



November 6, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 11, 2015 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 Branch 1071 of the National Association of Letter Carriers (NALC) on November 28, 2014.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that no violation occurred that may have affected the outcome of the election. The following is an explanation of this conclusion for each of your allegations.

You alleged that Branch 1071 failed to follow NALC's constitution and bylaws when it formed the Election Committee after the nominations and did not certify that all candidates were eligible to run for office. Section 401(e) of the LMRDA requires that the election "be conducted in accordance with the constitution and bylaws" of the Local. Article 5A, Section 8 of NALC Branch 1071's By-Laws provides that "[a]t the close of nominations, the President shall appoint a General Election Committee." NALC's Regulations Governing Branch Election Procedures, Section 8.1, further provides that "[t]he first task of the Committee is to determine the eligibility of these nominees." Article 5, Section 2 of the NALC constitution provides that "[u]pon nomination, the candidate must certify that he/she has not served in a supervisory capacity for the 24 months prior to the nomination." See also NALC's Regulations Governing Branch Election Procedures, Section 6.6.

The Department's investigation determined that the Election Committee was formed at the general membership meeting right after the nominations had taken place, as required by the By-Laws. However, the investigation further determined that the

committee did not determine candidate eligibility as its first task; instead it waited to obtain certifications from the candidates and permitted one candidate to run without obtaining certification or determining the candidate's eligibility. Accordingly, the failure to certify candidates was a violation of Article 5, Section 2 of the NALC constitution. Section 402(c) of the LMRDA provides, however, that an election will only be overturned where a violation "may have affected the outcome of an election." As all of the candidates were, in fact, eligible to run, the committee's failure to timely determine that they were eligible could not have affected the outcome of the election.

You further alleged that Branch 1071 failed to follow NALC's constitution and bylaws when it allowed retired members to vote and run for office. Article 2, Section 1(a) of the NALC Constitution defines membership as including "retirees from the [Postal] Service who were regular members of the NALC when they retired." Further, Article 2, Section 1(c) elaborates that "present members who have left the Postal Service shall have no voice or vote in any of the affairs of such Branch," with exceptions that do not apply in this case.

The Department's investigation determined that the union has consistently interpreted Section 1(a) as permitting retired members to vote and run for office and that it has interpreted Section 1(c), which refers to "members who have left the Postal Service," to refer only to former employees who quit or were fired. The Department's regulations provide that it will accept a union's consistent interpretation of its constitution unless it is "clearly unreasonable." 5 C.F.R. § 452.3. The union's interpretation is not clearly unreasonable. Accordingly, there was no violation.

You next alleged that the unvoted ballots were sent directly to the branch union hall, were in the possession of the incumbent candidates, and were open and accessible to individuals walking into the union office, creating an opportunity for ballot fraud. Section 401(c) of the LMRDA requires that unions provide adequate safeguards to insure a fair election. The Department's investigation determined that the printed ballots and envelopes were delivered directly to the union hall on October 27th, where they sat, unsecured until they were picked up by Election Committee Chair [REDACTED] on October 31st. Office Manager Denise Roman opened the boxes to insure that the printer had provided the correct number. The boxes were kept in Office Secretary [REDACTED] office. [REDACTED] did not open the boxes nor did she see anyone else open them. There was no specific indication that the boxes contained ballots. The boxes were not locked up during the day. During union meetings the offices were locked and at night the offices are closed, but not locked.

OLMS examined the ballots for signs of ballot tampering and found no signs of fraud. Print America indicated that it printed between 5,600 and 5,615 ballots. The Department's investigation found that, given the number of voters and unvoted ballots

remaining, there were between 17 and 32 unaccounted for ballots. The closest margin in the election was 561 votes. Accordingly, even if the handling of the ballots demonstrated a lack of adequate safeguards, there could have been no effect on the election.

You also alleged that the incumbent officers had the key to the P.O. Box containing the returned ballot envelopes, creating the possibility of fraud. The Department's investigation determined that there is no key for the union's box. The business reply envelopes were locked in a vault where the postage stamps were kept. Only the postal manager and one clerk had the combination to the vault and no one else had access to the ballots before the tally. There was no violation.

You further alleged that many of the ballots that were counted during the election were not postmarked by the United States Postal Service, raising the possibility that they were not mailed by a voter. The Department's investigation determined that USPS does not generally postmark business reply envelopes, so it would follow that ballots, which were in business reply envelopes, were not postmarked. Therefore, there was no violation.

You next alleged that the incumbent officers discouraged campaigning by the challengers by raising the price of a full page ad in the Branch's monthly publication and imposing tight deadlines to submit campaign ads. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office. The Department's investigation found that the candidates' information package included advertising rates and deadlines for the union's newsletter, the *South Florida Letter Carrier*. The advertising rates had not changed since 2009. The package was mailed on October 22, 2014, and the deadline for ad submissions was October 27, 2014. Your advertisement was published in time to reach the membership before the election. The investigation determined there was ample time to prepare campaign advertisements for publication after the nominations notice appeared in the *South Florida Letter Carrier* in June 2014. There was no evidence of any candidates receiving preferential treatment or discounts. Therefore, there was no violation.

