



May 2, 2012



Dear [REDACTED]:

This Statement of Reasons is in response to your August 15, 2011 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, as amended (LMRDA) occurred in connection with the re-run election of officers of the National Treasury Employees Union (NTEU) Chapter 137, conducted on April 14, 2011. Chapter 137 held the initial election on December 9, 2010.

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 Chapter 137 violated the LMRDA by failing to provide secret ballot envelopes with the ballot packages mailed to members. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 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. Part IV, §2(D) of the NTEU Constitution & Bylaws specifically requires that mail ballot packages include an outer return envelope with information allowing the union to identify the sender as an eligible voter and an inner, secret ballot envelope for the voted ballot.

The investigation confirmed that Chapter 137 mailed the ballot packages without including a secret ballot envelope for voted ballots. Chapter 137's failure to provide a secret ballot envelope not only violated the union's constitution and bylaws, thereby violating section 401(e) of the LMRDA, but also violated section 401(c)'s adequate safeguards provision as the union's action did not adequately ensure the ballot secrecy required by the LMRDA. Section 401(b) of the LMRDA requires local labor organizations to conduct union officer elections by secret ballot.

However, the investigation revealed that the violations of section 401(c) and (e) did not affect the outcome of the election. The investigation disclosed that soon after the ballots were mailed out, the election committee posted a notice to the membership

acknowledging the lack of a secret ballot envelope in the ballot packages, assuring members that special precautions would be exercised to insure ballot secrecy, and suggesting that members could use their own blank envelopes as the secret ballot envelope. The investigation further revealed that the union was able to preserve the secrecy of the voted ballots.

The Department's review of election records found that at least 287 members mailed their ballots without secret ballot envelopes. At the tally, the election committee stacked the envelopes face down. The envelopes were taken from the stack one at a time and placed face down on the table so that no identifying information was visible. The envelopes were slit open and the folded ballots removed. The committee then placed all the ballots in a box without unfolding them and commingled the ballots. The empty envelopes were put in a separate box. Thus, the investigation concluded that secrecy was maintained. The vote on the ballots was not seen in conjunction with the member's identity. The investigation also did not identify any eligible voters who decided not to vote for fear of lack of voter secrecy or because Chapter 137 did not provide a secret ballot envelope. Therefore, although violations of Sections 401(c) and (e) of the LMRDA occurred, there was no effect on the outcome of the election.

You alleged that Chapter 137 failed to provide adequate safeguards to ensure a fair election and failed to follow its constitution and bylaws in violation of sections 401 (c) and (e) of the LMRDA in the voting for area vice president. The voting instructions included with the mail ballots, as well as the posted notice of nominations and election provided that members were to only vote for one candidate "in the appropriate area where you and the candidate both work." You alleged that members voted for more than one candidate for area vice president and voted for candidates outside of the area where the members worked.

With regard to voting only for candidates in the member's work area, the investigation revealed that the union's constitution and bylaws do not prohibit members from voting for area vice president candidates employed outside of the member's work area. Part VI, Section 1(C)) of the Constitution & Bylaws – the only rule regarding eligibility to run for or serve as an area vice president – only requires that area vice presidents "must be currently assigned to the area for which he/she runs for office." All area vice president candidates on the ballot met this requirement.

With regard to voting for more than one candidate, the election committee counted all of the votes on ballots with votes for more than one area vice president rather than voiding those ballots. There were 122 ballots which had votes marked for more than one area vice president. However, the Department's recount of ballots disclosed no changes in the outcome of the tally for the three contested area vice president positions even when disregarding ballots with more than one area vice president candidate

selected. Therefore, although some voters failed to follow Chapter 137's constitutional prohibition on voting for more than one area vice president candidate, there was no effect on the outcome of the election.

You alleged that Chapter 137 failed to follow the provisions of the constitution and bylaws pertaining to election committee appointments by improperly selecting [REDACTED] and [REDACTED], and excluding [REDACTED] from the activities of the election committee. Part VII, Section 5(A),(4) and (7) of Chapter 137's Constitution and Bylaws states that the chapter president's duties include appointing "chairpersons of all standing committees" and "all committee members." Part VIII, Section 1(A), stipulates that the president shall appoint two members and a chairperson to the election committee.

Steven Flig – attorney to Chapter 137 – supervised the April 14, 2011 rerun election at the direction of NTEU. The investigation disclosed that Counsel Flig initially selected [REDACTED] as chairperson and [REDACTED] as a committee member of the election committee. On or about February 4, 2011, Counsel Flig informed Chapter 137 President [REDACTED] by phone of his election committee selections. President [REDACTED] informed Flig that he objected to [REDACTED] serving as chairperson but did not object to [REDACTED] serving as a committee member. The records reveal that Counsel Flig emailed President [REDACTED] on February 9, 2011 at 1:14 PM asking Hyde who he wanted on the committee. At 8:03 p.m. that same day, [REDACTED] replied via email to Counsel Flig naming [REDACTED] as chairperson and [REDACTED] as vice chair. President [REDACTED] thus selected [REDACTED] as chairperson and [REDACTED] and [REDACTED] as committee members in accordance with Parts VII and Part VIII of Chapter 137's Constitution and Bylaws.

Election Committee member [REDACTED] engaged in committee activities including assembling ballot packages, monitoring email inquiries from members to the election committee, picking up the ballots at the post office and marking votes at the tally. The only election committee function that [REDACTED] did not participate in was the drafting and distribution of the Notice of the Nominations and Election. There was no evidence that union constitutional provisions were breached or inadequate safeguards taken, in either the selection of members on the election committee or the participation of its members. Therefore, there were no violations affecting the outcome of the election.

You alleged that Chapter 137 failed to follow its constitution and bylaws by permitting [REDACTED] to be the only committee member with unsupervised, unlimited access to the post office box for returned ballots. The investigation disclosed that there were, in fact, two post office box keys kept by Chairperson [REDACTED] and Committee Member [REDACTED] during the election. The investigation did not reveal any evidence that anyone accessed the post office box at any time before the ballot pickup when all

three committee members and Counsel Flig were present. There was no violation of the LMRDA.

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

Sincerely,



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Chief, Division of Enforcement

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