



September 26, 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 March 16, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of National Association of Letter Carriers (NALC), Branch 504 held on November 17, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation within the scope of your complaint occurred that may have affected the outcome of the election. A discussion of each of these allegations follows below.

You first alleged that you did not have equal access to the branch mailing list or other branch records in order to enable you to text campaign messages to members. The LMRDA provides that every bona fide candidate shall have the right, upon request, to inspect a union membership list once within 30 days prior to the election. 29 U.S.C. § 481(c). Candidates are not entitled to a copy of the list; the law provides only that they may inspect the list and compare it with a personal list of members. 29 CFR § 452.71(a).

In the course of the Department's investigation, we found that you did not make any request to inspect Local 504's membership records. Accordingly, there is no evidence that you were improperly denied access to these records. Further, the investigation found that the text messages sent out by Vice Presidential candidate [REDACTED] were sent on his personal cell phone using a personal contact list that he had collected through his dealings with union members over the previous several years. Campaign mailings from the "[REDACTED]" (referring to candidate for President [REDACTED]) were sent from a P.O. Box that was owned or once owned by Local 504 member [REDACTED]; there is no evidence that these mailings were sent out by or at the direction of [REDACTED] and thus that [REDACTED] had unlawful access to the membership list. There was no evidence that other candidates were provided copies of the membership list by the

union, or that there was otherwise any discrimination in favor of or against any candidate with respect to the use of lists of members. Accordingly, there was no violation of the LMRDA as to this allegation.

You further asserted that union funds were used to promote the candidacy of incumbent officers when the union's newsletter, *El Sol*, published monthly columns by sitting union officers in October 2010 that were allegedly similar to paid campaign ads in the same newsletter. The LMRDA provides that local union money cannot be used to promote the candidacy of any person in an election, and the regulations further specify that statements in a union-financed publication (outside of paid advertisements) "may neither attack a candidate... nor urge the nomination or election of a candidate." 29 U.S.C. § 481(g); 29 CFR § 452.75. The Department reviewed the October issue of the *El Sol* newsletter. Several sitting officers had columns in the *El Sol* newsletter, including Pratt, Chief Ship Steward Angel Martinez, Trustee Robert Escamilla, Health Benefits Representative Liz Dow-Rubio, Secretary Connie Burns, and Legislative Chairperson Marie Montano. The only columns identified in your complaint as questionable were those written by Martinez and Montano. The column by Martinez refers to the election and the need for "skilled advocates" in union officer roles, and Montano's column thanked a number of individuals, including those on Pratt's slate, for their assistance in a "Save Saturday Delivery" campaign. However, these statements do not attack specific candidates or slates, nor do they urge the election of a specific candidate or slate. *See* 29 CFR § 452.75. Accordingly, there was no violation of the LMRDA.

You further asserted that violations occurred in regard to the union's handling of absentee ballots in the election. Specifically, you asserted that the union's failure to properly notify the membership about absentee ballot procedures was a violation, and that several absentee ballot requests that were completed and sent to the union office were never responded to by the Election Committee, denying the members who submitted them the right to vote. To support this assertion, you provided 19 fax receipts of absentee ballot requests that you allege were not honored by the Election Committee.

Department of Labor regulations provide that when absentee ballots are necessary the organization must give members reasonable notice of the availability of such ballots. *See* 29 CFR § 452.95. Section 5 of the NALC Regulations Governing Branch Election Procedures states that the nominations/election notice should include information regarding absentee ballot requests, but does not require that this information be in the notice. The investigation found that the Election Committee sent notice of the nominations and election more than 45 days prior to the election, but the notice was silent on the process for requesting absentee ballots. However, the Election Committee distributed handouts that were available at the Post Offices detailing the process for requesting absentee ballots. Further, the procedure for requesting absentee ballots -

contacting the Election Committee or the union generally – was the practice in past elections. In light of these facts, the notice provided by the union with regard to absentee ballots did not violate the NALC Regulations or the LMRDA. NALC 504 provided reasonable notice of the availability of absentee ballots. Accordingly, the absentee ballot notification did not violate the LMRDA.

