



January 21, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor on September 15, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the election of officers of Local 110, Laborers International Union of North America, conducted on June 5, 2010.

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 the local paid members' dues for six months in an attempt to buy the members' votes for the incumbent officers. Section 401(g) of the LMRDA prohibits the use of union funds to promote any person's candidacy. The investigation disclosed that many of the local's members were experiencing difficulty in obtaining work. As a result, on December 8, 2009, members approved a resolution to pay six months of members' dues. The following day, the local executive board also approved this resolution. The local was required to obtain permission of the LIUNA Inspector General, which it obtained on December 16, 2010. , The resolution was approved six months in advance of the election by the membership, local executive board, and the LIUNA Inspector General. There is no evidence the payment was made to promote or in any way related to campaign activity in the June 2010 election. There was no violation.

You alleged that the local mailed its newsletter in close proximity to the election in order to promote the candidacies of the incumbent slate. Specifically, you identified an article authored by the incumbent business manager that lauded the accomplishments of the incumbent officers. The provisions of section 401(g) of the LMRDA prohibit a union or its officers from promoting or attacking any candidate in a union-financed publication. *See* 29 C.F.R. § 452.75. Courts have looked at the tone, content and timing of a publication to determine whether it constituted campaign literature.

The investigation disclosed that the local has a quarterly publication, *Organized Laborers' Review*, which is published on sporadic basis. A review of past publications showed that every issue contained an article authored by the Business Manager. The most recent issue, which is the subject of your challenge, was the Summer 2010 issue mailed to members one week prior to the June 5, 2010 election. The Department's review of the content of the article authored by incumbent Business Manager Don Willey focused on the issues of general interest to the membership and mentioned the union's payment of six months of members' dues payments in the context of the severe effects of high unemployment in the construction industry. Although the timing of the mailing was in close proximity to the election, the tone of the article was neutral and the content newsworthy to the membership. Moreover, there was no reference to the election. Consequently, this article did not constitute campaign material. There was no violation.

You alleged that the local, through the election committee chair, treated the New Direction slate less favorably than the incumbent slate with respect to the opportunity to campaign to retirees at a union-sponsored event. Section 401(c) of the LMRDA contains a general mandate that adequate safeguards to ensure a fair election shall be provided. Included among those safeguards is a general rule of fairness which encompasses the requirement that candidates be treated equally. 29 C.F.R. § 452.110. These standards have been interpreted to permit unions to adopt reasonable campaigning rules, as long as those rules are applied equally. Here, the local had imposed a rule that prohibited campaigning within 100 feet of any union-sponsored event.

The investigation disclosed that at the local's annual retiree trip to a baseball game, the New Deal slate (NDS) members gathered at a shopping mall's parking lot to campaign to those retirees who were collecting their baseball tickets and boarding buses to the baseball event. The NDS set up a mobile campaign billboard and tables less than 100 feet from the ticket distribution. The local executive board was in attendance, distributing tickets to the retirees. The election committee judge arrived and told the NDS that its members were in violation of the 100-foot rule. Rather than moving further from the ticket distribution, the NDS left the premises.

The local complied with its rule and did not treat NDS unfairly. The investigation disclosed that none of the local executive board members running for office campaigned at any time to the retirees. The local applied its rule in a non-discriminatory manner, treating all candidates the same. There was no violation.

You alleged that the local delayed the mailing of opposition slates' campaign material by requiring that their literature first be reviewed by the local before mailing. Section 401(c) of the LMRDA provides, in relevant part, that unions must comply with all

reasonable requests of any candidate to distribute campaign literature to the membership and must treat all candidates similarly.

There were three slates running for election: the incumbent slate, known as *Concerned Members* slate; your slate, known as the *New Direction*, and the *Banks Group*. The investigation disclosed that the local provided a complete list of members, among other lists, to St. Louis Pre-Sort (Pre-Sort), a mailer hired to mail all candidates' campaign literature. To ensure that only candidates were using the local's membership list, the mailer telefaxed a copy of the first page of all candidates' mailings to the local. The investigation determined that all mailings by your slate and the *Banks Group* slate were made within one day of drop off to the mailer, with the exception of one mailing that was delayed because of changes made to the mailing after dropping it off. There was no violation.

You also alleged that your three campaign mailings were censored by the union prior to being mailed by Pre-Sort. Unions may not regulate the contents of campaign literature which candidates request to have distributed by the union. The local denies any censorship of your campaign material and the Department's investigation did not support your allegation. The local reviewed the first page of your campaign material for the purpose of determining that it belonged to a bona fide candidate eligible to make a campaign mailing using the local's membership list. There was no violation.

You also alleged that Pre-Sort did not mail the three *New Direction's* campaign mailings to the entire membership, as you had instructed. The investigation disclosed that in late May, Pre-Sort made a mailing for the *Banks Group* to 3,027 of the locals 3,326 members, because that slate had not supplied sufficient material to mail to the entire membership. Pre-Sort mistakenly saved this shorter membership list and used it in all subsequent mailings, including your third mailing on June 1 and the incumbent's last mailing on the same date. Although your third mailing did not reach all members because of the abbreviated list, this same list was used to mail the incumbent slate's last mailing and affected both of your slates equally. Even if this error violated the Act, there was no effect on the outcome of the election, because it affected each slate equally.

You alleged that the local gave \$100 gift certificates to each new apprentice as an incentive to vote and attend membership meeting following the June 2010 election. Even if every new apprentice eligible to vote received such a gift certificate, there would be no violation of the LMRDA as there is no evidence that gift certificates were distributed in such a way as to favor a particular person or slate, nor did you make any such allegation. There was no violation.

You alleged that the ballots were not properly counted. Section 401(c) of the LMRDA provides in relevant part that adequate safeguards to insure a fair election shall be

provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. The Department recounted the ballots and found no irregularities. There was a one vote difference in the margin for two races, which were won by substantial margins. There was no violation.

Finally, you alleged that the election committee chair assisted retirees in depositing their votes in the voting machines, thereby compromising the secrecy of the ballot. Section 401(b) of the LMRDA requires, among other things, that elections be conducted by secret ballot. The investigation disclosed that in some instances, the election committee chair assisted retirees in feeding their ballot into a voting machine. The ballots were encased in a sleeve and fed to the voting machine face down so that no one could see the ballot as it was inserted into the voting machine. There was no breach of secrecy. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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