



April 17, 2015

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]:

This Statement of Reasons is in response to a complaint filed by [REDACTED] and a complaint filed by [REDACTED] with the U.S. Department of Labor on July 10, 2014 and July 15, 2014, respectively. The complainants alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the mail ballot election of union officers conducted by Local 2005, United Healthcare Workers- West (UHW), Service Employees International Union, on March 21, 2014.

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.

You alleged that Norma Gutierrez and Marcus Hatcher failed to comply with the union's requirement that prior to being verified as a candidate, an individual be a member of the union for at least one year. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws.

The investigation disclosed that the UHW's constitution and bylaws and the SEIU's constitution and bylaws contain a one-year continuous good standing requirement but they do not prescribe the length of time a person must be a UHW member to qualify for candidacy. In any event, the investigation revealed that at the time the union certified Gutierrez and Hatcher as candidates, they had been members of the UHW since January 1, 2000, or for 14 years. There was no violation.

You alleged that UHW staff employees collected nomination petition signatures for Must slate candidates and that some petitions submitted on behalf of the slate or individual candidates on the slate contained photocopied signatures. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election.

The investigation disclosed that the nominations and election notice states, “[a]ll nomination forms, original petitions and candidate statements must be received by February 3, 2014. . . .” The Department’s review of the individual petitions for Must slate (incumbent slate) candidates Earl Thomas, Dorcas Wheeler and Davie Martinez showed that their petition submissions included photocopies of original petitions. However, with the exception of Thomas, the candidates’ individual petitions contained the requisite number of original signatures. In addition, the slate petitions nominating the Must slate candidates, which included Thomas, contained the requisite number of original signatures. There was no violation.

You alleged that the design of the ballots and the voting instructions were misleading and favored the Must slate because the slate was permitted to use “SEIU-UHW” in its slate name. The investigation disclosed that the names of the three slates for the election were the “United Membership” slate, which was your slate, “SEIU-UHW MUST” (incumbent slate) and “SEIU-UHW Triumph,” an opposition slate. The UHW’s constitution and bylaws and the SEIU’s constitution and bylaws do not prohibit use of “SEIU-UHW,” and the use does not offend the LMRDA. Further, your slate was not prevented from using “SEIU-UHW” in your slate name. There was no violation.

You alleged that many members did not receive the nomination and election notice in the mail. Section 401(e) of the LMRDA requires a union to mail notice of the election to the last known home address of each member not less than 15 days prior to the election. A union is required to take reasonable efforts to keep its mailing list current as part of its duty to mail election notices.

The investigation disclosed that the union mailed nomination/election notices to 145,741 members on January 6, 2014. Of those notices, 1,423, or less than one percent, were returned as undeliverable, and at least 40 of the returned notices were re-mailed to better addresses. Thus, the union’s membership mailing list was more than 99 percent accurate at the time that the notices were mailed to members. On these facts, the union’s efforts to keep its mailing list current were reasonable and consistent with the requirements of the LMRDA. There was no violation of the LMRDA.

You alleged that a UHW staff member recruited Keith Riley to run on the incumbent slate and that the staff member told Riley that the slate would pay his back dues and collect the necessary signatures for his nomination petition. Neither the LMRDA nor the union’s constitution and bylaws prohibit a member from paying the dues of another

member or from collecting signatures for nominating petitions. There was no violation of the LMRDA or the union's constitution and bylaws.

You alleged that [REDACTED] name appeared on a list of verified candidates that the election committee posted on the SEIU-UHW website on February 14, 2014, but that his name was later removed from the list. The investigation disclosed that on February 20 the election committee created and posted a list of verified candidates on the union's website. The election committee inadvertently left [REDACTED] name and the name of Must slate candidate Luz M. Rojas off the list. The election committee corrected this mistake on February 20, the same day the list was posted, after [REDACTED] sent an email to the election committee that day informing it of this error. There was no violation.

You alleged that on February 27, 2014, a Must slate candidate circulated campaign flyers that included the union's official sample ballot and that such ballot was not made available to other candidates until February 28, 2014.

