



September 3, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on March 31, 2015. Your complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the Communications Workers of America (CWA) Local 9415 runoff election conducted by mail ballot on December 15, 2014.

The Department of Labor 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 there was no violation of the LMRDA that may have affected the outcome of the election.

First, you alleged that some CWA Local 9415 members received two ballots, and were confused regarding which ballot to vote. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. A labor organization's "wide range of discretion" regarding the conduct of officer elections is subject to a general rule of fairness. 29 C.F.R. § 452.110.

The local is comprised of primarily two bargaining units, Legacy T and Legacy S. Pursuant to its bylaws, Article IV, Section 2 and Article XI, Section 1(B), both Legacy T and Legacy S members vote for general officer positions. However, some officer positions are specific to and only elected by members of a particular bargaining unit.

The local's runoff election was for the offices of president (general), 2nd executive vice president (general), and 1st alternate contractual vice president (Legacy S). Therefore, all members were permitted to vote for president and 2nd executive vice president, but only the Legacy S members were permitted to vote for the 1st alternate contractual vice president position. To make the distinction, the union used two different colored ballots: the Legacy S ballot on purple paper, listing all three officer positions (Purple Ballot), and the Legacy T ballot on yellow paper, listing only the two general positions (Yellow Ballot).

On November 21, 2014, the union mistakenly mailed 200 Purple Ballot packages to Legacy T members. Thereafter, on November 24 or 25, 2014, the election committee mailed those same 200 Legacy T members Yellow Ballot packages, containing the correct ballots for their bargaining unit.

In an effort to avoid confusion during the voting period, the election committee took action to notify stewards of the problem. In an e-mail to stewards, on December 3, 2014, the election committee alerted the stewards that some Legacy T members may have received two ballots, and asked that stewards inform members at their location to vote the Yellow Ballot, and disregard the Purple Ballot.

To insure the validity of the ballot count, the election committee took precautions at the count to preserve Legacy T members' votes – even if they voted the wrong ballot – and to exclude any votes incorrectly cast by Legacy T members for the Legacy S candidate. To that end, the election committee separated the return ballot envelopes by bargaining unit prior to opening them. During this process, the election committee discovered that approximately six members voted two ballots, and the committee properly voided the duplicates so that only one ballot per member was counted.

When opening the Legacy T secret ballot envelopes, the election committee found 97 Yellow Ballots and 11 Purple Ballots. For those Purple Ballots, the election committee tallied the votes cast for the two general candidates only, and voided any votes cast for the Legacy S position. There is no evidence that any specific member was confused by receiving two ballots, or that any member failed to vote because of it. To the contrary, more members voted in the runoff election than voted in the regular election. There was no violation.

Second, you alleged that CWA Local 9415 failed to mail notice of the runoff election at least 15 *business* days in advance of the election. In other words, you object that weekends and holidays counted towards the notice period.

Section 401(e) of the LMRDA requires the union to mail notice of an election to each member not less than 15 days prior to the election. Department of Labor regulations specify that in computing the 15 day period, the date of mailing is not included, but the day of the election is included. There is no requirement of 15 business days. 29 C.F.R. § 452.99. The local's bylaws, Article XI, Section 2(B), also do not have a business days requirement and only state that the union must provide 15-days' notice of the election, mailed to each member at the member's last known address.

Neither the LMRDA nor the union bylaws has a 15 business day requirement for notifying members of an election. Since the election notices were mailed with the ballots at least 20 days prior to the vote count, there was no violation.

Third, you alleged that the Local mailed 200 election notices that listed an incorrect tally date. If a union changes the original date of an election, but has already announced the first date in an election notice to the members, the union “must mail a second notice, containing the corrected date, at least fifteen days before the election.” 29 C.F.R. § 452.104. The record shows that the union mailed a second, corrected notice here. On November 21, 2014, the union mailed 200 notices announcing an election date of December 12, 2014. Thereafter the election committee changed the date of the election. Accordingly, on November 24 and 25, 2014, the election committee mailed all members notice of the new election date, December 15, 2014, with the ballots. Hence, notices of the correct runoff election date were mailed to all members at least 20 days before the election. There was no violation.

Fourth, you asserted that the voting period for the runoff election was insufficient to allow Hawaii members a reasonable opportunity to vote. Section 401(e) of the LMRDA guarantees every member in good standing the right to vote for candidates of his or her choice. Implied in this right is a reasonable opportunity to vote. 29 C.F.R. § 452.94. For mail ballot elections where, as here, the union includes the election notice in the ballot package, “ballots must be mailed to the members no later than fifteen days prior to the date when they must be mailed back in order to be counted.” 29 C.F.R. § 452.102.

In this case, the record reflects that the voting period was no less than 20 days. While the voting period in the regular election was 29 days, the union’s constitution and bylaws do not require this timeframe. Additionally, prior to setting the voting period for the runoff election, the election committee consulted with you about how long mail delivery to Hawaii would take from California. According to two election committee members, you informed them that mail delivery to and from Hawaii would be four days each way. Based on your information, the election committee chose a 20-day voting period. The investigation did not reveal that the 20-day voting period provided to Hawaii members was an unreasonable time for them to vote. Under these circumstances, there was not a violation.

Fifth, you alleged that the election committee compromised voter secrecy when it improperly counted the ballots by bargaining unit and, contrary to the voting instructions, impermissibly counted ballots returned without a secret ballot envelope. Section 401(b) of the LMRDA requires local unions to elect their officers by secret ballot. For mail ballot elections, “no particular method” of assuring secrecy is required by the Department’s regulations; however, a double envelope system is suggested. Using this system, members return their ballots in an inner envelope with voter identification appearing only on the outer envelope. 29 C.F.R. § 452.97(a).

In this case, the union counted approximately seven ballots that were returned folded, but without a secret ballot envelope. Before including those ballots in the tally, the election committee separated them face down to preserve secrecy and asked you, as well as the other candidates present, for input regarding whether to count those ballots. The committee believed there was agreement on this issue, and decided to count the seven ballots returned without a secret ballot envelope. This decision would have been reasonable even without a consensus from the observers since, as you indicated to the investigator, secrecy of those ballots was maintained. Moreover, counting those ballots allowed eligible members to vote in the election, in keeping with the principles underlying the LMRDA. The election committee's decision in this regard did not conflict with the LMRDA or the union's election rules.

It was also not an error to count the ballots separately by bargaining unit, since doing so did not compromise the secrecy of any individual member's ballot. Accordingly, there was no violation.

Finally, you raised additional allegations for the first time during the Department's investigation of your complaint. In order to file a complaint with the Secretary of Labor, Section 402(a) of the LMRDA requires that a member first exhaust the remedies available to him or her under the union's constitution and bylaws. Accordingly, those claims were not properly within the scope of your complaint to the Department, and were not included in the investigation. 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 may have affected the outcome of the election. The office has closed the file in this matter.

Sincerely,

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Acting Chief, Division of Enforcement

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