



December 15, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 6, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010. This was an election of national officers with APWU members from locals throughout the country participating.

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

You allege that the APWU Boston Area Local used its website and newsletter to support one of your opponents for Organization Director, [REDACTED]. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits the use of union funds or resources to promote the candidacy of any person in an election. Pursuant to Department of Labor regulations at 29 C.F.R. 452.75, a union-financed publication may not be used to promote or denigrate any person's candidacy.

The investigation revealed that the Boston Area Local's January-March 2010 newsletter, *The Bostonian*, that was later archived on the local's website, contained a piece written by the outgoing Boston Local president and then prospective candidate for Organization Director, [REDACTED]. In this article, [REDACTED] extolled his history of working for the Boston Local and his dedication to its members and stated that he hoped to continue serving in national office. The newsletter also contained articles by four other Boston Local officers praising [REDACTED] for his work and supporting his upcoming candidacy. These articles, contained in a union-financed publication, promoted [REDACTED] candidacy in violation of the LMRDA.

However, the investigation did not reveal that the violation affected the outcome of the election for Organization Director. The newsletter was only mailed to Boston Local members. The investigation revealed that the APWU website contained a

link to the websites of all APWU locals, including Boston. However, the investigation revealed that the APWU website's link to the local websites was deactivated as of May 1, 2010, some 5 months before the election. The investigation did not reveal evidence suggesting that APWU members outside of the Boston area accessed the Boston Local's website, searched the archived newsletters to find the January-March issue and read the issue containing the articles promoting ██████ in sufficient numbers to have affected the outcome of the election. The average monthly number of hits to the Boston Local's website was 4,138. In September and October 2010 when voting occurred, the number of hits on the website was 3,536 and 3,676 which does not reflect increased viewing of the website at the time of the election. The investigation did reveal that one eligible member outside of the Boston area blogged about finding the articles written by ██████ during an internet search on ██████. With respect to the members of the Boston Local whose votes may have been tainted by this violation, the investigation revealed that 665 members from the Boston Local voted for ██████ in the election. These votes are insufficient to affect the outcome of the Organization Director race.

You allege that the APWU promoted the candidacy of another of your opponents for Organization Director, ██████, when APWU allowed her and two other members to escort the National Association of Letter Carriers president to the stage for a speech at the APWU Convention. The investigation did not substantiate this allegation. The investigation disclosed that it is customary for local officials to accompany important guest speakers to the stage at the APWU Convention. ██████ was a local official. Further, there was nothing said or done in connection with escorting the speaker to the stage that promoted ██████ candidacy. The speaker acknowledged those who escorted him by saying: "I want to thank [President Burrus] for that great introduction, and it was really kind of cool being escorted up here. ██████, ██████, and ██████ we worked together at Sarasota for many, many years. ██████ and I fought the battles as branch presidents going back 25 years, so it's great to be here. I've got a lot of good friends in APWU." Neither ██████ candidacy nor the election was mentioned. There were no statements made denigrating the candidacy of others. There was no violation of the LMRDA.

You also allege that ██████ gained access to a Tampa facility in order to campaign by using the badge of National Business Agent ██████ who accompanied ██████. You also allege that you were denied the opportunity to campaign at this facility. The investigation revealed that ██████ and ██████ campaigned inside the security gates of the Tampa facility after using the old employee identification card of ██████ who had worked at the Tampa facility before becoming a National Business Agent. ██████ may also have used her position as a union officer to gain access. In any event, the two women campaigned to approximately 75 members. That number, even when combined with the violations discussed elsewhere in this letter, is not sufficient to have affected the outcome of the election of Organization Director where the margin of victory was 1,198. The

investigation did not reveal that you or your supporters were denied an opportunity to enter the Tampa facility. The investigation revealed that neither you nor one of your supporters attempted to do so and were denied. You further alleged that [REDACTED] and [REDACTED] campaigned together improperly at other Florida postal facilities. Investigation determined that [REDACTED] and [REDACTED] did not campaign together at any other Florida postal facilities.

You also allege that [REDACTED] campaigned on the floor of the APWU convention in violation of the election rules and while being paid with union funds to be a delegate. As stated above, Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. However, campaigning incidental to regular union business does not constitute a 401(g) violation. *See* 29 C.F.R. § 452.76. Further, Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws.

