



January 11, 2011



This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("Department") on July 20, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("the Act"), as amended 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Association of University Professors ("AAUP" or the "Union") completed on April 15, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations occurred.

You allege that the Union failed to follow the AAUP Constitution with respect to the handling of the minutes of the November 2009 AAUP National Council meeting. Specifically, you allege that the Union delayed publishing the minutes and that the minutes should have contained the Election Committee's report on an election protest that you filed regarding the April 2009 Assembly of State Conferences ("ASC") election. You assert that the Union delayed the publication of and deliberately censored the minutes in order to hide problems in the election and its discussion of your protest so as not to negatively affect the candidacy of the incumbent officers in the April 2010 election at issue here.

Article IV, Section 2(g) of the AAUP Constitution requires the Council to publish a record of its meetings but does not prescribe a time frame for doing so. The investigation found that the Union normally publishes the minutes for the November meeting in March or April and that the Union only publishes minutes of its open session meetings, not of its executive committee or closed session meetings. With regard to the November 2009 meeting, the Department's investigation found that, consistent with past practice, the Union published the minutes of the open session on its website on April 23, 2010. The published minutes contained no reference to your

protest or a report by the Election Committee because the Election Committee did not report on the protest and the protest was only discussed in closed session.

The investigation found that during the closed session of the November 2009 meeting the Union's legal counsel reported on the status of the Department's investigation of the April 2009 ASC election. As was its practice, the Union did not publish minutes of the closed session. The investigation also found that reports from the Union's legal counsel were normally conducted during closed session. There is no evidence that the Union's continuation of this practice with regard to the November 2009 meeting was in any way related to the discussion of your April election protest or the April 2010 election at issue in this matter. There was no violation of the Act.

You also allege that the Union's nominating committee process was unfair in that it favored the incumbent officers. Specifically, you allege that the Union's two nomination methods, whereby a member either applies to the nominating committee for selection as a nominee or submits a petition signed by 150 members, give candidates nominated by the committee a *de facto* endorsement of the Union, more time to campaign than petition candidates, and burdened petition candidates. The Act does not prescribe particular procedures for the nomination of candidates, and unions may use any method that provides a reasonable opportunity for making nominations. *See* 29 CFR § 452.56. Whether a particular procedure is reasonable depends on the facts in each case. *Id.*

Here, the Union's Constitution provides two methods by which members could be nominated for office, by the nominations committee or by petition. Pursuant to Department of Labor policy, being selected by a nominating committee is not, standing alone, a *de facto* endorsement by the union or otherwise a violation of the Act. The investigation found no evidence of actions taken by the union to promote the candidacy of those selected by the nominating committee.

Moreover, the investigation found no evidence that the nominating committee process worked to favor incumbents over other potential candidates. The investigation found that the nominating committee nominated 26 people, only six of whom were incumbents. Of the 22 people who applied for nomination by the committee and were not selected, two were incumbents and one was a former AAUP President (who successfully submitted a petition for nomination and won a position for At Large Council Member).

Further, contrary to your allegation, candidates selected by the nominating committee did not have an unfair advantage with respect to time to campaign. Potential candidates, not the union, determine when their campaign begins. Here, a potential candidate did not have to wait until the nominating committee's decision on nominees

or even the collection of signatures to begin campaigning. A union member may begin campaigning when he or she decides to run for union office and does not have to wait to be formally nominated in order to be a bona fide candidate entitled to campaign. *See* 29 C.F.R. § 452.80. There was no evidence that the Union took steps to prevent campaigning prior to the nominating committee's selections.

Finally, with regard to the alleged burden placed on petition candidates by the 150 signature requirement, the investigation did not reveal any union member who would have run for office in the instant election but for the petition requirement. There was no violation.

You also allege that the Election Committee failed to properly announce the election results and the number of "spammed" ballots (i.e. ballots electronically misdirected and not counted). Section 401(e) of the Act requires that the votes cast by members be published and the results published, separately. The investigation found that the Union published the names of the winning candidates on its website on April 16, 2010. The posting was updated on May 20, 2010 to include a link to the actual vote totals for each race. Further, the investigation found there were no "spammed" ballots. There was no violation of the Act.

You also allege that the Nominating Committee was appointed instead of elected by the general membership. Specifically, you allege that these positions were "officer" positions because they perform executive functions, and therefore were subject to election. Section 401 of the LMRDA requires, among other things, that officers must be elected. Section 3(n) of the LMRDA defines "officers" to mean any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive function of a labor organization, and any member of its executive board or similar governing body. The Department's Interpretive Regulations provide further explanation to the definition of "officer." *See* 29 C.F.R. §§ 452.17 through 452.22. A member of any group, committee, or board which is vested with broad governing or policymaking authority will be regarded as a member of an "executive board or similar governing body." 29 C.F.R. § 452.20. The Nominating Committee is not vested with any broad governing or policymaking authority, nor did you provide any evidence to the contrary. Consequently, the members of the Nominating Committee were not "officers" as defined under Section 3(n) of the LMRDA. 29 U.S.C. § 402(n).

In addition, following the 2010 National Officer election, you alleged that the Union continues to conduct improper officer and delegate elections. Section 402 of the LMRDA states that a member may file a complaint with the Secretary of Labor within one calendar month after receiving a final decision from the union or within the fourth calendar month after invocation of the protest to the union. 29 U.S.C. § 482. The

investigation determined that, if you did properly raise this issue to the union, you did not bring this issue to the Secretary of Labor within the time specified in the LMRDA. This issue is therefore not properly within the scope of your complaint to the Department. 29 C.F.R. § 452,136(b-1).

You also make several other allegations that even if true would not violate requirements of Title IV of the Act and, thus, were not included in the investigation. These allegations are: the email election balloting has not been formally reviewed for conformity with the Act and Department regulations; the Union manipulated the schedule and dates of the ASC Chair election; the Union did not inform the membership of the investigative finding and voluntary settlement agreement with the Department regarding the ASC Chair election; the Union has not conformed its LM reports to the Department's 2007 audit; the Union does not have procedures for the removal of officers; and, numerous AAUP entities, conferences, and chapters are "labor organizations" under the Act but do not file with OLMS.

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

Sincerely,

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