With regard to your allegation that the Election Committee failed to send absentee ballot requests to those who requested them, the Department conducted interviews and performed document and record reviews pertaining to the 19 individuals listed on the fax receipts you supplied. The Department's investigation found that 14 of these 19 individuals were mailed an absentee ballot package. The Department found no evidence that Local 504 President David Pratt intercepted absentee ballots and selectively forwarded certain ballots for the Election Committee to consider. Of the five individuals who were not mailed an absentee ballot package, two of them recorded votes at the polling places. Thus, even assuming that the union's actions denied members the right to vote in violation of the LMRDA, the effect of that violation was limited to three individuals. In the election held on November 17, 2010, the smallest margin of victory was in the race for President. While the union's reported count resulted in a two-vote margin (171-169) for that race, the recount of all ballots conducted by the Department resulted in a four vote margin of victory (171-167).¹ In sum, because the number of individuals who requested absentee ballots, did not receive them, and subsequently did not vote (three) was less than the smallest margin of victory in any race (four), any violation that occurred did not affect the ultimate outcome of the election for any race. Accordingly, the Department cannot institute legal action based on this allegation.

You further asserted that the union failed to provide adequate safeguards in the conduct of the election when it allowed Election Committee Chairman John Trujillo to pick up voted absentee ballots several days before the day of the election tally, allowing him to provide notes to President Pratt regarding who had and who had not voted and thus aid in Pratt's campaigning. The investigation found that the absentee ballots were collected before the tally because the Election Committee wanted "to get an early start." The NALC Regulations governing the election do not prohibit early collections of absentee ballots; they provide only that the ballots must be collected prior to the tabulation of any votes and immediately brought to where the votes will be counted. NALC Regulation 16.2.

In any event, the investigation revealed no violation of the LMRDA affecting the outcome of the election associated with the early pick-up of the absentee ballots. The

¹ Further discussion regarding the counting of ballots in the President's race is set forth in the discussion of your allegation that the ballot tally was manipulated. *See infra* at 3-4.

Election Committee reported that observers were present during these collections. The investigation included an interview with [REDACTED] an observer for you. [REDACTED] stated that he was present when absentee ballots were collected on Saturday prior to the election on, November 13, 2010. After they were collected, absentee ballots were placed in a filing cabinet in the back of a truck. The file cabinet had two different locks, the keys to which were held separately by two of the Election Committee members. Once the absentee ballots arrived at the union hall, the absentee ballot packages were checked against the eligibility list, and the secret ballot envelopes were separated from the outer envelopes. The secret ballot envelopes were then stored in the locked file cabinet in the union hall. In the course of its record review, the Department found that there were 228 secret ballot envelopes, which reconciled with the 228 names on the eligibility list that were checked off as having submitted an absentee ballot. The investigation revealed that the union did not keep 34 of the 228 outer envelopes submitted as part of the ballot package. While this is a violation of the records retention language in the Act, *see* 29 U.S.C. § 481(e); 29 CFR § 452.106, there is no evidence that this violation had an effect on the outcome of the election.

While you asserted that the ballots were collected early to give information to President Pratt in order to direct his campaigning, you admitted that this was a “presumption” on your part, and the Department found no evidence to support your assertion. There was no evidence that Pratt engaged in any campaign activity, and the campaign activity engaged in by the Vice President on Pratt’s slate, Martinez, was conducted using his personal cell phone contact list. There was no evidence that early collected absentee ballots were used to direct campaign activities, and thus there is no cause to bring legal action under this allegation.

You further asserted that the union failed to provide adequate election safeguards and failed to properly count the ballots during the November 17, 2010 tally. Specifically, you asserted that, at the end of the ballot tally, Election Committee Chairman Trujillo ordered all observers out of the tally room, refused to announce the results, and then manipulated the ballots to change the tally results. You further asserted that several observers claimed at the end of the tally that the race for President was tied 170-170, that an Election Committee member called you after the tally stating that Pratt had won 171-170, and that the official results showed Pratt winning 171-169. The Department’s investigation and records review found evidence that both tally sheets used in the counting of the ballots had been changed. Tally Sheet 1 contained a group of votes where it appeared that one tally mark was erased; the subtotal for the block was changed from 35 to 34, and a final tally of 171-170 in favor of Pratt. Tally Sheet 2 likewise contained a group of votes where one tally mark was crossed off, a subtotal was changed from 13 to 14 and then back to 13, and a final tally of 171-169 in favor of Pratt. These changes to the tallies constitute a violation of the requirements that adequate election safeguards are taken and that ballots are properly counted. 29 U.S.C.

§ 481(c). However, in order to determine whether a violation that affected the outcome of the election occurred, the Department conducted a recount of the ballots to ensure a proper count. This recount found a final tally of 171-167 in favor of Pratt. Accordingly, to the extent the actions of the Election Committee violated the LMRDA it had no effect on the election result, as the Department's recount confirmed that Presidential Candidate Pratt received more votes.

For the reasons set forth above, it is concluded that, while violations of the LMRDA occurred in the conduct of the November 17, 2011 election, there was no violation 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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