



February 20, 2015



Dear [REDACTED]:

This Statement of Reasons is in response to your September 12, 2014, 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 (LMRDA) occurred in connection with the election of officers conducted by the Transport Workers Union Local 545 between April 15 and April 29, 2014.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that, with respect to each of your specific allegations, no violation occurred. The Department's conclusions are explained in detail below.

You alleged that the union violated the LMRDA by reimbursing your opponent in the race for president, Danny Pursuit, for time he spent on April 4, 2014, traveling to a membership meeting held at a United Parcel Service (UPS) facility in Louisville, Kentucky, where he gave a campaign speech. Section 401(g) of the LMRDA prohibits a union from using its funds or resources to promote or disparage a candidate for union office. *See* 29 C.F.R. § 452.73.

The union's by-laws require the president to attend and chair all "Membership, Local Executive Board, and any other special meetings of the Local." During its investigation of this allegation, the Department determined that Pursuit was required to attend the UPS meeting, and that his time and expenses for the trip were consistent with normal practice. Although Pursuit did give a brief candidate's speech at the UPS meeting, all candidates were permitted to do the same on equal terms. You also gave a speech at the UPS meeting. The union's expenditure of funds for Pursuit to attend the UPS meeting did not violate section 401(g).

Next, you alleged that Pursuit violated the LMRDA by being reimbursed by his employer for time he spent chairing a meeting of members at Sun Country in

Minneapolis, Minnesota. You alleged that Pursuit chaired the Sun Country meeting on the morning of April 8, 2014 around 9:00 a.m., but that he was compensated on that day by his employer, US Airways, for engaging in work related to US Airways' merger with American Airlines. Section 401(g) of the LMRDA prohibits a union official from receiving direct or indirect employer contributions to promote his candidacy, including using company time for campaigning. *See* 29 C.F.R. § 452.78.

The investigation determined that the Sun Country meeting on the morning of April 8 occurred around 7:00 a.m. The Department's investigation also revealed that Pursuit returned to Pittsburgh immediately after the Sun Country meeting, arriving around noon. He spent the remainder of the day until at least 6:00 p.m. working on merger-related business. When working on merger-related negotiations, Pursuit is compensated by US Airways, and you did not allege that such compensation is improper. The investigation did not substantiate your allegation that Pursuit received employer funds for the time he spent chairing the Sun Country meeting. There was no violation of the LMRDA.

Further, you alleged that the election was not fair and impartial because President Pursuit received inappropriate privileges during the election. Specifically, you alleged that candidates were permitted to submit one letter — but only one letter — to the union to be read at nominee meetings. You alleged that on the night of April 2, 2014, Pursuit was given a copy of the nominee letter you wrote, and that he gained an unfair advantage by reading the letter and preparing a response, which he read the following morning at a meeting of US Airways members.

As noted above, section 401(g) of the LMRDA prohibits a union from using its funds or resources to promote or disparage a candidate for union office, which includes sponsoring an unfair candidate debate. *See* 29 C.F.R. § 452.74. In addition, section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. *See* 29 C.F.R. § 452.110.

The investigation concluded that it was standard practice for the sitting president to receive copies of all nominee letters in advance of membership meetings because union election rules provide that the president is responsible for carrying nominee letters to membership meetings and reading the letters of any nominee who is not present and has not requested that another member read his or her letter. Here, all nominee letters were delivered to Pursuit in a folder on the evening of April 2, 2014, by a member of the election committee. Various individuals who were present indicated that Pursuit placed the folder on a desk in the union office without reviewing the letters, and left the office with members of the election committee. The folder was still in the office the next morning when election committee officials entered the office.

The investigation did not substantiate your allegation that Pursuit prepared a second letter in advance of the meeting after having read your nominee letter. The evidence established that Pursuit responded to your speech in an extemporaneous manner, which is permitted by union rules. Thus, the investigation did not substantiate your allegation that Pursuit exploited his position to gain an advantage at the US Airways meeting. There was no violation of the LMRDA.

In addition, you alleged that the union used union resources and made inappropriate use of union email distribution lists to send two election-related emails to a partial list of the US Airways membership. You alleged that the first email concerned a proposed change in work schedule that would appeal primarily to more junior members of the US Airways membership, and that the email was sent disproportionately to junior members. You did not provide any details about the second alleged email.

Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office, and prohibits unions from discriminating between candidates in the manner in which campaign literature is distributed. *See* 29 C.F.R. § 452.67. Section 401(g) of the LMRDA prohibits the use of union funds to distribute campaign literature. *See* 29 C.F.R. 452.73. Courts have consistently held that the tone, content and timing of union-promulgated material determines whether the material is in fact campaign material that is regulated by the LMRDA. The overall timing, tone and content must be evaluated to determine whether the material effectively supports or attacks a candidate in the election.

With respect to the first email, although it was sent immediately after the membership meetings at the four different locations where the union is active, nothing about the email itself indicates that it was election-related. The email is a copy of an email Pursuit sent to Garry Drummond, the international vice president of the Transport Workers Union, discussing merger negotiations between US Airways and American Airlines employees for a joint collective bargaining agreement. The email was sent to the US Airways members within two business days of Pursuit having sent the original email to Drummond, which was immediately after Pursuit spent two days with the union merger committee discussing merger-related business. These circumstances, rather than the membership meetings, explain the timing of the email. Further, the email does not mention the election, either explicitly or implicitly, and nothing in its tone is indicative of electioneering. Whatever the composition of the membership who might benefit from the union proposal, the email merely reports on Pursuit's efforts to negotiate such a revised schedule.

Further, the Department's investigation did not support your allegation that the email was deliberately sent primarily to junior employees. The email was sent using union software to a list of all union members who had subscribed to receive updates from the

union. While some members apparently did not receive the email due to technological problems, either with the union's email list or with individual members' email accounts, there is no evidence to substantiate your allegation that the email was deliberately sent to a subset of junior members. In sum, none of the circumstances indicate that the first email was a campaign-related communication, and the union did not violate section 401(c) or 401(g) of the LMRDA. Finally, the Department's investigation revealed no evidence that a second email was ever sent to a partial list of US Airways members. 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,

Patricia Fox
Chief, Division of Enforcement

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