



August 30, 2012

Dear [REDACTED]

This Statement of Reasons is in response to your April 17, 2012 complaint filed with the United States Department of Labor 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 Teamsters Local 89 conducted on December 16 and 17, 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 allegations, that there was no violation of the LMRDA affecting the outcome of the election.

Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. You alleged that Teamsters Local 89 violated the LMRDA by permitting some members to vote both absentee/mail ballots and walk-in ballots. You based your allegation on the fact that your election observers counted fewer walk-in voters at the polling site than the number of walk-in ballots reported by the Election Supervisor as having been cast.

However, the Department's investigation revealed that your observers' count was inaccurate because the observers were not present between the voting hours of 8:00 a.m. and 10:30 a.m. on December 16, 2011. There was also insufficient evidence to verify your observers' count since only one of the multiple notebooks documenting the observers' tally of walk-in voters was submitted to the Department.

Although the Department's review of election records found that twenty-four more ballots were entered than should have been counted according to the voter eligibility control roster, these votes could not have affected the outcome of the election because the closest margin of votes in the election was 1,372 votes in the race for president. Moreover, the investigation revealed no instances of voters casting multiple ballots or

any other evidence of ballot tampering or substitution. Therefore, there was no violation of the LMRDA affecting the outcome of the election.

You also alleged that your opponent's slate violated the LMRDA and Teamsters Local 89's election rules by promoting the candidacy of incumbents Fred Zuckerman and [REDACTED] when pens bearing their names were placed in the polling place.

Section 401(g) of the LMRDA prohibits the use of labor organization funds to promote the candidacy of any person in union officer elections. *See Donovan v. Council of Carpenters*, 797 F.2d 140, 145 (3d Cir. 1986); *citing Donovan v. National Alliance of Postal and Federal Employees*, 566 F.Supp. 529, 532 (D.D.C. 1983), *appeal dismissed*, 740 F.2d 58 (D.C. Cir.1984). Courts have consistently held that the overall tone, content and timing of union-promulgated material must be evaluated to determine whether it is prohibited campaign material. *Id.* Section 401(e) of the LMRDA further stipulates that union officer elections shall be conducted in accordance with the constitution and bylaws of the labor organization. Teamsters Local 89's 2011 election rules prohibit campaigning within 30 feet of the outside entrance to the polling place.

The Department examined the pens that were marked with the union logo and "President Fred Zuckerman Secretary-Treasurer [REDACTED]." The print on the pens did not explicitly endorse or promote the incumbents' candidacy in the 2011 election and did not attack any other candidates. Further, the pens were not ordered or distributed at a time coinciding with the campaign or election. Rather, the same pens were used at the union office and available to members during non-election years at least as early as 2009. Because the pens were not marked with content encouraging or supporting the incumbents' re-election and were available prior to the campaign, they were not unlawfully promulgated campaign materials under Section 401(g) of the LMRDA.

Finally, you raised three additional issues in your complaint to the Department that were not properly protested to your union, namely: 1) incorporation of all pre-election issues into your post-election complaint; 2) failure to honor your pre-election absentee ballot requests; and 3) failure to honor your campaign mailing request causing some literature to arrive after the election. Since these issues were not raised pre-election as required by your union, you failed to properly exhaust on these issues and as a result the Department is not able to investigate these allegations.

For the reasons set forth above, it is concluded that no violation of the LMRDA affecting the outcome of the election occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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