



October 24, 2011



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on May 25, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the regular triennial election of officers for Local 96 of the American Postal Workers Union, AFL-CIO (APWU) completed on April 9, 2011, and May 10, 2011.

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 may have affected the outcome of the election.

You allege that the Local did not account for all the ballots and envelopes printed for the election. Section 401(c) of the LMRDA provides, among other things, that "adequate safeguards to insure a fair election shall be provided." Adequate safeguards, as contemplated by the LMRDA, are considered to include the mechanical, procedural aspects of running an election. Violations of the adequate safeguards provision are determined on a case-by-case basis. Here, the investigation found that the Local could not account for the exact number of ballots received from the printer or used in the election. The printer estimated that it provided the Local with 30-50 extra ballots but did not record the exact number. The printer billed the Local for 1,200 ballots for the union-wide positions. The Local mailed 1,017 ballots in the original ballot mailing but did not document how many replacement ballots it mailed to the members. The Local's failure to account for all the ballots is a violation of the LMRDA.

However, in order for a violation to be actionable there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2); *see also*, 29 C.F.R. § 452.5. In this case, there is no such evidence. The investigation found no evidence of ballot tampering. The investigation also included a records review that examined the ballots and envelopes. The review found no evidence of ballot fraud (i.e.

suspicious markings, repeated use of the same pen or handwriting, or batches of ballots voted the same way). There was no violation of the LMRDA that may have affected the outcome of the election.

You also allege that the election committee improperly voided ballots when the voter's intent was clear. The investigation confirmed this allegation. Section 401(e) of the LMRDA requires, among other things, that votes cast by members shall be counted. The investigation included a record review which determined that some of the 28 voided general election ballots had been improperly voided. The Department also conducted a ballot recount which included the improperly voided ballots but the additional votes did not affect the outcome of any race. There was no violation of the LMRDA that may have affected the outcome of the election.

You also allege that the Local improperly challenged a member's ballot for president. As stated above, Section 401(e) of the LMRDA requires that members' votes be counted. Here, the investigation found that one member received two ballots for the president's race. He voted both ballots and mailed them back in the same ballot return envelope. The Local had announced that voting two ballots would result in both ballots being voided. These ballots were challenged at the tally and set aside for a final determination at the end of the tally. After the tally, the election committee decided it was unnecessary to resolve the matter because neither the counting nor voiding of this member's ballot would have affected the outcome of any race. The committee's actions were appropriate. There was no violation of the LMRDA that may have affected the outcome of the election.

You also allege that the union failed to properly record the contract driver members who voted. You allege that four members who told you they voted for you were not recorded as having voted at all. The investigation did not confirm your allegation. The investigation, including a survey of the contract drivers, did not discover any evidence that the contract drivers were treated differently or that their ballots were discarded. There was no violation of the LMRDA.

You also alleged numerous other violations that the Local or the APWU's National Election Appeal Committee (NEAC) determined to be untimely. Section 402 of the Act 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 Local's Constitution requires both pre-election and post-election protests be filed with the Local 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. We reviewed the protests and appeals at issue and we agree with the

union's determinations on timeliness. Thus, these issues 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

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

Ms. Maria Johnson, President
APWU Local 96
830 East E. H. Crump Boulevard
Memphis, Tennessee 38126

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

October 24, 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 June 16, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the regular triennial election of officers for Local 96 of the American Postal Workers Union, AFL-CIO (APWU) completed on April 9, 2011.

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 may have affected the outcome of the election.

You allege that the Local did not provide adequate notice of the February 8, 2011 nominations meeting and that the notice was not published in the Local's newspaper. The investigation did not substantiate this allegation. The LMRDA does not require specific procedures or times for notice of nominations, but it does require that notice be reasonably calculated to reach all members in good standing. 29 C.F.R. § 452.56. The Constitution and Bylaws do not require that the nominations notice be published in the Local's newsletter.

Here, the investigation found that the notice was mailed on January 12, 2011 to all the worksites for posting on January 17, 2011. The notices were stamped "Please Post". The election chair confirmed that notices were posted at all the worksites and the union hall. The investigation also found that the nominations notice was mailed to all the members on February 4, 2011. The election committee decided to mail the notice because it did not have time to include the notice in the Local's newsletter. Although the investigation found evidence that a few members did not receive the notice until after the meeting, the investigation did not reveal that any would-be nominator or nominee was deprived of the opportunity to nominate or be nominated at the meeting due to lack of notice. There was no violation of the LMRDA.

You allege that that the nomination notice was not prepared by a member of the election committee as required by the Local's Constitution and Bylaws. The investigation found that the notice was prepared and signed by the election chair, who delegated the mailing of the notice to the editor of the newsletter. The investigation found no evidence that the editor of the newsletter did not mail the notice to all the members. The Constitution and Bylaws provide that the election committee is responsible for the entire election. There is no specific requirement that the election committee actually prepare the nomination notice. Nor is there is a prohibition against delegating the committee's work. There was no violation of the LMRDA.

You also allege that the Local did not provide adequate notice of all the offices to be filled. The investigation confirmed this allegation. The LMRDA requires unions provide notice of the nominations process that is reasonably calculated to inform all members of the offices to be filled in the election. 29 C.F.R. § 452.56. The investigation found the nominations notice did not include the office of Support Services Vice President. This omission violated the LMRDA. However, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Here, there is no such evidence. The investigation did not reveal any would-be nominator or nominee who was unable to nominate or be nominated for the position because the position was not included in the nominations notice. The notice also failed to identify each specific trustee position to be filled. These positions are not covered by the LMRDA and thus the failure to separately identify them on the nominations notice does not violate the LMRDA.

You also allege that the Local violated its Constitution and Bylaws by holding the nomination meeting in February instead of March. Section 401(e) of the LMRDA requires that election be conducted in accordance with the constitution and bylaws of the union. Article 10, Section 3(a) of the Local's Constitution and Bylaws requires that nominations be held at the March general membership meeting. Election results must be announced at the general membership meeting on the second Tuesday of April.

The investigation found that the Local held nominations at the February general membership meeting. This violated the Local's constitution and bylaws and, thus, the LMRDA. However, as stated above, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. In this case, the investigation did not reveal that any would-be nominators or nominees were prevented from participating in the nominations process because of the earlier nominations meeting. There was no violation of the LMRDA that may have affected the outcome of the election.

You allege that the Local improperly waived the meeting attendance requirement for nominees. The investigation did not substantiate this allegation. Article 10, Section 2(b) of the Constitution and Bylaws provides that “[N]o member of this local shall be eligible to serve as an officer and/or delegate to the National or State Convention unless he/she has attended at least one (1) General Membership Meetings between March and February each year, proceeding the month of nominations for delegates and officers.” As stated above, the investigation found that the Local held the nomination in February rather than March. The investigation also found, that the Local did not actually waive the meeting attendance requirement but applied it by counting attendance at the February 2011 meeting toward fulfillment of the one meeting requirement, as it would have done had the nominations meeting been held in March. There was no 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 I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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