



March 6, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your September 19, 2011 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) occurred in connection with the Missouri Postal Workers Union (MPWU) election of officers held during its June 2-5, 2011 convention of delegates. The MPWU is a state branch of the American Postal Workers Union, AFL-CIO (APWU).

The Department of Labor conducted an investigation of each of your allegations. As a result of the investigation, the Department concluded that no violation of the LMRDA that could have affected the outcome of the MPWU election of officers occurred.

You alleged that ineligible delegates were allowed to vote in MPWU's regularly scheduled election of officers at its convention held on June 4, 2011. All delegates to the MPWU convention must be elected in accordance with the requirements of Title IV of the LMRDA because the delegates elect officers of the MPWU. 29 U.S.C. § 481(d); 29 C.F.R. § 452.22. You alleged that violations of the LMRDA occurred during St. Louis Gateway District Area Local's March 20, 2011 election of delegates. During the Department's investigation, you acknowledged that you were not alleging any improprieties in other delegate elections.

You specifically alleged that several candidates should have been disqualified because they did not attend six of St. Louis Gateway's general membership meetings in the year preceding the election as required by Article 5, Section 4B of the Local's constitution.

Section 401(e) of the LMRDA requires that a union conduct officer elections in accordance with its constitution and by-laws. The Department's investigation determined that there was not a meeting attendance requirement for delegates to the MPWU (state) convention. The investigation found that sometime prior to 1998, the Department of Labor advised APWU that its meeting attendance requirement for delegate positions covered by the LMRDA (because they elect higher body officers) was not reasonable. *See* 29 C.F.R. § 452.38.

Accordingly, St. Louis Gateway amended a similar meeting attendance requirement in Article 5, Section 4B of its constitution so that it applied only to candidates for delegates to *national* conventions, where no union officers are nominated or elected. An outdated, pre-amendment version of the meeting attendance requirement was mistakenly printed in St. Louis Gateway's January/February 2011 newsletter, but the Local did not, in fact, have an attendance requirement for delegates to the state convention. No attendance requirement was included in the nomination notice and no such requirement was applied to candidates in the March 20, 2011 delegate election. Therefore, there was no violation of the union's constitution and bylaws or Section 401(e) of the LMRDA.

You also alleged that the Local's recount of ballots for support services delegates was improper because the request for a recount was not in writing and not all candidates were invited to witness the recount. The Department's investigation found that the election committee chair recounted the ballots while only candidate [REDACTED] was present. Conducting a recount without providing all candidates the opportunity to have an observer present was a violation of Section 401(c) of the LMRDA, which requires adequate safeguards to ensure a fair election. However, the Department's investigation determined that the ballots were not tampered with or altered between the original tally and recounts conducted by the Local election committee chair and the Department. The Department's recount of the ballots confirmed that [REDACTED] received the most votes. Thus, the violation did not alter the Local's election of state delegates and could not have had an effect on the outcome of the MPWU election.

You also alleged that two support service delegates, [REDACTED] and [REDACTED] used employer email, telephones, and time to campaign. Section 401(g) of the LMRDA provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person." *See also* 29 C.F.R. §§ 452.76- 452.78.

The Department's investigation revealed no clear evidence that any candidate used an employer's phone to make campaign calls. In addition, the two witnesses you named to support your allegation that [REDACTED] posted campaign flyers during work time stated that they did not see him do so. [REDACTED] work time is closely monitored by his supervisor, who did not see him campaign and did not think he had opportunities to do so during his shift. The investigation did reveal that [REDACTED] used her work computer to send an email to supporters on behalf of [REDACTED] and herself on March 15, 2011. This use of an employer's computer and email system violates Section 401(g) of the LMRDA.

In order for a union election to be overturned, there must be a finding that the violation of the LMRDA may have affected the outcome of the election. 29 U.S.C. § 402(c)(2). Where a violation occurs that may have affected a delegate election and the delegates only function is to vote at one convention that has taken place before the complaint is

resolved by the Department, it is only necessary to rerun the delegate election if the tainted delegate or delegates could have affected the election that took place at the convention.

Here, the use of the employer's computer and email may have caused more members to vote for ██████ and ██████ than otherwise would have. Because ██████ was not elected, the violation could not have affected her status. The number of members who were improperly emailed from ██████' work computer exceeded ██████ margin of victory for the second support services delegate position and therefore the violation may have affected which candidate was elected for that position.

However, the sole purpose of the delegate election was to select individuals to vote at the MPWU convention. ██████ cast only three of the nine votes in the MPWU support services craft director race. As a candidate for that position, she won the race by receiving all nine votes cast. The legislative director-editor was elected by a margin of 82 votes. You attended the MPWU convention and were nominated for support services craft director. ██████ improper election as a state delegate over you did not prevent you from being nominated or being a candidate for MPWU support services craft director. Here, ██████ improper election as a state delegate for St. Louis Gateway did not affect the outcome of either race in the MPWU election and there is, therefore, no reason for the Department to seek a rerun of either election.

For the reasons set forth above, the Department of Labor has concluded that no violation of the LMRDA occurred that could have affected the outcome of the MPWU election.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. Cliff Guffrey, President
APWU
1300 L Street, NW
Washington, DC 20005

Mr. Teddy F. Days, President
MPWU
1117 Dunston Drive
St. Louis, MO 63146-5684

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