



July 23, 2015



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on December 29, 2014, 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 of American Postal Workers Union (APWU), Local 96, that was conducted by mail ballot and concluded on May 17, 2014.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA that may have affected the election outcome.

You allege that Local 96 did not properly count the ballots received in the election. Section 401(c) of the LMRDA provides, among other things, that "adequate safeguards to insure a fair election shall be provided." Adequate safeguards include an accurate count of the ballots. The investigation found 22 sealed secret ballot envelopes in the election records that did not appear to have been opened such that the ballots could be included in the tally. As part of the investigation, the Department opened the 22 sealed secret ballot envelopes and found that they contained only blank ballots. Since the envelopes contained unused election materials, there was no evidence the union failed to properly count the voted ballots. There was no violation of the LMRDA.

You also allege that eligible members were denied their right to vote. You base that allegation on the fact that names of some eligible members were not called out during the voter eligibility verification process. You provided the names of five individuals who said they voted for you but whose names were not called in the verification process. In connection with this allegation, you further allege that the election chairperson removed voted ballots from the post office prior to the ballot tally. Here, the investigation found that 401 names were called during voter eligibility verification, while 426 outer return ballot envelopes were received. The investigation revealed that the discrepancy between the number of voter names called out and the number of

return ballot envelopes received can be attributed to the fact that not all of the 426 outer returned envelopes contained the necessary information inside to confirm the eligibility of the voter. For this election, Local 96 used a triple-envelope system for members to return ballots: an outer return envelope that contained no information identifying the voter; an inner envelope with space for the voter to write his/her name and other identifying information; and a secret ballot envelope. Not all of the 426 returned outer envelopes contained the inner envelope with identifying voter information and not all of the returned inner envelopes included the voter identification information. As a result, during the verification process, the Local could not call out names for all 426 outer return envelopes received since not all contained identifying information that would allow the election committee to verify voter eligibility. With respect to the five individuals you named, only two could be reached and one of the two wasn't sure that she placed identifying information on the inner envelope as required. The other stated that he mailed the return ballot before the deadline. Thus, four votes are called into question here. The smallest margin of victory was eight votes. These four votes would not have affected the outcome of the election. The investigation, including a review of the election records, revealed that the union counted all ballots received from eligible members where eligibility could be determined.

Additionally, the investigation did not discover any evidence that the election chairperson retrieved ballots from the post office prior to the tally or that any person mishandled ballot envelopes or ballots. The election chair did not have the keys to the post office box. Election committee members [REDACTED] and [REDACTED] were in possession of the post office box keys and deny removing ballots prior to the election. Their statements are supported by the statement of the post office supervisor who stated that no ballots were removed from the post office box prior to the tally. There was no violation of the LMRDA.

You alleged that members [REDACTED] and [REDACTED] requested duplicate ballots but did not receive them. During the investigation, [REDACTED] stated that he received a duplicate ballot. [REDACTED] stated that you requested a duplicate ballot on his behalf but he never received a duplicate ballot. You, however, denied requesting a duplicate ballot for [REDACTED]. There was no violation of the LMRDA.

You also allege that the local election committee or incumbent president tampered with ballots. You allege that, when the ballots were collected on May 10, 2014, the election committee was permitted to wait in the break room of the post office with the ballots, while candidates and observers were required to wait in the lobby. You allege that this provided the opportunity for ballot tampering. The investigation confirmed that the election committee and observers arrived at the post office prior to the time window service opened and were required to wait. The groups waited in different rooms, and the ballots were not in the room with the election committee. The ballots could not be retrieved until the post office's window service opened. There was no violation of the LMRDA.

You alleged that ██████ asked ██████ for keys to the union office in order to check for ballots that may have been returned there. There was no evidence that ██████ or ██████ retrieved any ballots from the union office. There was no violation of the LMRDA.

You also allege that you were denied your right to have an observer at a recount of the ballots on May 17, 2014. Section 401(c) of the LMRDA provides, among other things, that any candidate has the right to have an observer at the counting of ballots. Section 401(e) also provides, among other things, that elections shall be conducted in accordance with the constitution and bylaws of the organization. Article 10, Section 4g of the Local's constitution and bylaws provides that, "[i]f a recount is demanded, such recount shall be conducted immediately with observers allowed for candidates involved in the recount." Here, the investigation established that the recount was not held immediately after the May 10 ballot tally. The election committee had announced at the May 10 tally, and at a May 13 membership meeting, that it would be tallying the ballots cast for *delegate* positions on May 17. The delegate ballots were separate from the officer ballots. The delegate ballots were not counted during the May 10 tally of the officer ballots.

The investigation revealed that at the May 17-18 tally of delegate ballots, the election committee also resolved challenged ballots and recounted the ballots for certain officer positions. You did not have an observer present at the May 17-18, 2014 recount. The election committee acknowledged that candidates should have been notified of the recount. However, the investigation established that you were present at the May 13, 2014 monthly membership meeting where, as documented in the meeting minutes, it was announced that on May 17 the election committee would attempt to resolve challenged ballots set aside during the May 10 tally. This provided notice that the presidential race vote totals could change. The meeting minutes specifically state that "the Candidates and the Observers may want to be present" for the May 17 ballot count. There is no evidence that you (or your observer) attempted to attend the May 17 ballot count but were denied access. In any event, there were observers present when the ballots for officer positions were recounted. Two other candidates for president were present at the May 17-18 recount, and neither complained of any irregularities with the recount. The Department of Labor investigation revealed no irregularities with the recount. The election committee's failure to follow the constitution and bylaws did not result in a violation affecting the outcome of the election.

Your allegations that the ballots were in the union hall a week before the recount; that the union only mailed ballots to 9,690 members; and that the election committee called the names of only 10 members from the Pat Salmon facility were not timely filed internally with the union. Thus, these allegations are not properly within the scope of your complaint to the Department. 29 C.F.R. § 452.136(b-1).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Stephen J. Willertz
Acting Chief, Division of Enforcement

cc: Mark Dimondstein, President
American Postal Workers Union
1300 L Street, NW
Washington, D.C. 20005

Maria Johnson, President
APWU local 96
830 E. H. Crump Boulevard
Memphis, Tennessee 38126

Christopher B. Wilkinson, Associate Solicitor