



March 22, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on October 15, 2010. 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 Service Employees International Union (SEIU) Local 176 run-off election held on June 26, 2010.

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

You alleged in your complaint to the Department that the election committee was only established two weeks before the run-off election, had not met as of two days before the election, and therefore could not have established rules for the election process. Section 401(e) of the Act provides that elections "shall be conducted in accordance with the constitution and bylaws of [the union] insofar as they are not inconsistent with" the LMRDA. *See also* 29 C.F.R. § 452.2. The local constitution and bylaws call for an election committee, but do not set any deadline by which such committee must be formed. *See* Constitution and Bylaws of the Licensed Ushers and Ticket Takers Local 176, Article XI, Section 2 (as revised and amended April 1992). The Department's investigation determined that the committee was established and operating three days prior to the run-off election. Thus, there was no violation of the Act.

You also alleged that your observer was not allowed to witness the full voting process. Section 401(e) of the Act guarantees "the right of any candidate to an observer at the polls and at the counting of the ballots." *See also* 29 C.F.R. § 452.107. The union president and the election committee chairperson both agree that your observer was not permitted to witness the entire election. The election committee, in accordance with past practice, had its members serve as observers for both candidates. That practice is not consistent with the Act's requirement that candidates be permitted their own

observers and the union's refusal to permit your observer to remain for the duration of the election was thus a violation of the Act. However, section 402(c)(2) of the LMRDA requires 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, the failure of the union to permit candidate observers did not affect the outcome of the election. The Department's review of the ballots and election records and interviews indicated that there were no irregularities during the election. There is no evidence that any vote was affected by the absence of candidate observers at the polls.

You further alleged that you were not given an opportunity to look at the local membership or mailing list to ensure they were accurate. Section 401(c) of the Act provides candidates the right to inspect a list containing the names and last known home addresses of all members of the union who are subject to a collective bargaining agreement requiring membership thereof as a condition of employment. *See also* 29 C.F.R. § 452.71. However, candidates must request to inspect the list. You concede that you never asked the union to provide access to the lists, nor did you invoke your right of inspection. Therefore, there was no violation of the Act.

You alleged that you were disadvantaged by the placement of your name after your opponent's on the ballot, and by the fact that such placement was not determined by a coin toss or other random selection means. Department regulations state that "determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and the other provisions of the Act." 29 C.F.R. § 452.112.

The constitution and bylaws do not specify the means of name placement. However, the Department's investigation found that the union placed the names on the ballot in order of nomination. There is no evidence that this method was unreasonable or unfair. There was no violation of the Act.

You also alleged that the union held an unannounced general meeting at your opponent's workplace and "home base," allowing your opponent to solicit votes from new members who attended that meeting. Department regulation 29 C.F.R. § 452.76 states that union officers and employees "may not campaign on time that is paid for by the union, nor use union funds, facilities . . ." etc. to campaign. *See* 29 U.S.C. § 401(c). However, campaigning that is incidental to regular union business would not be a violation. *See* 29 C.F.R. § 452.76.

The Department's investigation revealed that the union announced the general membership meeting on its website, in accordance with usual practice. You concede that you did not visit the website and thus did not know about the meeting. Further, at the time of the meeting, your opponent was an officer of the union and introduced himself, as did the other officers present, to all attendees of the meeting. You did not provide the names of any witnesses to the alleged campaigning, and the Department's interviews with members who attended the meeting confirmed that no campaigning took place. Thus, there is no evidence of any violation of the Act.

Finally, you allege that the "entire election verification process was flawed" because the election box was improperly secured, the union was conducting business in the voting area, the ballots were unnumbered and not counted, and no membership list was used to identify eligible voters. During its investigation, the Department requested access to all election records from the run-off election. The Department discovered that the union failed to retain certain of these records for one year, in violation by Section 401(e) of the Act. However, interviews with the election committee revealed that the committee verified voter eligibility with a list of members in good standing provided by the union's treasurer.

Additionally, the Department conducted a recount and confirmed that the reported vote tally was correct. Finally, the union provided the voter registration list, which each person signed after voting, as well as a dues payment roster reflecting the good standing of members at the time of the June 26 run-off election. With the exception of three illegible signatures, the Department verified that all those who voted were indeed eligible. Interviews also revealed that one person was turned away from the polls because he was not on the list of members in good standing. It is not necessary to determine whether the eligibility determinations concerning these four individuals were incorrect, because the margin of victory was 24 votes and four votes would not have affected the outcome of the run-off election.

You also raised allegations to the Department that had been contained only in your June 11, 2010 protest to the union. Pursuant to Section 402(a) of the Act, your complaint with respect to these allegations must have been filed with the Secretary on or before October 11, 2010. *See* 29 C.F.R. § 452.135. You submitted your complaint to the Department on October 15, 2010. Therefore, allegations concerning your first protest to the union were untimely, and the Department did not address those allegations. However, to the extent that you reasserted allegations contained in the June 11, 2010 protest in later protests to the union, the Department did investigate, and the results of those findings are as stated above.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act which may have affected the outcome of the election. Accordingly, I am closing the file on this matter.

Sincerely,

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Chief Division of Enforcement

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