The investigation disclosed that the election committee initially told candidates that the sample ballot would be available on the union's website on February 28 but, instead, that it was posted on the website on February 25 because it was completed early. The Must slate candidate retrieved the sample ballot from the website prior to February 28 and distributed it to members along with partisan campaign materials. However, the investigation showed that during the election, the election committee sent out numerous emails to members, including candidates, with election updates and advised members to routinely check the union's website for any additional updates. There was no evidence of disparate treatment with respect to the availability of the sample ballot. Your slate could have obtained a copy of the sample ballot from the union's website as early as February 25 as well had your slate checked the website for updates. There was no violation.

You alleged that the Must slate used union funds to campaign because campaign flyers that a Must slate candidate circulated during the 2014 election were exact replicas of UHW flyers used during the union's decertification election and other elections. Even if Must slate campaign flyers were exact replicas of UHW flyers used during previous UHW elections, candidates were not prohibited from using their personal copies of such flyers to create replica flyers for their campaign. Further, there is no evidence that an official union document was used to create or produce any campaign flyers. Nor is there any evidence that the campaign flyers implied union endorsement of the Must slate candidates. There was no violation of the LMRDA.

You alleged that a MUST candidate campaigned at a Kaiser West Los Angeles stewards council meeting held at the Los Angeles UHW office on January 22, 2014. Section

401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any person in an election of union officers.

During the investigation, one steward who attended the meeting stated that a Must slate executive board candidate for Kaiser West Los Angeles solicited the stewards' votes and support for the Must slate during the meeting. The stewards were on paid employer time when this incident occurred. Thus, such campaigning constituted a use of employer funds to promote the candidacy of any person. However, the investigation disclosed that of the 31 stewards who attended the meeting, 11 of them voted in the election. The stewards were eligible to vote for the contested offices of president, union-wide executive committee member, and executive board/Kaiser Division. The vote margins for these offices ranged from 6,906 votes to 60 votes. Thus, these 11 steward votes did not affect the outcome of the election. There was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that Must slate candidates campaigned at various worksites while being paid by the union. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. Thus, union officers and employees may not campaign on time that is paid for by the union. 29 C.F.R. § 452.76.

During the investigation Denise Ellis-Lashon stated that [REDACTED] and [REDACTED] informed her that they received a campaign telephone call from a UWH coordinator during the union's normal business hours. However, neither [REDACTED] nor [REDACTED] returned the Department's telephone calls to them. You also identified several incidents of union officials campaigning at various work facilities. The Department's review of UHW leave records for Must slate candidates Dave Regan, [REDACTED], Stanley Lyles and Lis Castillo disclosed that they took personal leave on the days they campaigned at these facilities.

In addition, the individual you stated witnessed campaigning at various other facilities did not return the Department's telephone calls to him. The investigation showed that the Must slate's campaign efforts at the Kaiser Sunset, Kaiser Downey, Kaiser Woodland Hills, and Brea Kaiser facilities occurred in the cafeteria or other public areas during break time or lunch time. The investigation disclosed that Kaiser's solicitation policy permits employees to engage in campaign activities in public areas, including the cafeteria, during break time and lunch time. There is no evidence that opposing candidates or their supporters were prevented from campaigning in these areas at such times. Moreover, although the Must slate candidate for executive board/Woodland Hills Kaiser collected petition signatures during a stewards council meeting held at the Woodland Hills Kaiser facility, there is no evidence that other candidates were prevented from engaging in that activity. To the extent that such solicitation

constituted a violation of the LMRDA, 27 stewards attended the meeting at the Woodland Hills Kaiser facility and the race for executive board/Woodland Hills Kaiser was uncontested. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that members campaigned at Kaiser facilities while they were being paid by the employer. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any person in an election of union officers. During the investigation complainant [REDACTED] stated that certain members told him that they witnessed [REDACTED], [REDACTED] Earlene Person and [REDACTED] campaigning at the Kaiser Los Angeles West facility, the Kaiser Sunset facility, the Kaiser Woodland Hills facility, or the Kaiser Berkeley Lab.

With respect to campaigning at the Kaiser Los Angeles West facility, the investigation disclosed that [REDACTED] for executive board/Kaiser West Los Angeles, distributed campaign literature promoting her candidacy to employees while she was standing at the entrance to the lobby of that facility. You alleged that [REDACTED] was being paid by her employer during such campaigning because it occurred during Hampton's regular work hours. However, the evidence is inconclusive concerning whether Hampton was on paid employer time or on personal time when distributing the campaign literature. In any event, the investigation disclosed that 30-40 individuals may have been exposed to the campaigning and that the vote margin for executive board/Kaiser West Los Angeles was 62 votes. Thus, to the extent that the LMRDA was violated as a result of [REDACTED] campaign efforts, the violation of the LMRDA did not affect the outcome of the election.

