



April 17, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint to the U.S. Department of Labor, received May 1, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), occurred in connection with the January 12, 2013 election of union officers held by National Postal Mail Handlers Union Local 305.

The Department of Labor conducted an investigation of your allegation. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged that the New Direction slate posted on its Facebook page a photo of its slate members standing in front of the International logo, giving the appearance that the International endorsed that slate's candidacy. Section 401(g) of the LMRDA, provides, in relevant part, that no moneys received by any labor organization by way of dues shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of the LMRDA. "Moneys" is broadly interpreted to include almost anything of value.

A union's logo may constitute "moneys" where the logo has market value, such as when the logo is protected by trademark, and where the union restricts the use of its logo in some manner (such as requiring permission before the logo may be used for any purpose), and where the manner of its use implies that the union has endorsed the candidate(s). Therefore, the use of a union logo may be a violation of section 401(g) under certain circumstances. However, there was no violation in the instant case. Although the International has trademarked and prohibits the use of its official logo, the logo featured in the photograph was not the official, trademark-protected logo. To commemorate its one-hundred year anniversary, the International issued this new logo, which the International has not trademarked. Additionally, the New Directions slate's use of this anniversary logo did not create a reasonable inference that the union had

endorsed the candidate. There is no statement of endorsement accompanying the photo. No union official commented on the New Direction's Facebook page regarding that photograph. There was no violation.

You alleged that in the late hours of December 14 and early hours of December 15, 2013, [REDACTED] of incumbent candidate for Charlotte Branch President Eugene Horton, campaigned on [REDACTED] behalf at the Charlotte facility while being paid by the employer. Specifically, you alleged that [REDACTED] while operating a company-owned vehicle, distributed campaign cards to employees on the work floor during hours paid by the employer. Section 401(g) prohibits the use of employer funds, including employer equipment, for campaigning purposes; however, campaigning that is incidental to the performance of legitimate work assignments and that does not interfere with the performance of the assignments, does not violate section 401(g). 29 C.F.R. § 452.78.

Several members recall [REDACTED] driving a union-owned vehicle on the work floor of the employer facility on the date in question, that she stopped to hand out campaign cards and talked to members. No one stated that [REDACTED] activities interfered with others performing their jobs. It appears that [REDACTED] engaged in incidental campaigning. There was no violation.

You alleged that Eugene Horton gained an unfair advantage by posting his campaign material on the work floor and on time clocks at the Charlotte Postal Distribution Center between December 14, 2012 and January 11, 2013.

The investigation disclosed inconsistent members' statements regarding the posting of Horton's campaign material on the work floor and on time clocks. Some members remembered no postings at all, while others remembered postings, but could not recall the location of the postings. Still others recalled postings on the work floor and on time clocks but could offer no specific details to corroborate the allegation. A senior plant manager who was on the work floor on a daily basis for the time period in question recalled one instance of Horton's campaign card posted on a time clock; he immediately removed it. The manager stated he removed all candidates' campaign materials from the work floor whenever he saw it, no matter whose campaign material it was. The Department conducted a survey to determine the number of members that saw Horton's campaign card on the work floor and on various time clocks; of the five members who stated that they had witnessed such postings, only three voted. To the extent that Horton gained an unfair advantage over you, and the evidence does not support such a finding, there is no effect on the outcome of the election for Charlotte Branch President, because that position was won by a 9-vote margin.

In a related allegation, you stated that Eugene Horton's posting of his campaign material on the work floor and on time clocks violated the local's campaign rules. It is the employer's campaign rules, not the local union's campaign rules that govern whether campaigning is permissible on an employer's premises. Although the local's campaigning rules prohibit the posting of campaign literature anywhere on the work room floor, including time clocks, the employer's policy does not expressly prohibit such postings unless the content of the campaign material advocates a strike, slow-down, or similar employee responses. The employer's procedures for the removal of such posted campaign material includes seeking advice from labor relations at the post office in question or at the district prior to taking any action; authorized persons may order individuals to cease and desist posting such campaign material. Since the employer's rules do not expressly prohibit the posting of campaign material on the work floor, and Horton's campaign literature did not advocate any of the prohibited activities delineated by the employer, there was no violation. In any event, as noted above, the plant manager immediately removed any campaign postings that were on the work floor during the period in question. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue NW, Suite 500
Washington, DC 20036

Kevin Fletcher, President
NPMHU Local 305
4907 Fitzhugh Avenue, Suite 100
Richmond, Virginia 23230

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