In this case, the investigation found that the APWU constitution and the convention rules did not address campaigning on the convention floor. A letter from APWU Secretary-Treasurer [REDACTED] to the delegates and members attending the convention, which you referenced in your complaint, prohibited the distribution of campaign literature relating to the national election in the convention hall. The applicability of Powell's letter to the convention was raised during the convention proceedings. Then President Burrus ruled that [REDACTED] letter was not controlling and that the convention was to be governed by the duly passed convention rules. Since the directive in [REDACTED] letter was not a duly enacted convention rule or incorporated in the constitution, the failure to follow it did not violate the union constitution or the LMRDA. Further, [REDACTED] distribution of her campaign card to some delegates present on the convention floor was incidental to her union business as a delegate and not a prohibited use of union funds.

You allege that entire locals or crafts within locals in the southern region never received ballots. The investigation disclosed that many members in the southern region did not receive ballots from the original September 13, 2010 mailing. The U.S. Postal Service mailing receipt for the ballots shows that 190,717 ballots were mailed on September 13 via presorted first class mail. This number matches the number of members on the APWU membership mailing lists. The evidence therefore supports a finding that ballots were mailed to all members. In addition, there were 44,705 members on the southern region's mailing list and only 562 of the 2,432 ballots returned as undeliverable were from the southern region. As such, the explanation for southern region members not receiving ballots was not bad addresses. As discussed below, in order to address the reports of members in the southern region not receiving their ballots, the election committee extended the deadlines for requesting duplicate ballots and for returning voted ballots. This action was a reasonable solution despite the new ballot return date not conforming to the date provided in the APWU constitution.

You also allege that the APWU violated its constitution by changing the ballot return deadline from October 5, 2010, to October 14, 2010 and only candidates who were incumbent officers were consulted about the change. As stated above, Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. In this case, the APWU constitution requires ballots to be returned by October 5.

The investigation found that the APWU announced the change in the ballot return deadline on September 24, 2010, by posting the change on the union's website and mailing the candidates a letter informing them of the change. APWU also sent locals a notice to post that announced the extension. The change was precipitated by the large number of members, primarily in the southern region, who did not receive ballots in the original mailing and had to request duplicates. The investigation also disclosed that while the incumbent officers were notified of the extended ballot return deadline because the new tally date involved additional costs, it was the election committee that made the decision to extend the deadline. Extending the deadline was intended to provide affected members with sufficient time to return their ballots. The extension of the return deadline did not violate the substantive requirements of the LMRDA. This action served to promote important principles of the LMRDA concerning participation in union elections. The failure to adequately address the problem with the delivery of ballots could have resulted in the APWU denying eligible members the right to vote in violation of the LMRDA. The constitutional violation had no effect on the outcome of the election. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

You also allege that the duplicate ballot procedure was discriminatory in that the APWU did not provide duplicate ballots to the members of the Austin Local upon the request of that Local's president but rather required the members to make the request themselves.

The investigation did not confirm this allegation. As stated above, Section 401(c) requires a union to provide adequate safeguards to insure a fair election. The investigation revealed that the APWU election rules, published in the March/ April magazine mailed to all members, stated: "An individual member or a local on behalf of its members is to notify the AAA by calling 1-800..." The APWU processed 5,389 duplicate ballot requests by mailing the duplicates to members' home addresses. The APWU also permitted twenty-nine local officers, usually local presidents, to request duplicate ballots on behalf of their entire local. The investigation found that no one from the Austin Local, including the president, requested duplicate ballots for the entire membership. Rather, the Austin Local posted flyers on the local's worksite bulletin boards informing members how to request a duplicate ballot. The evidence does not

support a finding that the procedures were inadequate, especially when combined with the extension of the ballot return deadline. There was no violation of the LMRDA.

You also allege that candidate for Assistant Director B for Maintenance, [REDACTED], used union resources to campaign against you. Specifically, you allege that [REDACTED] used his union cell phone to call the Cincinnati Local President, Angie Holtgreffe, to persuade her to change her local's endorsement from you to [REDACTED]. As stated above, Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. The investigation revealed that [REDACTED] called Holtgreffe using his union cell phone during her work hours. [REDACTED] denies that he urged Holtgreffe to change the Local's endorsement of you during the call. More importantly, Holtgreffe did not change the Cincinnati Local's endorsement. Therefore, even if [REDACTED] used a union resource for campaign purposes, the violation had no effect.

