



April 12, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your November 6, 2011 complaint to the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, occurred in connection with the election of officers for the New York State Nurses Association (NYSNA) completed on August 24, 2011.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded with respect to each of your specific allegations that no violation occurred.

You allege that the Staffing, Security, and Strength (SSS) slate of candidates used outside union and employer resources to promote their candidacies in violation of Section 401(g) of the LMRDA when attorney [REDACTED] who also represented the National Nurses Union (NNU), authored two letters to NYSNA on behalf of SSS candidates [REDACTED] and [REDACTED]. Section 401(g) prohibits the use of employer and union funds to promote the candidacy of any person in an election covered by the LMRDA. However, the use of legal or accounting services is permissible if they are used for no other reason but compliance with the LMRDA. *U.S. v. Int'l Bhd. of Teamsters*, 931 F.2d 177, 189 (2d Cir. 1991).

The Department's investigation revealed that [REDACTED] retained [REDACTED] to help with compliance issues regarding the election. As a result, [REDACTED] drafted two letters for [REDACTED] and [REDACTED] to send to NYSNA. The letters, sent on June 24, 2011 and July 18, 2011, addressed issues regarding the LMRDA's requirements for the distribution of campaign literature and the location of the balloting process. There is no indication in the letters, and the investigation found no evidence, that [REDACTED] provided campaign services that would, if unpaid, violate the LMRDA. Rather, the evidence indicates that the services [REDACTED] provided were the type of compliance advice permitted under the LMRDA. Therefore, no violation occurred.

You also allege that outside union resources were used to fund the SSS slate. Specifically, you allege that an NNU employee, ██████████ distributed literature in support of the SSS slate. As stated above, Section 401(g) prohibits the use of union funds to promote the candidacy of any person in an election covered by the LMRDA.

The investigation did not substantiate your allegation. The investigation found that although ██████ had been employed by NNU, his last day of work was May 31, 2011. ██████ did not begin work for the SSS slate until June 2011. The payments that ██████ received, as evidenced by Form LM-2 for the period July 2010 – June 2011, were the result of a severance package and vacation pay that ██████ received from the NNU upon leaving its employment. ██████ was not being paid by the NNU when he campaigned for the SSS slate. Therefore, there was no violation of LMRDA.

You raised a number of other allegations that you previously included in a separate complaint to the Department dated December 8, 2011. The Department determined that with respect to those issues not addressed above, that you did not properly follow the NYSNA election protest procedures which require the filing of pre-election protests within 72 hours of the time the complainant knew or should have known of the events giving rise to the protest, or such protests shall be waived. Because you did not timely invoke and exhaust these issues in accordance with the union's election protest procedures, the Department lacks the authority to consider their merits. 29 CFR §452.136(a).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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