



July 12, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your January 18, 2012 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the election of officers conducted by the National Association of Government Employees (NAGE), Local R4-17 on September 29, 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.

You alleged that Local R4-17 denied you equal access to the union bulletin board at the Hampton VA Medical Center. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election. Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The investigation revealed that on September 23, 2011, you informed union officials that you wanted to post campaign literature in the locked bulletin board at the Hampton VA Medical Center. The officials advised that you needed the approval of the Hampton VA Medical Center before you would be permitted to post such materials on the locked bulletin board.

Once it was determined that approval by the Hampton VA Medical Center was not necessary, you and Election Committee Chair (ECC) [REDACTED] set up a time of 3:45 pm on September 26, 2011, to post your materials. You were informed that your materials could not be posted that day because a union official mistakenly had taken the bulletin board key home. At this time, you told ECC [REDACTED] that you would not be back to post your materials unless ECC [REDACTED] physically had the key in his possession. The next day, September 27, ECC [REDACTED] informed you that he would post your and candidate [REDACTED] materials on bulletin boards that day.

Numerous emails ensued between the three of you and you decided not to meet ECC [REDACTED] to post your materials because you did not have assurance he physically had the key in his possession even though ECC [REDACTED] assured you the key was available and he could access the key. In addition, you did not want to leave your materials with ECC [REDACTED] to post on bulletin boards for you.

The evidence does not provide an adequate basis for finding that there was a violation that may have affected the election outcome. The investigation disclosed that although you were unable to post your materials inside the union bulletin board, you were afforded the opportunity to do so by obtaining the key and posting yourself or leaving your materials with ECC [REDACTED] to post for you. Instead, you wanted to physically be with ECC [REDACTED] as he posted your materials inside bulletin boards.

The investigation revealed that despite not being able to post inside bulletin boards, you effectively campaigned and on or about September 19, 2011, you taped your materials outside the locked union bulletin board. You also sent a campaign mailing to the local union membership, consisting of the same material you wished to post inside that bulletin board. Additionally, you placed your campaign flyers on the tables inside the canteen located at the Hampton VA Medical Center and passed out campaign materials to potential voters. You also shook hands with members during the day shift's lunch break and as they exited for the day, handed out flyers and asked for support. Under these circumstances, even if a violation occurred, it would not have affected the outcome of the election.

You alleged that an incumbent candidate used union supplies to send a campaign mailing to the Local R4-17 membership. Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. The investigation disclosed that a candidate told you that he received a campaign mailing from the incumbent president in an envelope bearing the union's name and logo. As a result, you assumed that union supplies were used for the mailing. However, during the investigation, your witness was unable to produce the alleged envelope. Further, the incumbent president stated that he purchased the envelopes used for his campaign mailing. He stated that one or two union envelopes may have been mixed in with his personal supplies and inadvertently used for campaign mailings. In response to this allegation, the union concluded that four or five union envelopes may have somehow been mixed in with the candidate's supplies and inadvertently used for campaign mailings.

The Department conducted a random telephone survey of the members to ascertain whether members received campaign literature in envelopes bearing the union's name and logo. Of the members surveyed, only one recalled receiving campaign literature in the mail, but could not recall the type of envelope containing the literature. Even if the

union's finding is considered to be true, the use of the five envelopes did not affect the outcome of the election. The smallest margin of victory was 44 votes. Thus, any violation that may have occurred did not affect the outcome of the election.

You alleged that absentee ballot information was only provided to members employed at outlying facilities and not those employed at the Hampton VA Medical Center. Section 401(e) of the LMRDA requires that a union must give all members in good standing a reasonable opportunity to vote. Unions are required to conduct an election of union officers in accordance with the requirements of their constitution and bylaws, insofar as they are not inconsistent with the provisions of the LMRDA. *See* 29 C.F.R. § 452.109.

You alleged that the election notice only had absentee ballot information for members employed at outlying facilities and not those employed at the Hampton VA Medical Center. The investigation disclosed that the challenged election was conducted in person at the Hampton VA Medical Center. The union provided absentee ballot information to all its members; however, it specified that only members working at facilities other than the Hampton VA Medical Center could vote by absentee ballot. Local R4-17's provision of absentee ballots only to those members outside the Medical Center facility did not violate the LMRDA as Department of Labor regulations provide that a union is only required to provide absentee ballots when it knows in advance that a substantial number or particular segment of the members will not be able to exercise their right to vote in person, 29 C.F.R. § 452.95, and that was not the case here. Further, Local R4-17's provision of absentee ballots only to those members outside the Medical Center facility did not violate the NAGE Constitution as Article IV, Section 7 provides, "[a]bsentee ballots may be permitted subject to the regulations of the U.S. Department of Labor." There was no violation of the LMRDA.

You also made several other allegations that even if true would not violate requirements of Title IV and, thus, were not included in the investigation. First, you alleged that the incumbent president used a government computer to send out notices to all members that included the voting times and polling place on the day of the election and his title. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any person. This prohibition against the use of employer funds includes any costs incurred by an employer, or anything of value contributed by an employer, in order to support the candidacy of any individual in an election. 29 C.F.R. § 452.78. Here, the notices that were transmitted to members over the government computer included the voting times and the polling place on the day of the election and identified the incumbent president by name and title. The notices contained factual information regarding the impending election, did not solicit members' votes, and did not in any way promote the candidacy of the president or the candidacy of any other individual. There was no violation of the LMRDA.

Finally, you alleged that the incumbent president's campaign literature included false and unethical information and destroyed your credibility. The LMRDA does not regulate the content of campaign literature and a union may not regulate the content of campaign literature that candidates wish to have distributed by the union. A union may not censor the statements of candidates in any way, even though a statement may include derogatory remarks about another candidate. 29 C.F.R. § 452.70. Therefore, there was no violation of the LMRDA.

The investigation, however, did uncover an additional violation. Section 401(e) of the LMRDA requires unions to preserve the ballots and all other records pertaining to the election for one year. Local R4-17's failure to maintain the eligibility list and the absentee ballot log from the election is a violation of the LMRDA. Nonetheless, since this violation occurred after the ballot tally, the violation did not affect the outcome of the election.

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,

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Chief, Division of Enforcement

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