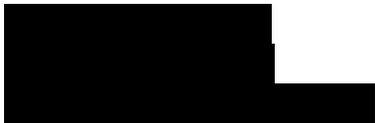




September 21, 2011



Dear [REDACTED]:

This Statement of Reasons is in response to the two complaints that you filed with the United States Department of Labor on December 9, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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 affected the outcome of the election.

You allege that members in several states did not receive ballots and members who requested duplicates did not receive them or received them too late to vote. Section 401(e) of Act requires that eligible members be allowed to participate in the election. 29 U.S.C. § 481(e). In this case, the investigation found that an unusually large number of members, primarily in the southern region, did not receive ballots in the original mailing and had to request duplicates. To address this problem the union extended the ballot return deadline, from October 5 to October 14, in order to provide members with sufficient time to request, receive and return duplicate ballots. The investigation found that the union announced the change in the ballot return deadline on September 24, 2010, by posting the change on the APWU's website and by mailing the candidates a letter informing them of the change. Locals also publicized the change by posting flyers at worksites. Through these actions, the union adequately addressed the problem with the receipt of ballots. Further, the investigation found that the union had an adequate duplicate ballot procedure, notified members of it, and timely responded to duplicate ballot requests. There was no violation of the LMRDA.

You allege that the union's duplicate ballot procedure was not followed in that local officers were allowed to request duplicate ballots without providing the names of members on whose behalf the request was being made and that the union sent the duplicate ballots to the local officers requesting the ballots rather than to individual members. The investigation revealed that the union's election rules regarding duplicate ballots, published in the March/April magazine which is mailed to all members, provided that an individual member or a local on behalf of its members could request duplicate ballots. Requests were to include the name, social security number, division, local, and address of the member needing the ballot. The investigation revealed that the Union permitted twenty-nine local officers, usually local presidents, to request duplicate ballots on behalf of their members. The investigation further revealed that these ballots were mailed to individual members not the local officers who made the requests. There were instances when a local officer requested ballots for their entire membership without providing each member's name, social security number, division, and address. However, the fact that the information was not required when a local officer made a blanket request is not considered a violation of the LMRDA. You further allege that the American Arbitration Association (AAA), who was hired to conduct the election, required a member requesting a duplicate ballot to submit a signed form whereas requests through the union did not require such a form. The investigation determined that AAA did not demand a signed form in order to request a duplicate ballot. There was no violation of the LMRDA.

You also allege that the union failed to correctly print your candidate statement in its July/August magazine. Specifically, you allege that the union misprinted the domain name of your website as [REDACTED] rather than [REDACTED]. The investigation confirmed this allegation. The investigation found that the union permitted all candidates to submit an article of 300 words or less for publication in the July/August magazine. Yet, when your statement, which complied with the union's guidelines, was printed your website's domain name was inexplicably misprinted. Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate and to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c); see 29 C.F.R. §§ 452.67-.72. However, in order for the Department to seek to overturn an election, there must be evidence that a violation affecting the outcome of the election "has occurred and has not been remedied." 29 U.S.C. § 482(b). In this case, there is no such evidence. When you noticed the error you acted swiftly to obtain the domain name printed in the magazine. The investigation found that the magazine was mailed on July 12 and you obtained the new domain name on July 15. Further, the Union remedied the violation by reprinting your statement and your opponent's statements in their entirety in the September/October issue which was mailed to members on September 15, just two

days following the ballot mailing. Thus, the initial violation was corrected and had no effect on the outcome of the election.

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 St., NW  
Washington, DC 20005

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

U.S. Department of Labor

Office of Labor-Management Standards  
Division of Enforcement  
Washington, DC 20210  
(202) 693-0143 Fax: (202) 693-1343



September 21, 2011



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on December 13, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the American Postal Workers Union, AFL-CIO (APWU), completed on October 15, 2010.

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 affected the outcome of the election.

You alleged that the union failed to print your entire candidate statement in its July/ August magazine. You further allege that the reprinting of your entire article was sent to the membership too late to remedy the situation and reprinting your opponent's article gave your opponent an additional opportunity to campaign to the membership. Specifically, you allege that the union omitted the following closing paragraph: "By being proactive, not reactive, keeping membership's needs always first in my heart and mind, I will continue to work for you and your future. Together we will prevail."

The Department's investigation confirmed this allegation. The investigation found that the union permitted all candidates to submit an article of 300 words or less for publication in the July/ August magazine. Yet, when your statement, which complied with the union's guidelines, was printed the above cited paragraph was inexplicably omitted.

Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate and to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c); see 29 C.F.R. §§ 452.67-72. The union's mishandling of your statement violated section 401(c). However, in order for the Department to seek to overturn an election, there must be evidence that a violation affecting the outcome of the election "has occurred and has not been remedied." In this case, there is no such evidence. The union remedied the violation by reprinting your statement and your opponent's statements in their entirety in the September/October issue which was mailed to members on September 15, just two days following the ballot mailing. Had the union failed to also reprint the statement of your opponent, it would have again violated Section 401(c) by distributing the majority of your statement more than his. Thus, the initial violation was corrected and had no effect on the outcome of the election.

You made additional allegations in your protest to the union on October 17, 2010. These allegations were: the union violated the constitution by extending the ballot return deadline from October 5 to October 14, 2010; the Mount Vernon Local president placed a personal endorsement of your opponent and other candidates on the Local's bulletin board; and, your opponent falsely claimed the support and endorsement of national and local officers. Section 402 of the LMRDA 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 union requires election complaints to be filed within 72 hours, not including weekends and holidays, after the grievance arises. Here, the union dismissed these allegations as untimely. The evidence supports that conclusion.

The investigation found that the union announced the change in the ballot return deadline on September 24, 2010, by posting the change on the APWU's website and mailing candidates, including you, a letter informing them of the change. However, you did not protest the change in the deadline until October 17, 2010. Further, the investigation revealed that you knew of the other alleged violations during the election period, yet did not file a protest until October 17, two days after the completion of the election. Therefore, these matters were not timely protested to the Union and are not properly before the Department. See 29 C.F.R. § 452.135.

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 St., NW  
Washington, DC 20005

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