



May 22, 2015



Dear [REDACTED]:

This Statement of Reasons is in response to your January 15, 2015 complaint filed with the U. S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of the National Postal Mail Handlers Union (NPMHU) Local 303 completed on September 19, 2014.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations that no violation occurred, which may have affected the outcome of the election.

Your complaint alleged that violations occurred during Local 303's September 2014 election. Because of irregularities and potential violations, the union determined that the September 2014 election should be voided and a new remedial election held. Your primary allegation is that the union's decision to void the September election and order a new election violates the LMRDA.

The requirement set out in section 402(a) of the LMRDA, 29 U.S.C. 482(a), that a member exhaust internal union remedies before filing a Title IV complaint with the Department, was included to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Department accords a degree of deference to union decisions providing for the conduct of a new election. The Department will not seek to reverse a union's remedial decision to hold a new election, even if the evidence could be viewed as insufficient to support a decision by the Department to sue to overturn the original election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the LMRDA and holding a new election

is unreasonable. It is within this context, that the Department analyzed this allegation.

In this case, the Department's investigation revealed that the Election Judges experienced a very difficult time while conducting the election. After the initial ballot tally, the Election Judges called the union's attorney, Bruce Lerner, seeking advice. In essence, the Election Judges did not feel that they could certify the election results because the races were close, they were not sure that they handled the challenged ballots correctly, and felt that the original tally may not be accurate. As such, the Election Judges decided to conduct a recount. When they met at the local union office to retrieve the election records, which were located in a locked cabinet, the Judges noticed a stack of 68 ballots that were not included in the appropriate box (*i.e.*, the box containing counted Executive Board ballots). Believing that these 68 ballots mistakenly had been excluded from the original tally, the Election Judges again contacted the union's attorney for advice. Given the Election Judges' belief that 68 Executive Board ballots had been misplaced, the uncertainty of the Election Judges' handling of the challenged ballots, and uncertainty regarding the accuracy of the tally, the union's attorney recommended that the union void the original election and order a new election for all Executive Board offices decided by 68 or fewer votes to remedy these problems.

The Department investigated the union's decision to conduct a remedial election and determined that the union did not violate the LMRDA. A review of the union's election records revealed that the 68 ballots that the Election Judges believed were misplaced, were counted in the original tally. The ballots were outside the container holding all other counted Executive Board ballots, but were part of the original ballot count. The fact that the Election Judges did not know if the 68 were originally counted bolsters the union's position that there was a great deal of confusion regarding the original ballot tally, warranting a new election. In addition, the Department reviewed the 22 challenged ballots that the Election Judges believed should be excluded from the tally. The Department found (as attorney Lerner suggested) that the vast majority of these challenged ballots should be counted. In most instances there were no identifying marks, the voter's intent was clear, and even in cases where one race should have been voided, the union could have counted the other unaffected races on the ballot. Instead, the Election Judges would have voided all 22 ballots. But most significant, there was a 138-ballot discrepancy between the number of ballots that the union recorded as received at the post office box (1,281) and the total number of ballots that OLMS received as part of the official election records (1,143). This discrepancy of 138 unaccounted for ballots alone merits a new remedial election. Accordingly, the union's decision to void the September 2014 election and to conduct a remedial election does not violate the LMRDA.

You alleged that the union failed to follow its constitution and bylaws when selecting the Election Judges for the September 19, 2014 election. Section 401(e) of the LMRDA requires that unions conduct their elections in accordance with the constitution and bylaws. Specifically, you stated that the union's constitution and bylaws require that the union appoint five Election Judges to oversee the election.

The investigation revealed that the union appointed five Election Judges, but one Judge became ineligible to hold the position when she applied for a supervisor position, leaving four Election Judges. *See* NPMHU Local 303 Local Bylaws, Article III. The union's constitution provides that local unions with more than 1,500 members (Local 303 has approximately 3,400 members) must appoint three or more Election Judges up to five judges. *See* NPMHU Uniform Local Union Constitution, Article VI, Section 1C. The union appointed five, and conducted its election with four Election Judges. There was no violation of the LMRDA.

As a related matter, you alleged that all Election Judges were not present for the entire tally, but certified the election results in violation of the constitution and bylaws and in violation of the LMRDA's adequate safeguards provision. In this allegation, you take issue with the fact that some Election Judges left for periods of time during the tally and also with the fact that some of these Election Judges signed the election certification. The LMRDA requires that unions provide adequate safeguards to insure a fair election. *See* 29 U.S.C. § 481(c); 29 C.F.R. § 452.66.

The Department reviewed the union's constitution, which states that "upon completion of the election, the Judges of Election shall certify the results of the election and shall promptly post a notice of the results on the Local Union's bulletin boards..." NPMHU Uniform Local Union Constitution, Article VI, Section 4G. The union's constitution does not require that all Election Judges be present at all times during the ballot tally in order to certify the election results. More importantly, the union made its determination that the original election was run improperly and should be remedied by conducting a new election. The new election included a new group of Election Judges. Accordingly, even if there were some violation, the violation is moot because the union already provided for a new election with new election officials overseeing the process.

You also alleged that the union violated its constitution and bylaws and failed to provide adequate safeguards when the Local Executive Board appointed two interim Election Judges to assist in the ballot tally. During the tally, which took multiple days, two Election Judges left the tally. In order to expedite this tally, the Local Executive Board appointed two interim Election Judges to assist in counting ballots. The union's constitution does not prohibit this practice. Further, as mentioned above, the union ordered a remedial election to correct many problems or irregularities. Accordingly,

even if this were a violation of the LMRDA, the union remedied this violation by ordering a new election.

