigation did not disclose any violation of the LMRDA that may have affected the election outcome. Accordingly, I am closing the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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