



November 16, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor on April 27, 2012, 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 in Communication Workers of America, Local 9588 conducted by mail ballot on October 28, 2011.

The Department conducted an investigation of your allegations. As a result of that investigation, the Department has concluded that there were no violations of the LMRDA that may have affected the outcome of the October 28, 2011 election.

You alleged that although an insurgent candidate for local president withdrew his candidacy, the local should have reinstated him on the ballot when he so requested. Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall be eligible to be a candidate and hold office. Section 401(e) also requires that union officer elections be conducted in accordance with the union constitution and bylaws. Local 9588's Constitution and Bylaws are silent on the issue of candidates who withdraw their candidacy.

The investigation disclosed that two members were nominated for president at the September 28, 2011 nominations meeting. [REDACTED] accepted your nomination for president, challenging the incumbent president Carlos Castillon. Two days later, on September 30, 2011, [REDACTED] faxed the withdrawal of his candidacy. Shortly thereafter, [REDACTED] again changed his mind, seeking reinstatement to the ballot. The Election Committee unanimously agreed to not reinstate [REDACTED], because the committee thought to do otherwise would disrupt the nominations process. Given that the local's constitution and bylaws do not address the issue of a candidate's reinstatement, nothing in the LMRDA requires the reinstatement of a candidate who

has withdrawn his candidacy. Consequently, the Election Committee had the discretion not to reinstate [REDACTED] to the ballot. There was no violation.

In a related allegation, you stated that once [REDACTED] was no longer on the ballot, members should have been permitted to write in the name of their preferred presidential candidate, as the Local 9588 Constitution and Bylaws do not prohibit write-in votes. The LMRDA neither requires nor prohibits write-in candidacy or write-in votes. 29 C.F.R. § 452.64. These matters are governed by appropriate provisions of the union's constitution and bylaws, applicable resolutions, or established practice of the union. A union may, in accordance with its constitution and bylaws or as a matter of stated policy, refuse to permit write-in votes. 29 C.F.R. 452.114.

A review of the Local Constitution, Bylaws, and the National Constitution disclosed that none of these governing documents address the issue of write-in votes. However, Article IV, section 15 of the CWA Uniform Operating Practices Manual (CWA Manual) provides, in relevant part, that a local may refuse to accept write-in votes "if the refusal is based on a prohibition in the local's bylaws or election rules, or a longstanding established practice of the local." The investigation disclosed that the local has a ten-year past practice of prohibiting write-in votes. This prohibition was reiterated in the voting instructions sent with the ballot to all members. Since the local has a longstanding established practice of prohibiting write-in votes and members were notified of the prohibition, there was no violation.

You alleged that the local applied a non-existent, geographical restriction to disqualify your nomination of [REDACTED] for the position of area vice president substitute teacher (AVPST). Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. A candidacy qualification is imposed in the local bylaws. Article XIV, section 5(C) of the local bylaws provides that "Area Vice Presidents must work in their geographic area." The position of area vice president substitute teachers is a subset of area vice president under the local bylaws. Article XII(A), Local Bylaws. These two bylaws provisions support the local's position that a geographical restriction is imposed on those seeking the office of area vice president.

The investigation disclosed that [REDACTED] geographical area was Sacramento but the position for which you believe you nominated [REDACTED] was for AVPST in San Bernardino City/Rialto Unified School Districts. Article XIV, section 5(C) of the local bylaws would prohibit [REDACTED] eligibility to run for this office under these circumstances. As an additional basis for finding [REDACTED] ineligible, the union claims that [REDACTED] as a Verizon wireless employee, was not a substitute teacher and therefore was precluded from running for any AVPST position. However, nothing in the local bylaws imposes craft restrictions as a candidacy qualification. In any event, the investigation disclosed no evidence that you actually nominated [REDACTED] the local president, first executive vice

president, and the local's office secretary all stated that they did not hear you nominate [REDACTED] at the September 28th nominations meeting; also, the minutes of the September 28, 2011 nominations meeting showed you nominated [REDACTED] for two positions but did not nominate [REDACTED] who was not at that meeting. There was no violation.

