



May 13, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint, dated January 21, 2011, to the Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481 – 484, as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the regularly scheduled election of officers of the Union of Pension Employees, (Local), concluded on October 1, 2010.

You alleged that the local denied your request for a copy of the local's membership list, a list to which you were entitled under the local constitution. You further alleged that the local provided that same list to your opponent for president, who was able to use that list to form a de facto slate, while you were unable to form a slate because you did not have a copy of that membership list.

Section 401(c) of the LMRDA, requires, in relevant part, that unions refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Article III, section 3 of the local constitution provides in relevant part, that "[t]he UPE shall keep all membership records secure from disclosure unless specifically authorized by UPE's Constitution or its Bylaws, except that the names of regular members shall be provided to regular members upon request."

The investigation disclosed that you made several email requests for a copy of the local's membership list. [REDACTED], Interim Assembly Co-Chair at the time of the election, responded to you in an August 4, 2010 email. [REDACTED]' email acknowledged the constitutional requirement to provide any member with a list of members' names and agreed to provide you with such a list on the condition that you sign a confidentiality form at her office. The confidentiality form would ensure non-disclosure of those members' social security numbers which were part of the list of members. You did not visit [REDACTED] office to sign the form. Since you had the opportunity to obtain the membership list available at that time, the local did not deny your request. There was no violation of the local constitution. There was no violation of the LMRDA.

With respect to your claim of discrimination in the use of the membership list, the investigation disclosed that on August 6, 2010, Interim Secretary [REDACTED] emailed a list of forty members to the Committee of Membership, comprised of thirteen members, including your opponent for President. That email solicited the recipients to recruit more members. Attached to the email was a list of new members. You were not sent a copy of this e-mail because you were not a

member of this Committee, which was comprised of members who were successfully recruiting new members. The list was not used for campaigning and there was no improper discrimination in the distribution of the list. There was no violation of the LMRDA.

With respect to your claim that you could not form a slate because you did not have a membership list, the investigation showed that you had ample opportunity to form a slate, despite your lack of a membership list. At one point, you were a member and Co-Chair of the Interim Assembly (IA), the local's governing body, and knew all of the members on the IA. You had the opportunity to ask any employee or member to run on your slate, but you failed to do so. Moreover, those who joined the union by August 20, the closing date for nominations, were eligible to run for office. As such, you could have recruited someone who was not a member to become a member, serving the dual purpose of increasing the union's membership and filling your slate of candidates. There was no violation.

Next, you alleged that twenty-three members did not receive a ballot, because there was not a voted ballot from those members. Section 401(e) of the LMRDA requires that a union provide its members with a reasonable opportunity to vote. The investigation disclosed that ballots were mailed to 66 members. You received six votes while your opponent for President received 34 votes, leaving twenty-six members who did not cast a vote. The fact that twenty-six members did not vote is not evidence that they did not receive a ballot. The Department interviewed a sampling of members who had not returned a ballot. All of those involved in the survey stated they had received a ballot. There was no violation.

You further alleged that some of the bar codes on the return ballot envelopes were either difficult to read or illegible, which resulted in the return of those ballot packages to the sender rather than to the union's post office box, and shortened the amount of time a member had to return his or her voted ballot. Section 401(c) of the LMRDA provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. The investigation disclosed that two members' ballot packages were returned to their homes instead of the post office box. The two ballot packages were stamped by the post office with the notation "return to sender", a post office error. Despite being returned to the senders, both ballot packages were received by the election committee by the time of the tally. Neither of these ballot packages was returned because the bar code was illegible. You alleged that two other members had their voted ballots returned to them rather than to the post office box. Both individuals are not listed as members on the local membership list. There was no violation.

You alleged that one of the election committee members opened the post office box prior to the announced day of collection, and that in opening the post office box, election committee member tampered with voted ballot packages, in violation of section 401(c) of the LMRDA. The investigation disclosed that the local used the same post office box to retain voted and undeliverable ballots. When a member complained to one of the election committee members that he had not received a ballot, that election committee member, accompanied by another election committee member, went to the post office to retrieve any undeliverable ballots. According to their statements to the Department, the two election committee members found one undeliverable ballot, retrieved it, and left the voted ballots in the post office box without tampering with them. The Department's review of the ballots did not show any evidence of tampering.

Nevertheless, by opening the post office box prior to the tally date, the two election committee members violated section 401(c) of the LMRDA.

Section 402(c) of the LMRDA, 29 U.S.C. § 482(c), provides that a union election will not be set aside unless a violation may have affected the outcome of the election. See 29 C.F.R. § 452.36(b). Given the absence of evidence that the election committee members tampered with the voted ballots, there is no probable cause to believe that the premature opening of the post office box may have affected the outcome of the election.

For the reasons set forth above, your complaint is dismissed, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Ms. Betsy Rogers, President
Union of Pension Employees
1200 K Street, NW, Lower Level Room 20
Washington, DC 20005

Beverly Dankowitz, Acting Associate Solicitor, Civil Rights and Labor-Management