You also alleged that one Election Judge, [REDACTED], was not a member of Local 303, and therefore could not serve in this capacity. The investigation revealed that at the time of the election, [REDACTED] was detailed to another craft due to an injury. At all times, Local 303 considered her to be a member of the union. There was no violation.

You alleged that the union failed to properly count ballots in the race for Branch President – City of Industry P&DC. Specifically, you alleged that you were told that there were four challenged ballots for this race and since the race was only decided by one vote, mishandling of these challenged ballots could have affected the race. The Department reviewed all election records. There were 22 challenged ballots, but none included the race for Branch President – City of Industry. All 22 challenged ballots were Executive Board ballots. Accordingly, there was no violation of the LMRDA.

You alleged that the union violated section 401(g) of the LMRDA when one candidate wore a t-shirt with the union's logo on it. Section 401(g) prohibits the use of union funds, such as union logos, to promote any candidate for union office. You specifically alleged that [REDACTED], candidate for Branch President – City of Industry, campaigned in a t-shirt with an eagle and the Local 303 logo.

The Department reviewed photographs of this particular t-shirt and compared it to the union's logo. The t-shirt includes an eagle that has no affiliation with Local 303. The union logo is not on this t-shirt. We believe that your complaint is based on the fact that an older version of this t-shirt did include both the eagle and the union logo. It is clear that candidate [REDACTED] removed the logo and only printed the eagle on this t-shirt. There was no 401(g) violation.

Finally, you alleged that the union violated section 401(g) when Branch President candidate [REDACTED] posted campaign flyers under a locked union bulletin board that he had access to because of his status as [REDACTED]. [REDACTED] denied that he posted any campaign materials on the union bulletin board.

The Department's investigation did not substantiate your allegation. Rather, the investigation revealed that this particular union bulletin board's lock was broken, and had been broken since at least June 5, 2012, when [REDACTED] wrote a letter to the Plant Manager requesting that the lock be replaced. As such, anyone could have opened the glass door to post inappropriate election-related materials. On September 12, 2014, [REDACTED] sent a letter to the employer's Security Control Officer explaining that the union bulletin board was broken into and inappropriate campaign material was posted.

██████ was doing all he could to ensure that the union's bulletin board was secure and only used for official union postings. There was no evidence of a violation.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. Paul V. Hogrogian, National President
National Postal Mailhandlers Union
1101 Connecticut Avenue, Suite 500
Washington, D.C. 20036

Mr. Javier Valencia, President
NPMHU Local 303
11139 S. Western Avenue
Los Angeles, CA 90047-0161

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



May 22, 2015



Dear [REDACTED]:

This Statement of Reasons is in response to your February 12, 2015 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of the National Postal Mail Handlers Union (NPMHU), Local 303 completed on September 19, 2014.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations, that no violation occurred which may have affected the outcome of the election.

Your complaint alleged that violations occurred during Local 303's September 2014 election. Because of irregularities and potential violations, the union determined that the September 2014 election should be voided and a new remedial election held. Your primary allegation is that the union's decision to void the September election and order a new election violates the LMRDA.

The requirement set out in section 402(a) of the LMRDA, 29 U.S.C. § 482(a), that a member exhaust internal union remedies before filing a Title IV complaint with the Department was included to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Department accords a degree of deference to internal union decisions providing for the conduct of a new election. The Department will not seek to reverse a union's remedial decision to hold a new election, even if the evidence could be viewed as insufficient to support a decision by the Department to sue to overturn the original election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the LMRDA and holding a new election

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The Department investigated the union's decision to conduct a remedial election and determined that the union did not violate the LMRDA. A review of the union's election records revealed that the 68 ballots that the Election Judges believed were misplaced, were counted in the original tally. The ballots were outside the container holding all other counted Executive Board ballots, but were part of the original ballot count. The fact that the Election Judges did not know if the 68 were originally counted bolsters the union's position that there was a great deal of confusion regarding the original ballot tally, warranting a new election. In addition, the Department reviewed the 22 challenged ballots that the Election Judges believed should be excluded. The Department found (as attorney Lerner suggested) that the vast majority of these challenged ballots should be counted. In most instances there were no identifying marks, the voter's intent was clear, and even in cases where one race should have been voided, the union could have counted the other unaffected races on the ballot. Instead, the Election Judges would have voided all 22 ballots. But most significantly, there was a 138-ballot discrepancy between the number of ballots that the union recorded as received at the post office box (1,281) and the total number of ballots that OLMS received as part of the official election records (1,143). This discrepancy of 138 unaccounted for ballots alone merits a new remedial election. Accordingly, the union's decision to void the September 2014 election and to conduct a remedial election does not violate the LMRDA.

You also alleged that the union's decision to conduct a new election constituted disparate candidate treatment in violation of the LMRDA. Generally speaking, section 401(c) prohibits disparate candidate treatment. *see* 29 C.F.R. § 452.66. Specifically, you alleged that the union's decision to void the original election and conduct a remedial election caused speculation of your own wrongdoing because you were [REDACTED], which disadvantaged you in the remedial election.

First, as mentioned above, the Department did not find that the union's decision to conduct a remedial election violated the LMRDA. Second, the Department reviewed the union's October 2, 2014 letter, which detailed the union's rationale for its decision. The October 2 letter neutrally explains the reasons for the new election and does not mention any wrongdoing on your part. In fact, the Election Judges assume the blame for the need to conduct a new election. The Department did not find that the union's decision to conduct a new election, or its public explanation of this decision, constituted disparate candidate treatment.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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