With respect to the Kaiser Sunset facility, the investigation showed that campaigning occurred in the cafeteria during break time and lunch time in accordance with facility policy. The investigation further revealed that no candidates or their supporters were prevented from campaigning in these areas.

Concerning campaigning at the Kaiser Woodland Hills facility, it appears that Must slate supporters campaigned at that facility while being paid by the employer in violation of the LMRDA. However, the violation did not affect the outcome of the election. The investigation disclosed that 206 members employed at that facility voted for executive board/Kaiser Woodland Hills and for the contested primary offices. The executive board/Kaiser Woodland Hills race was uncontested. In addition, the vote margins for the contested primary offices ranged from 6906 votes to 6,032 votes. Thus, the 206 votes did not affect these races

You alleged that members did not receive original ballots in the mail or did not receive replacement ballots in the mail until after the election was completed.

In the present case, the investigation disclosed that the membership list used to mail the 2014 nomination/election notice to members was updated after that mailing. On February 28, 2014, the American Arbitration Association (AAA) used this updated list to mail 144,741 ballots to eligible members. Despite UHW's efforts to update the list, 2,220 of the 144,741 ballots were returned as undeliverable. However, the list was more than 98 percent accurate at the time of the ballot mailing. Further, the union had a system in place for providing replacement ballots to those members who did not receive ballots in the mail. The investigation showed that a replacement ballot was mailed to an eligible member within 24 hours of the member requesting it. On these facts, there was no violation of the LMRDA.

You alleged that a friend of the incumbent president counted the ballots, and you questioned the accuracy of the ballot count. Section 401(c) of the LMRDA requires a union to provide adequate safeguard to insure fair election. The election thus is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The investigation disclosed that 990 ballots were returned with more than one slate vote marked on the ballot. A ballot marked for the Must slate as well as for a second slate was counted as a vote for the Must slate, although it was impossible to determine whether the voter intended to vote for the Must slate or vote for the second slate. Therefore, the inclusion of such ballots in the vote tally violated the adequate safeguards provision of the LMRDA. However, the Department's recount of the votes for those races that may have been affected by the violation showed that the election results for the races were not changed. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that union staff asked certain individuals or other union staff members to become members of the UHW/SEIU for the sole purpose of campaigning for the incumbent slate (Must slate). Even if true, this allegation would not constitute a violation of the LMRDA because section 401(e) of the LMRDA affords members the right to support the candidates of their choice. Further, there is no evidence that any such campaigning involved the expenditure of union funds or employer funds in violation of section 401(g) of the LMRDA. There was no violation of the LMRDA.

You alleged that Pat Thomas, a UHW staff member, was in charge of the election committee and played a role in the election committee's decisions and functions. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. Article XXII of the UHW constitution and bylaws provide that the duties of the election committee include conducting the election, determining voter and candidacy eligibility, determining the method of voting, tabulating the results and certifying the election.

The investigation showed that Thomas, an assistant to the UHW president, assisted the election committee as requested, including responding to routine emails from members to the election committee. Thomas did not conduct the election. There was no violation of the LMRDA or the UHW constitution and bylaws.

Complainant [REDACTED] alleged that MUST slate candidates had access to information that showed those members who had already returned ballots. The investigation disclosed that throughout the course of the election the union notified candidates, including the members of your slate, of the total number of ballots returned from each region as part of the union's "Get Out The Vote" efforts. However, neither the MUST slate candidates nor any other candidates were given the names of those voters. There was no violation of the LMRDA.

You alleged that union staff solicited nomination petition signatures for Must candidates Keith Riley, [REDACTED], Victoria Lewis, and Samantha Ponse. Even if true, this allegation would not constitute a violation of the LMRDA as there is no evidence that such solicitation involved the expenditure of union funds or employer funds in violation of section 401(g) of the LMRDA. Further, the UHW has no proscription against staff members collecting signatures or otherwise campaigning. There was no violation of the LMRDA.

Finally, you alleged that the UHW published the general election results but did not publish the results by region. You acknowledged during the investigation that the union published the election results for those positions defined on a geographical or regional basis. There was no violation of the LMRDA.

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

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

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