



March 10, 2016



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on August 24, 2015 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by Local 329 (Local), National Postal Mail Handlers Union (NPMHU), on May 14, 2015.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there were no violations that may have affected the outcome of the election.

You alleged that the Local allowed the incumbent candidates to make a campaign mailing earlier than other candidates. Specifically, you alleged that incumbent president John Macon and incumbent treasurer David Champion mailed their campaign literature prior to March 27, 2015, when the Local mailed the campaign rules to the candidates. The investigation disclosed that the union did not require candidates to wait until they received the campaign rules before making a campaign mailing. The union's action is consistent with the requirements of the LMRDA. Generally, the LMRDA requires unions to comply with reasonable requests to distribute literature at the candidate's expense and provides that it is the union member, not the union, who decides when the member is a candidate for office. The union did not violate the LMRDA but acted in accordance with its requirements when the union allowed a campaign mailing prior to the mailing of the campaign rules. The union in permitting the mailing did not violate the LMRDA requirement that unions treat all candidates equally with respect to the distribution of campaign literature. You did not make a request to do an earlier campaign literature mailing that was denied. There was no violation of the LMRDA.

You also alleged that the Local failed to notify you and your observer of the dates of the preparation and mailing of the ballots, in violation of the union constitution. Section 401(c) of the LMRDA affords candidates the right to have an observer, including at the preparation and mailing of the ballots. 29 C.F.R. § 452.107(c). Section 401(e) mandates that elections be conducted in accordance with the constitution and bylaws of such organization. Article VI, section F, of the NMPHU Constitution, provides, in relevant part, "that candidates are entitled to an observer who may be present at the preparation and mailing of the ballots, among other phases of the balloting process." In addition, section F provides, in relevant part, that the election judges "shall give reasonable notice to the candidate and his/her observer, if known by the Election Judges, of the time and place of each phase of the balloting process."

The Department's investigation found that in a letter to the election judges dated April 2, 2015, you requested to have your observer [REDACTED] present at the preparation and mailing of the ballots. The Local election committee began the preparation of ballot packages on April 15 or 16, 2015, and mailed ballots on April 17, 2015. Although the Local identified April 17 as the "tentative" ballot mailing date in the campaign rules and identified it as the ballot mailing date in its response to your preelection protest, the Local failed to mail a schedule of election until April 20, 2015. The investigations further found that after the Local election committee realized that it had failed to mail the election schedule on the morning of April 17, 2015, election committee members contacted or attempted to contact candidates and observers, including [REDACTED], to inform them of the mailing of ballots. A member of the election committee spoke to [REDACTED] at approximately 10 a.m. on April 17, 2015. [REDACTED] was not scheduled to work that a day and advised that she would attend the mailing at 1 p.m. However, [REDACTED] never showed up and did not respond to the election committee's numerous subsequent phone calls that day. After waiting for [REDACTED] until 4 p.m., the Local proceeded with its final preparation for the mailing of the ballots. The Local's failure to give each candidate and observer notice of each phase of the balloting process prior to the morning of April 17, 2015, constitutes a violation of its constitution and the LMRDA's requirement that elections be conducted in accordance with the constitution. However, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). The Department's investigation, including a review of the mailing list and a recount of voted ballots, did not reveal any impropriety related to the ballot preparation and mailing. There was no violation of the LMRDA that affected the outcome of the election.

You also alleged that the Local failed to mail ballots to members in the Nashville Branch. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for candidates of his or her choice. In a mail ballot election where the ballot serves as notice of the election, unions must mail ballots to all members

fifteen days prior to the deadline by which ballots must be returned. See 29 C.F.R. § 452.102. The Department's investigation found that ballot packages, including election notice and voting instructions, were mailed to all members, including those located in Nashville, on April 17, 2015, with a return deadline of May 14, 2015. There was no violation.

You also alleged that Macon's campaign mailing included a confidential internal union document bearing the union's insignia. Section 401(g) prohibits the use of union funds to promote any member's candidacy. 29 U.S.C. § 481(g). The document you identified is the decision of the Local Executive Board dismissing charges █████ filed against Macon. The investigation disclosed that decisions of the Local Executive Board are routinely distributed and posted throughout the Local. Further, the trial on the charges was open to all members, and the decision had been previously circulated to various members of the Local. Consequently, the document at issue was not a confidential union document, but was readily accessible to members, and posting the document did not violate the LMRDA. There was no violation.

Finally, you alleged that the incumbent president texted derogatory comments about you to members using a union cell phone. As noted above, Section 401(g) prohibits the use of union funds, including union facilities and resources such as union-issued cell phones, to promote any member's candidacy. The investigation found that the Local does not provide any of its officers with a cell phone. Consequently, no union moneys were expended in Macon's text messages to various members. There was no violation of the LMRDA.

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 regarding this matter.

Sincerely,

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Chief, Division of Enforcement

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