You allege that ballots from the southern region were removed from return ballot and secret ballot envelopes and left uncounted overnight outside the presence of observers. Leaving the ballots overnight outside the presence of observers may provide an opportunity for ballot fraud or tampering in violation of Section 401(c) of the LMRDA which requires that adequate safeguards to insure a fair election be provided. In this case, the investigation confirmed that ballots were left uncounted overnight outside the presence of observers. However, the investigation, including an examination of the ballots from the southern region, found no evidence of ballot fraud or tampering. You also allege that observer [REDACTED] was denied the right to stay overnight with the ballots. The investigation found conflicting evidence regarding whether [REDACTED] requested and/or was denied the right to stay with the ballots overnight. The investigation did find that three election committee members stayed in the ballot room overnight to safeguard the ballots. In any event, the investigation's witness interviews and the examination of the ballots found no evidence of fraud or tampering. No violation affecting the outcome of the election occurred.

You allege that the New York Metro Area Local's (NY Metro Local) endorsement of candidates was not voted on by the members or executive committee. You also allege that the NY Metro Local misused union funds because the flyers promoting the endorsed candidates contained the union logo. You further allege that the endorsement flyers were improperly distributed in workplaces. The investigation revealed that the union dismissed these issues as untimely. Section 402 of the LMRDA requires that a member must have exhausted the remedies available under the union's constitution and bylaws in order to file a complaint with the Secretary of Labor. The APWU requires election complaints to be filed within 72 hours, not including weekends and holidays, after the grievance arises. You did not protest issues concerning the endorsements and the endorsement flyers until October 25, 2010, 37 days after the flyers were first distributed on September 15. The investigation did not substantiate your claim that you did not learn about the NY Metro Local endorsement issues until

October 22. Thus, these matters were not timely protested to the union and are not properly before the Department. *See* 29 C.F.R. § 452.135.

You also made other allegations that the Department did not investigate because even if they were true they would not amount to a violation of the LMRDA.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and we have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Mr. Cliff Guffey  
President  
American Postal Workers Union, AFL-CIO  
1300 L St., NW  
Washington, DC 20005

Christopher B. Wilkinson, Associate Solicitor for  
Civil Rights and Labor Management



December 15, 2011



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 7, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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

You allege that members and entire locals in the southern region did not receive ballots and that the union's remedy to address this problem was inadequate. The investigation partially confirmed this allegation. Section 401(e) of LMRDA requires that eligible members be allowed to participate in the election. The investigation disclosed that many members in the southern region did not receive ballots in the original September 13, 2010 mailing. The U.S. Postal Service mailing receipt for the ballots shows that 190,717 ballots were mailed on September 13 via presorted first class mail. This number matches the number of members on the APWU membership mailing lists. The evidence, therefore, supports a finding that the APWU mailed ballots to all members. In addition, there were 44,705 members on the southern region's mailing list and only 562 of the 2,432 ballots returned as undeliverable were from the southern region. As such, the explanation for southern region members not receiving ballots was not bad addresses.

In order to address the ballot receipt problem, the APWU extended the ballot return deadline, from October 5 to October 14, to provide members with sufficient time to request, receive, and return their duplicate ballots. The investigation found that the

APWU announced the change in the ballot return deadline on September 24, 2010, by posting the change on the APWU's website and by mailing the candidates a letter informing them of the change. The union also sent all locals a notice to post that announced the extension. These actions were an adequate remedy for the ballot receipt problem. The investigation also determined that the private company that the Union hired to conduct the election satisfactorily responded to duplicate ballot requests. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Mr. Cliff Guffey  
President  
American Postal Workers Union, AFL-CIO  
1300 L St., NW  
Washington, DC 20005

Christopher Wilkinson, Associate Solicitor for  
Civil Rights and Labor-Management



December 15, 2011



Dear [REDACTED]

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 7, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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

You allege that members were disenfranchised by the failure to receive original ballots and the union's failure to timely provide them with duplicate ballots. Similarly, you also allege that the notification of the extension of the deadline to return ballots or request duplicates was inadequate and that locals did not know they could request duplicate ballots on behalf of their entire membership. The investigation did not disclose a violation that may have affected the outcome of the election.