You alleged that the local applied a non-existent rule, i.e., that no member may be nominated for more than one office, to disqualify [REDACTED] nomination for AVPST. More specifically, you alleged that the fact that [REDACTED] had already been nominated for first executive vice president did not preclude him from running for the AVPST position for which you nominated him.

Article XV, Section 3(b) of the Local Bylaws states, in relevant part, that "beginning in 1987, no member shall be permitted to hold more than one such office." The local has interpreted "hold more than one office" to include "run for more than one office," to avoid having to rerun its election. However, the local bylaws do not specifically provide that a member can only be nominated for one office. A nominee could run for more than one office and select his or her preferred position at the close of nominations. In any event, as noted above, the bylaws contain a geographical restriction for AVPST. Article XIV, section 5(C) and Article XII(A), Local bylaws. [REDACTED] worked in Sacramento, but the AVPST position he sought is in the San Bernardino and Rialto school districts, geographical areas outside of [REDACTED] working area. [REDACTED] was not eligible to run for the AVPST position for which he was nominated. There was no violation that may have affected the outcome of the election.

You alleged that the local denied your request to have your campaign material mailed to all members, and in the alternative, to have your campaign material emailed to all members. Section 401(c) requires unions to comply with a candidate's reasonable request for the distribution of his or her campaign material. The candidate making the request is required to pay any fees associated with the distribution. 29 C.F.R. § 452.67. The investigation disclosed that you requested that mailing labels be sent to you electronically at the CWA District 9 office in Sacramento so that you could supervise your own campaign mailing. The local attempted to comply with your request but was unable to do so because of the incompatibility of software programs. You then requested that the election committee provide you with its list of members' home email addresses or that the election committee email your campaign material to its members. Section 401(c) of the LMRDA provides bona fide candidates with the right, once within thirty days of the election, to inspect a list of members' names and addresses. That right, however, does not include the right to copy or to have a copy of that list. 29 C.F.R. 452.71(a). Moreover, the investigation disclosed that the local does not have a complete list of members' home email addresses, and the LMRDA does not require the union to create an email list in order to comply with campaign mailing requests. In

addition, the local had privacy concerns about disclosing its members' home email addresses. The investigation further disclosed that the union did not provide a list of email addresses to other candidates. There was no disparate candidate treatment. The union did not violate the LMRDA in denying your requests. Moreover, the investigation disclosed that you were provided with an alternative campaign mailing option. Office secretary [REDACTED] located in Colton, California, approximately 600 miles from you, offered to mail your campaign materials, with the understanding that you pay for her labor and the cost of the labels. Such payments are deemed reasonable under the LMRDA. 29 C.F.R. § 452.67. You did not respond to her offer. Consequently, the local did not deny your request for a campaign mailing. There was no violation.

You alleged that the local violated your right to observe the ballot tally when it refused to pay your travel expenses so that you could observe the ballot count. Section 401(c) provides in relevant part that as part of adequate safeguards to ensure a fair election, candidates have the right to an observer at the polls and at the counting of the ballots. Nothing in the LMRDA requires a union to pay any candidate's expenses for transporting observers to a polling site, unless the union has a rule providing for payment of observers. 29 C.F.R. § 452.107(d). This local has no rule providing for the payment of observers. However, unions must provide adequate safeguards to ensure a fair election. If the union holds an election at a location that would prevent the presence of observers or one that would cause observers to go through considerable expense in order to exercise the right to observe, the union may be in violation of the LMRDA's adequate safeguards provision. That violation would have to have affected the outcome of the election in order for the violation to provide a basis for litigation by the Department of Labor. Here, you did not allege and the investigation did not reveal violations of the LMRDA with respect to the tally such that may have affected the outcome of the election. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

For the reasons set forth above, it is concluded that your complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Larry Cohen, President
Communications Workers of America
501 3rd Street, NW
Washington, DC 20001

J. Carlos Castillon, President
CWA Local 9588
190 West "G" Street
Colton, CA 92324

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