



April 16, 2013

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaints filed with the U.S. Department of Labor on June 27, 2012 and July 12, 2012, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the American Postal Workers Union, Local 251, on March 15, 2012.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that two ballots were improperly voided and not counted. Section 401(e) of the LMRDA requires the election of local union officers to be held by secret ballot vote among the members in good standing. A secret ballot under the LMRDA is the expression by ballot cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. See 29 C.F.R. § 452.97. Thus, a ballot must not contain any markings which upon examination would enable one to identify it with the voter.

The Department's review of the two voided ballots disclosed that each ballot contained the initials of the voter, thereby compromising the secrecy of the ballot. Thus, the election officials were correct in voiding the ballots and not including them in the ballot

count. Further, the ballot instructions stated, "ballots with signatures or initials would be voided." The LMRDA was not violated.

You alleged that a large number of members complained that they did not receive ballots in a timely manner. Section 401(e) of the LMRDA requires a union to provide a reasonable opportunity for voting. Thus, there is an obligation that the union conduct its election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. 29 C.F.R. § 452.94.

The investigation disclosed that the American Arbitration Association (AAA) mailed ballots to the last known home addresses of 1,156 eligible voters on February 29, 2012. Voted ballots had to be received by the union no later than 9:00 a.m. on March 15, 2012, to be included in the ballot count. The AAA election supervisor stated during the investigation that members should have received their ballots within 2-3 days after the ballot mailing, or no later than March 3, 2012. Members were provided the contact information for the AAA and instructed to contact the company if they did not receive a ballot in the mail by March 4, 2012. The investigation showed that 25 members who voted in the election requested, received and returned duplicate ballots on or before the March 15, 2012 deadline. The LMRDA was not violated.

Complainant [REDACTED] alleged in a pre-election protest filed with the union and in his complaint filed with the Department that a candidate for president used the employer's copying machine to print copies of a campaign flyer. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any individual in an election. This prohibition against the use of employer funds includes any costs incurred by an employer or anything of value contributed by an employer. 29 C.F.R. § 452.78.

The investigation disclosed that the independent candidate for president used the employer's copying machine to print 300 campaign flyers that supported his candidacy and opposed the candidacy of the incumbent president. This use of the employer's equipment constituted a prohibited use of employer resources in violation of section 401(g) of the LMRDA.

However, the violation could not have affected the outcome of the election. 29 U.S.C. § 482(c)(2) (election only set aside if violation may have affected the outcome of the election). The president-elect received 291 votes, the incumbent president received 241 votes, and the independent candidate received 40 votes. Thus, even if it were assumed that the votes of all 40 members who voted for the independent candidate were affected by the improper flyer and that these 40 members would have voted unanimously for the incumbent president had no violation occurred, the incumbent president still would have lost the election by a margin of 10 votes ($241 + 40 = 281$; president-elect received 291 votes). No violation occurred that may have affected the outcome of the election.

You alleged that in October 2011 or November 2011 the successful presidential candidate mailed envelopes containing campaign materials to members at their worksite, the Forbell Street postal facility. You also alleged that two office clerks employed at the facility distributed the envelopes to members, while the clerks were on paid work time. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any individual in an election. Thus, employees may not campaign on time that is paid for by the employer. 29 C.F.R. §§ 452.76, 452.78.

The investigation disclosed that the Forbell Street employees routinely receive personal mail at that facility. The investigation also disclosed that the envelopes did not contain any materials that solicited the votes of members. Further, such materials did not promote or discourage the candidacy of any person in the election. Thus, even if the envelopes were distributed by office clerks while on paid work time, the LMRDA was not violated.


With respect to the remainder of the allegations you raised in your June 27, and July 12, 2012 complaints to the Department, the investigation disclosed that you did not protest these allegations in accordance with the mandatory pre-election protest procedures prescribed in the union's constitution and bylaws. Section 402 of the LMRDA requires a complaining union member either to have exhausted the remedies available under the union's constitution and bylaws or to have invoked such available remedies in order to file a valid complaint with the Department. The purpose of the exhaustion and invocation provisions is to preserve, to the maximum extent feasible, the independence of the union from unnecessary governmental interference, by giving the union the first opportunity to cure any defects in its election process. Because you did not comply with the mandatory pre-election protest procedures prescribed in the union's constitution and bylaws, the union was not afforded the first opportunity to cure any defects in its election, in violation of section 402 of the LMRDA. Therefore, these allegations are not properly before the Department and are dismissed.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election and I have closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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