Section 401(e) of the LMRDA requires that eligible members be allowed to participate in the election; it also provides that unions are to hold covered elections in accordance with their validly adopted constitution and bylaws. In this case, a large number of members, primarily in the southern region, did not receive ballots in the original mailing and had to request duplicates. In order to address this problem, the APWU extended the ballot return deadline, from October 5, as required by the APWU constitution, to October 14, to provide members with sufficient time to request, receive, and return their duplicate ballots. The investigation found that the union announced the change in the ballot return deadline on September 24, 2010, by posting the change on the APWU's website and by mailing the candidates a letter informing them of the change. The union also sent all locals a notice to post that announced the extension. Although the extension of the deadline violated the APWU constitution, the extension did not violate the substantive requirements of the LMRDA. Rather, the action served to promote important principles of the LMRDA concerning participation in union

elections. The failure to adequately address the problem with the receipt of ballots could have resulted in the APWU denying eligible members the right to vote in violation of the LMRDA.

The investigation also revealed that the APWU election rules regarding duplicate ballots, published in the March/ April magazine which is mailed to all members, provided that an individual member or a local on behalf of its members could request duplicate ballots. The investigation revealed that the APWU permitted twenty-nine local officers, usually local presidents, to request duplicate ballots on behalf of their entire local. The investigation further revealed that these ballots were mailed to individual members not the local officers who made the requests. The investigation also determined that the private company that the union hired to conduct the election satisfactorily responded to duplicate ballot requests. The duplicate ballot request records reflect that [REDACTED] whom you stated did not receive a duplicate ballot, was mailed a duplicate ballot on both September 29 and October 6. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Mr. Cliff Guffey  
President  
American Postal Workers Union, AFL-CIO  
1300 L St., NW  
Washington, DC 20005

Christopher Wilkinson, Associate Solicitor  
Civil Rights and Labor-Management Division



December 15, 2011



Dear [REDACTED]:

This Statement of Reasons is in response to the two complaints that you filed with the United States Department of Labor on December 9, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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

You allege that members in several states did not receive ballots and members who requested duplicates did not receive them or received them too late to vote. Section 401(e) of the LMRDA requires that eligible members be allowed to participate in the election. In this case, the investigation found that a large number of members, primarily in the southern region, did not receive ballots in the original mailing and had to request duplicates. The U.S. Postal Service mailing receipt for the ballots shows that 190,717 ballots were mailed on September 13 via presorted first class mail. This number matches the number of members on the APWU membership mailing lists. The evidence therefore supports a finding that ballots were mailed to all members. In addition, there were 44,705 members on the southern region's mailing list and only 562 of the 2,432 ballots returned as undeliverable were from the southern region. As such, the explanation for southern region members not receiving ballots was not bad addresses.

In order to address the reports of members in the southern region not receiving ballots from the original ballot mailing, the union extended the ballot return deadline, from October 5 to October 14, in order to provide members with sufficient time to request, receive and return duplicate ballots. The investigation found that the union announced the change in the ballot return deadline on September 24, 2010, by posting the change

on the APWU's website and by mailing the candidates a letter informing them of the change. Locals also publicized the change by posting flyers at worksites. Through these actions, the union adequately addressed the problem with the receipt of ballots. Further, the investigation found that the union had an adequate duplicate ballot procedure, notified members of it, and adequately responded to duplicate ballot requests. There was no violation of the LMRDA.

You allege that the union's duplicate ballot procedure was not followed in that local officers were allowed to request duplicate ballots without providing the names of members on whose behalf the request was being made and that the union sent the duplicate ballots to the local officers requesting the ballots rather than to individual members. The investigation revealed that the union's election rules regarding duplicate ballots, published in the March/April magazine which is mailed to all members, provided that an individual member or a local on behalf of its members could request duplicate ballots. Requests were to include the name, social security number, division, local, and address of the member needing the ballot.

