



May 2, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your January 5, 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) occurred in connection with the election of officers of the National Treasury Employees Union (NTEU), conducted on August 9, 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 NTEU violated the LMRDA by promoting the candidacy of incumbent Colleen Kelley through two publications and a video highlighting her achievements as National President. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in union officer elections. Courts have consistently held that the tone, content and timing of union-promulgated material determines whether the material is in fact campaign material that falls within the section 401(g) prohibition. The overall timing, tone and content must be evaluated to determine whether the material effectively supports or attacks a candidate in the election. 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). Publication of incumbent officers' regular functions and activities on membership interests is permissible under the LMRDA. *Id.*

The Department reviewed the NTEU "Two-Year Report" distributed to delegates at the 2011 NTEU biennial convention, the 2011 convention video, and the July 2011 "NTEU Working for You @ the IRS" e-mail newsletter. Although images and quotes of President Kelley appeared in the publications and video, none of these materials explicitly endorsed or promoted her candidacy in the 2011 election, nor contained references to her personal goals or accomplishments. Further, the 2011 convention materials were similar to videos and reports presented at the 2005 and 2007 national

conventions, both held in non-election years. Because the 2011 video and publications merely covered President Kelley's past activities rather than encouraging or endorsing her re-election, they were not unlawfully promulgated campaign materials under section 401(g) of the Act.

You alleged that NTEU violated the Act by disrupting presidential candidate [REDACTED] nomination speech before the ten minutes allotted to him by Part II, Section A of the NTEU "Rules of the Committee on Nominations and Elections" (August 7-11, 2011) had ended and that no other candidate was treated in this manner. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Pursuant to this provision, the union's actions are circumscribed by the general rule of fairness. Unions may not engage in discriminatory treatment of candidates. The Department's review of a video recording of the speech showed that [REDACTED] spoke for at least ten minutes before [REDACTED], NTEU Election Committee Chairperson, informed him that his time had expired. The video also showed that [REDACTED] continued speaking to the delegates for seventeen seconds after that. [REDACTED] was the only presidential candidate that spoke beyond ten minutes. Another nomination speaker, Delegate [REDACTED] was also publicly interrupted by Chairperson [REDACTED] when [REDACTED] speech time had expired. There was no evidence of discriminatory treatment regarding the nomination speech length. Thus, there was no violation of the LMRDA.

You alleged that NTEU failed to ensure ballot secrecy. Specifically, you claimed that delegates were not able to vote their ballots in private voting booths and NTEU employees could tell how each delegate voted. You further alleged that an NTEU staff member informed delegate [REDACTED] that they could tell how delegates voted. The LMRDA does not require national unions to hold officer elections by secret ballot vote. The NTEU Constitution and Bylaws do not require secret ballot voting or private voting booths. Pursuant to the Constitution and Bylaws, national officers are to be elected by delegate vote in the presence of the Committee on Nominations and Elections. There was no violation of the LMRDA.

You alleged that NTEU engaged in discriminatory treatment of candidates when the union prevented candidate [REDACTED] from posting a campaign sign and prohibited him from distributing campaign materials at the convention on the day of the election. The investigation confirmed that there was no union action in connection with the removal of the sign. A security officer for the Westin Hotel – the site of the convention – instructed Walker to remove a poster from the wall and informed [REDACTED] that hotel policy prohibited attaching signs to hotel property. Soon after Walker removed his poster from the hotel wall, the hotel provided him an easel on which to display the poster.

The 2011 NTEU "Rules of the Committee on Nominations and Elections" further stipulate that the posting of campaign materials is "subject to the housekeeping rules of the hotel." There was no evidence that NTEU took any action in instructing Westin

Hotel employees or security to direct Walker to remove his campaign poster from the hotel wall. No other officer candidates attempted to affix campaign literature to hotel property. Because there was no union action taken, and no disparate treatment between candidates posting campaign materials onto hotel property, the union did not violate the LMRDA.

You also alleged that NTEU violated the adequate safeguards provision of the LMRDA by engaging in discriminatory treatment of candidates when supporters of Walker were prohibited from distributing campaign materials on August 9, 2011. The investigation disclosed that during the lunch break before voting had begun, Election Committee Chairperson ██████ told you and ██████ to stop distributing campaign materials because distribution on the day of the election was prohibited. However, after a delay of five to twenty-five minutes, ██████ reversed herself and permitted the two of you to continue distributing.

Section VI of the NTEU 2011 "Rules of the Committee on Nominations and Elections" prohibits campaigning "after the voting process has begun" and stipulates that "[t]he Committee on Nominations and Elections will order a halt to disruptive electioneering activities." Although there appeared to have been some minor confusion with this rule causing Chairperson ██████ to halt distribution, the short delay was a minor mistake not significantly affecting distribution. There is no evidence that Walker's campaign was denied a fair opportunity to distribute its literature. Rather, regardless of the minor delay in distribution, any delegates who may have wanted to review or obtain Walker's campaign literature would have been able to do so prior to the election taking place. Therefore, no violation affecting the outcome of the election occurred.

You alleged that NTEU violated the LMRDA by denying the NTEU Chapter 70 President the right to cast her chapter's votes at the convention. The investigation disclosed that former Chapter 70 President ██████ was refused credentials to cast delegate votes on behalf of her chapter because she was no longer a delegate by virtue of office as her term as President expired before the August 2011 convention and because Chapter 70 did not conduct a special delegate election.

Part IV, Section 3 of the NTEU Constitution and Bylaws prohibits Chapter Presidents from serving as delegates at the convention if their terms have expired, unless they were elected by the Chapter membership in a special, secret ballot election. Section 401(a) of the LMRDA also stipulates that convention delegates must be chosen by secret ballot in national union officer elections where voting is conducted by convention delegates rather than by all members in good standing. ██████ was ineligible to vote at the convention, so NTEU did not violate the LMRDA in denying her the credentials to vote in the national officer election. Additionally, the outcome of the election was not affected because Chapter 70 only held three votes which would not have affected the outcome of any race. There was no violation.

You alleged that NTEU violated the LMRDA by prohibiting the NTEU Chapter 39 Vice President from voting as a delegate and forcing him to shut down his website, which advocated against the re-election of President Kelley. Chapter 39 Vice President Ken Mynatt confirmed that he had, in fact, voted at the convention and did not shut down his website. Therefore, no violation of the LMRDA occurred.

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,

A solid black rectangular redaction box covering the signature of Patricia Fox.

Patricia Fox
Chief, Division of Enforcement

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