You next alleged that incumbent candidates campaigned on union time and using union vehicles. Section 401(g) of the LMDRA provides that union resources may not be used to support a particular candidate's campaign. The Department's investigation did not support the allegation that candidates campaigned on union time or while using union vehicles. The specific violations alleged by you and the other complainants were not supported by the evidence and no other evidence of campaigning using union resources was discovered. The incumbent officers all denied campaigning on union time or using union vehicles to campaign. Therefore, there was no violation.

You also alleged that the incumbent candidates used union funds to pay for campaign printing and mailing. Section 401(g) of the LMDRA provides that union resources may not be used to promote particular candidate. The Department's investigation determined that the incumbents used personal funds to pay for their campaign mailing to membership. The total cost of the incumbents' mailing, \$4,454, was paid by personal check to Image Plus Graphics (IPG). The payment and corresponding invoice were provided by IPG's owner. The incumbents also paid for a full-page advertisement in the South Florida Letter Carrier with a personal check for \$530. Therefore, there was no violation.

You next alleged that the union failed to provide you with the membership list or the list of employers during the election. Section 401(c) provides that every candidate "shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment." The Department's investigation determined that USPS is an open shop employer, meaning that membership in the union is not a condition of employment. Accordingly, the candidates did not have a statutory right to inspect the membership list. The NALC constitution and by-laws do not provide a right to inspect the membership list. Further, there was no evidence that the incumbents had access to a membership or employer list and, thus, no preferential treatment. Finally, the LMRDA does not require a union to provide employer lists and, in any event, the location of all worksites where Branch 1071 members work is listed on the USPS website and there was therefore no need to get this information from the union. Therefore, there was no violation.

You further alleged that 45 ballots were counted from members who were not on the mailing list and, therefore, were ineligible to vote. Section 401(e) provides that each member in good standing is entitled to vote. The Department's investigation determined that the Election Committee set aside 45 challenged ballots because those voters were not on NALC's voter eligibility list. The investigation revealed that USPS had recently started hiring a new category of employee (city carrier assistants), and while these new employees had signed up for the union and were mailed ballots, their names did not appear on the eligibility list because their enrollment was not yet complete. The validity of the challenged ballots was not determined, because there were not enough challenged ballots to change the outcome of the election. The Department's investigation confirmed that 45 ballots were set aside and not counted. Upon reviewing the eligibility of the 45 voters, the Department found that 4 of the voters were eligible and should have had their ballots counted. Accordingly, there was a violation. However, because the smallest margin in the election was 561 votes, the violation could not have had an effect on the outcome of the election.

You next alleged that the Election Committee miscounted the ballots. The Department's investigation determined that the USPS provided an incorrect number of ballots received. USPS reported 1725 returned ballot envelopes while the union counted 1869. The union accurately counted the returned ballot envelopes twice to confirm its total. The Department's reconciliation of ballots revealed a small number of missing ballots. Specifically, Print America printed between 5600 and 5615 ballots. The Election Committee mailed out 5310 ballots plus an additional 37 duplicate ballots. The union should have had between 253 and 268 unused ballots, however, the union could only account for 236 unused ballots. Accordingly, there were between 17 and 32 ballots which were unaccounted for. As noted above, the Department examined the ballots for signs of ballot tampering including suspicious markings, indentations on ballots indicating they were marked in stacks or on top of one another, a pattern of erasures for one candidate and corresponding votes for the same opponent, frequent use of an unusually colored pen or pencil, subtle differences in the size, type of paper, and print, or color of the ballots indicating the ballots may have been duplicated or photocopied. No signs of fraud were found. . Therefore, there was no violation that may have affected the outcome of the election.

Finally, you alleged that the union improperly used two different membership lists, one to mail the ballots and a second to verify eligibility. The investigation confirmed the union used two different lists but also concluded the union's actions did not violate the Act. Section 5.12 of the NALC Regulations Governing Branch Election Procedures provides that "[m]ailing lists must be up to date." Section 8.2 further provides that "[t]he Financial Secretary must also prepare an alphabetical list of all regular members eligible to vote. Retirees may be listed separately. This list should be given to the Chairperson of the Election Committee at least ten (10) days before the election." The Department's investigation determined that Branch 1071's mailing service used the most up to date list available to mail the ballots on November 7, 2014. For the election tally on November 28, the Election Committee used a list provided by the NALC dated November 14. The union's actions were consistent with the requirements of the constitution and bylaws. The union's use of two different lists - both lists being the most accurate list available at the time - on two separate dates three weeks apart did not disadvantage any candidate or member. Therefore, there was no violation.

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,

Sharon Hanley, Chief
Division of Enforcement
Office of Labor-Management Standards

cc: Frederic V. Rolando, President
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue NW
Washington, DC 20001

Mike Gill, President
NALC Branch 1071
70 NE 39 Street
Miami, FL 33137

Beverly Dankowitz
Acting Associate Solicitor for Civil Rights and Labor