The investigation revealed that the Union permitted twenty-nine local officers, usually local presidents, to request duplicate ballots on behalf of their members. Investigation further revealed that these ballots were mailed to individual members and not to the local officers who made the requests. There were instances when a local officer requested ballots for their entire membership without providing each member's name, social security number, division, and address. However, the fact that the information was not required when a local officer made a blanket request is not considered a violation of the LMRDA. You further allege that the American Arbitration Association (AAA), who was hired to conduct the election, required a member requesting a duplicate ballot to submit a signed form whereas requests through the union did not require such a form. The investigation determined that AAA did not demand a signed form in order to request a duplicate ballot. There was no violation of the LMRDA.

You also allege that the union failed to correctly print your candidate statement in its July/August magazine. Specifically, you allege that the union misprinted your website domain name as [REDACTED] rather than [REDACTED]. The investigation confirmed this allegation. The investigation found that the union permitted all candidates to submit an article of 300 words or less for publication in the July/August magazine. Yet, when your statement, which complied with the union's guidelines, was printed your website's domain name was inexplicably misprinted. Section 401(c) of the LMRDA requires unions to refrain from discrimination in favor or against any candidate and to provide adequate safeguards to ensure a fair election. see 29 C.F.R. §§ 452.67-72. However, in order for the Department to seek to overturn an election, there must be evidence that a violation affecting the outcome of the election "has occurred and has not been remedied." 29 U.S.C. § 482(b). In this case, there is no

such evidence. When you noticed the error you acted swiftly to obtain the domain name printed in the magazine. The investigation found that the magazine was mailed on July 12 and you obtained the new domain name on July 15. Further, the Union remedied the violation by reprinting your statement and your opponent's statements in their entirety in the September/October issue which was mailed to members on September 15, just two days following the ballot mailing. Thus, the initial violation was corrected and had no effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Mr. Cliff Guffey  
President  
American Postal Workers Union, AFL-CIO  
1300 L St., NW  
Washington, DC 20005

Christopher Wilkinson, Associate Solicitor  
Civil Rights and Labor-Management Division



December 15, 2011



Dear [Redacted]

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 10, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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

You allege that the members in the southern region did not receive ballots and that the union's remedy to address this problem and duplicate ballot procedure were inadequate. Specifically, you allege that members should not have been required to request a duplicate ballot in order to participate in the election and some members were not sure how to request a duplicate ballot while others received duplicate ballots too late to return them or did not receive them at all. Section 401(e) of LMRDA requires that eligible members be allowed to participate in the election.

In this case, a large number of members, primarily in the southern region, did not receive ballots in the original mailing and had to request duplicates. The U.S. Postal Service mailing receipt for the ballots shows that 190,717 ballots were mailed on September 13 via presorted first class mail. This number matches the number of members on the APWU membership mailing list. The evidence, therefore, supports a finding that the APWU mailed ballots to all members. In addition, there were 44,705 members on the southern region's mailing list and only 562 of the 2,432 ballots returned as undeliverable were from the southern region. As such, the explanation for southern region members not receiving ballots was not bad addresses.

In order to address the ballot receipt problem, the union extended the ballot return deadline, from October 5 to October 14, in order to provide members with sufficient time to request, receive, and return their duplicate ballots. The investigation found that the union announced the change in the ballot return deadline, along with the instructions for requesting a duplicate ballot, on September 24, 2010 by posting the information on the APWU's website and by mailing the candidates a letter informing them of the change. The union also sent all locals a notice to post that announced the extension. The investigation also revealed that the Union's election rules, published in the March/April magazine which is mailed to all members, stated: "An individual member or a local on behalf of its members is to notify the AAA by calling 1-800..."

The investigation determined that the private company that the Union hired to conduct the election adequately responded to duplicate ballot requests, processing 5,389 duplicate ballot requests. These actions were an adequate remedy to the ballot receipt problem. Further, it is not a violation of the LMRDA to require members to comply with a reasonable duplicate ballot procedure, such as this one. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

You also alleged numerous other violations. The APWU Constitution requires both pre-election and post-election protests be filed with the election committee within 72 hours after the grievance arises and that appeals be submitted in writing to the NEAC within 5 days of the decision appealed from. Section 402 of the Act requires that a member must have "exhausted the remedies available under the constitution and bylaws" of their union in order to file a complaint with the Secretary of Labor. Because you never protested these issues to the APWU, they are not properly within the scope of your complaint to the Department. 29 C.F.R. § 452.136(b-1).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

Page 3 of 3

cc: Mr. Cliff Guffey

President  
American Postal Workers Union, AFL-CIO  
1300 L St., NW  
Washington, DC 20005

Christopher Wilkinson, Associate Solicitor  
Civil Rights and Labor-Management Division



December 15, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 13, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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

You alleged that the union failed to print your entire candidate statement in its July/August magazine. You further allege that the reprinting of your entire article was sent to the membership too late to remedy the situation and reprinting your opponent's article gave your opponent an additional opportunity to campaign to the membership. Specifically, you allege that the union omitted the following closing paragraph: "By being proactive, not reactive, keeping membership's needs always first in my heart and mind, I will continue to work for you and your future. Together we will prevail."

The investigation found that the union permitted all candidates to submit an article of 300 words or less for publication in the July/August magazine. Yet, when your statement, which complied with the union's guidelines, was printed the above cited paragraph was inexplicably omitted.

Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate and to provide adequate safeguards to ensure a fair election. see 29 C.F.R. §§ 452.67-72. The union's mishandling of your statement violated section 401(c) of the LMRDA. However, in order for the Department to seek to overturn an election, there must be evidence that a violation affecting the outcome of the election "has occurred and has not been remedied." In this case, there is no such evidence. The union remedied the violation by reprinting your statement and your opponent's statements in their entirety in the September/October issue which was mailed to members on September 15, just two days following the ballot mailing. Had the union failed to also reprint the statement of your opponent, it would have again violated Section 401(c) by distributing the majority of your statement more than his. Thus, the initial violation was corrected and had no effect on the outcome of the election.

You made additional allegations in your protest to the union on October 17, 2010. These allegations were: the union violated the constitution by extending the ballot return deadline from October 5 to October 14, 2010; the Mount Vernon Local president placed a personal endorsement of your opponent and other candidates on the Local's bulletin board; and, your opponent falsely claimed the support and endorsement of national and local officers. Section 402 of the LMRDA requires that a member must have "exhausted the remedies available under the constitution and bylaws" of the union in order to file a complaint with the Secretary of Labor. The union requires election complaints to be filed within 72 hours, not including weekends and holidays, after the grievance arises. Here, the union dismissed these allegations as untimely. The evidence supports that conclusion.

The investigation found that the union announced the change in the ballot return deadline on September 24, 2010, by posting the change on the APWU's website and mailing candidates, including you, a letter informing them of the change. However, you did not protest the change in the deadline until October 17, 2010. Further, the investigation revealed that you knew of the other alleged violations during the election period, yet did not file a protest until October 17, two days after the completion of the election. Therefore, these matters were not timely protested to the Union and are not properly before the Department. See 29 C.F.R. § 452.135.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Mr. Cliff Guffey  
President  
American Postal Workers Union, AFL-CIO  
1300 L St., NW  
Washington, DC 20005

Christopher Wilkinson, Associate Solicitor  
Civil Rights and Labor-Management Division



December 15, 2011



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 13, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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

You allege that members and entire locals in the southern region did not receive ballots and that the union's remedy to address this problem was inadequate and did not conform to union rules. The investigation partially confirmed this allegation. Section 401(e) of LMRDA requires that eligible members be allowed to participate in the election; it also provides that unions are to hold covered elections in accordance with their validly adopted constitution and bylaws.) *see* 29 C.F.R. § 452.2. In this case, a large number of members, primarily in the southern region, did not receive ballots in the original mailing and had to request duplicates. The U.S. Postal Service mailing receipt for the ballots shows that 190,717 ballots were mailed on September 13 via presorted first class mail. This number matches the number of members on the APWU membership mailing list. The evidence therefore supports a finding that the APWU mailed ballots to all members. In addition, there were 44,705 members on the southern region's mailing list and only 562 of the 2,432 ballots returned as undeliverable were from the southern region. As such, the explanation for southern region members not receiving ballots was not bad addresses.

In order to address the ballot receipt problem, the union extended the ballot return deadline, from October 5, as required by the APWU constitution, to October 14, in order

to provide members with sufficient time to request, receive, and return their duplicate ballots. The investigation found that the APWU announced the change in the ballot return deadline on September 24, 2010, by posting the change on the APWU's website and by mailing the candidates a letter informing them of the change. The APWU also sent all locals a notice to post that announced the extension. Although the extension of the deadline violated the APWU constitution, the extension did not violate the substantive requirements of the LMRDA. Rather, the action served to promote important principles of the LMRDA concerning participation in union elections. The failure to adequately address the problem with the receipt of ballots could have resulted in the union denying eligible members the right to vote in violation of the LMRDA. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

You also allege that the duplicate ballot request rules were not followed. Specifically, you object to the election committee and the secretary treasurer's office taking duplicate ballot requests rather than the American Arbitration Association (AAA), the company the APWU hired to run the election and the entity designated in the election rules for receiving duplicate ballot requests. The duplicate ballot request procedure in the election rules provided that an individual member or a Local on behalf of its members was to request a ballot from AAA by calling an 800 number between the hours of 9:00 a.m. to 5:00 p.m. EST, Monday through Friday, or by sending an e-mail to [apwu@adr.org](mailto:apwu@adr.org). All requests were to include the name, social security number, division, Local and address of the member needing a duplicate ballot.

The investigation found that the election committee chairman received some duplicate ballot requests directly and the secretary treasurer's office referred calls about duplicate ballots to the election committee chairman. Duplicate ballot requests made to the election committee chairman and AAA were responded to in the same manner by mailing a duplicate to the individual member. It is not a violation of the LMRDA for the election committee or the secretary treasurer's office to receive duplicate ballot requests. The fact that the election committee accepted the duplicate ballot requests increased voter participation and helped to correct the issue of voters in the southern region not receiving ballots. Ultimately, the requests were processed the same way. In addition, the email address provided in the election rules for duplicate ballot requests, [apwu@adr.org](mailto:apwu@adr.org), belonged to AAA, not the Union. Furthermore, the election rules did not require that a member or local complete or return a form to AAA in order to request a duplicate ballot as you allege.

Similarly, you allege that the union failed to respond to duplicate ballot requests on the next business day as required by the election rules. Nothing in the APWU constitution requires or sets out timelines for responding to duplicate ballot requests. The LMRDA also does not have such requirements. Consequently, any failure to respond to duplicate ballot requests on the next business day did not violate the LMRDA. Even if the election rule regarding this issue could be viewed as a constitutional requirement, the evidence shows that duplicate ballot requests were responded to in sufficient time to allow members to vote and any failure to adhere to the rule did not affect the outcome of the election. As part of the investigation, the Department examined a sampling of fifty-seven duplicate ballots requests from the southern region. The examination reflected that the requests were reasonably responded to although all were not responded to on the next business day as required by the election rules. There were two requests in the sample with the longest response time of four days which included a weekend. The requests were made in the middle of the original balloting period, so these members would have had adequate time to receive and return such ballots, especially given the extension of the ballot return deadline. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

You allege that ballots from the southern region were removed from return ballot and secret ballot envelopes and left uncounted overnight, outside the presence of observers. Leaving the ballots overnight, outside the presence of observers, may provide an opportunity for ballot fraud or tampering in violation of Section 401(c) of the LMRDA which requires that adequate safeguards to insure a fair election be provided. However, the investigation, including an examination of the ballots from the southern region, found no evidence of ballot fraud or tampering. You also allege that you were denied the right to stay overnight with the ballots as an observer. In this case, the investigation found conflicting evidence regarding whether you requested and/or were denied the right to stay with the ballots overnight. The investigation did find that three election committee members stayed in the ballot room overnight to safeguard the ballots. In any event, the investigation's witness interviews and examination of the ballots found no evidence of fraud or tampering. No violation affecting the outcome of the election occurred.

You also made other allegations that the APWU's National Election Appeals Committee dismissed as untimely. These allegations are: the change in ballot return deadline violated the Constitution; the membership was not properly notified of the change in the ballot return deadline; the failure to remove ballots from the post office box on October 5 violated the election rules; and, the Union promoted the candidacy of two individuals by placing a photo of them on the cover of the March/April APWU magazine.

Section 402 of the LMRDA requires that a member must have exhausted the remedies available under the union's constitution and bylaws in order to file a complaint with the Secretary of Labor. The APWU requires election complaints to be filed within 72 hours, not including weekends and holidays, after the grievance arises. The investigation confirmed that you did not timely protest these matters. Thus, they are not properly within the scope of your complaint to the Department. 29 C.F.R. § 452.136(b-1).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected 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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