



February 23, 2017

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on September 22, 2015, alleging that violations of the election provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481, as made applicable to the elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the election of officers conducted June 26, 2014, by Chapter 284 (Local 284 or union), National Treasury Employees Union (NTEU).

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

You alleged that incumbent officers and union stewards campaigned during work hours and while conducting official meetings. Your allegations regarding campaigning by the officers and stewards were not substantiated. Section 401(g) of the LMRDA provides that neither union nor employer funds can be used to promote the candidacy of any candidate. Unless restricted by constitutional provisions to the contrary, union officers and employees retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election. However, such campaigning must not involve the expenditure of funds in violation of section 401(g). Accordingly, officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. 29 C.F.R. § 452.76. Campaigning by union stewards on employer time would be unlawful, even if approved by the employer, unless the campaign activities are only incidental to and do not interfere with performance of the work. 29 C.F.R. § 452.78.

The Department's investigation established that all incumbents denied campaigning on union or work time, and you were not able to identify any witnesses who could refute their denials. Some of the stewards acknowledged that they passed out campaign literature on their personal time, before or after their shifts. Other stewards denied

passing out campaign literature at all. The investigation did not reveal any evidence that the incumbent officers campaigned while working for the union or employer. Also, you alleged multiple instances of union stewards wearing campaign buttons while conducting union business. While the NTEU Bylaws do not address wearing campaign buttons during the course of an election, officers retain their right to campaign on behalf of candidates. Without more, wearing campaign buttons while at work or conducting union business is not a violation of Title IV. There was no violation.

You alleged that Local 284 Election Committee members ([REDACTED] and [REDACTED]) defamed your character in an email that was sent to you on May 21, 2014. The investigation established that [REDACTED] sent you an email merely to caution you not to campaign on work time. While the email was copied to other members of the committee, the contents of the email did not defame your character and did not constitute unlawful campaigning. There was no violation.

You alleged that Election Committee members organized the incumbents' campaign materials during work hours. In particular, you assert that you saw [REDACTED] - [REDACTED] arranging campaign material on a table in the IRS building cafeteria between 2:30 p.m. and 3:00 p.m. As stated above, Section 401(g) of the LMRDA provides that employer funds cannot be used to promote the candidacy of any candidate. 29 C.F.R. § 452.78. The investigation established that [REDACTED] periodically checked on candidates' campaign materials placed in the cafeteria lobby. The photo you provided shows [REDACTED] moving an easel. They acknowledged that they moved the easel for safety reasons. The Department's review of the photo found no clear evidence of campaigning by [REDACTED]. There was no violation.

You alleged that Local 284 did not provide adequate notice of the nominations and election to all members in that the local did not insure that the membership mailing list was accurate. The investigation found that the union adequately informed the members of nominations and the election. The Department's investigation established that the combined notice of nominations and election was mailed on April 7, 2014 to approximately 1600 to 1700 members. Ballot packages were mailed on May 23, 2014. The NTEU National office sent the most current mailing list to the Election Committee to use for the mailing of the nominations and election notice. The OLMS records review revealed that Local 284 had 186 ballots returned as undeliverable ballots, more than 10 percent of the total ballots mailed. Inasmuch as the NTEU does not receive address information from the IRS, it must rely on its members to provide and update their addresses. Consequently, the NTEU sends periodic reminders to its chapters to update the addresses of the members.

Even before the election process began, the union was proactive in ensuring that its mailing lists would be up-to-date. Requests to update the members' addresses were

posted in the cafeteria and in each of the two break rooms on each floor of both IRS buildings advising members to contact the union office or the Election Committee to update their address. These notices were posted as early as January 2014 and remained posted until the election on June 26, 2014.

The union's efforts to update its list did not stop there. The Election Committee tried to obtain updated addresses for the returned notice of nominations and election by using email and the IRS "Discovery" System. The Election Committee emailed each member whose notice or ballot package was returned as undeliverable in order to obtain a good address. They also searched the IRS Discovery database for employees and searched the NTEU website for email addresses for those members. The Election Committee put a notice to members on Lobby Vision asking members to contact the union if they did not receive a ballot. The Election Committee checked the NTEU hotline phone number about three times a week for messages from members updating their addresses and requesting duplicate ballots. Updated addresses were forwarded to the NTEU to make corrections to the membership list. The investigation did not reveal any evidence that those members who called the NTEU hotline and requested a ballot did not receive one.

For members who did not receive a ballot, they could obtain replacement ballots until June 13, 2014, 10 days before the election. Moreover, the investigation revealed that at least six of the 14 members specifically identified by you as having not received ballots did indeed receive ballots, and all six voted. There were five members identified by you whose ballot packages were not returned to the union as undeliverable. There were no records that any of the five requested a duplicate ballot, and they did not vote. The records review revealed that one member requested a duplicate ballot and was mailed one, but he did not vote. There were no records of his ballot package being returned to the union as undeliverable mail. As well, there were two others identified by you who were not listed on any of the membership lists. No violation occurred.

You alleged that the incumbents made campaign mailings to members who were not on the mailing list used to mail election ballots. Among the election safeguards specified in Section 401(c) is the requirement of equal treatment of all candidates with respect to distribution of campaign literature. The investigation found no evidence to support your allegation and, in fact, you did not recall the source of this information and could not identify any witnesses. The investigation revealed that campaign mailings were made by a mailing service and that arrangements for the mailings were made by the Election Committee and the NTEU Assistant Counsel. The investigation did not reveal any evidence that other mailing lists were used aside from the lists provided to the mailing service by the Election Committee and the NTEU. There was no violation.

You alleged that the ballots used for Local 284's election were confusing because the instructions stated that a check mark should be used the voter when the voter could

very well have used an "X." A union must provide adequate instructions so that members may properly cast their ballots. 29 C.F.R. § 452.110(b). Although the investigation revealed that the ballots instructed voters to use a check mark, the Department's records review revealed that the Election Committee counted all the ballots of eligible members regardless of whether they used a check mark, "X" or circle. There was no violation.

You alleged that Local 284 mailed the nominations and election notices to non-members. The investigation confirmed this allegation. However, the investigation established that there is usually a six-week delay between an employment decision and the payroll update which means that members may get promoted into management positions or transferred to a new position without the union's knowledge. If a member moves into a position outside the bargaining unit the updates may take longer. Consequently, the delay in updating the members' list may have resulted in a list that included members who had moved out of the bargaining unit and were ineligible to vote. In fact, the Election Committee found 40 members who were managers and removed from the membership list before the ballots were mailed. Even though notices were mailed to ineligible members, there is no evidence that these individuals were allowed to vote. There was no violation.

You alleged that Local 284 failed to include [REDACTED] name as a candidate for secretary on some of the ballots. The investigation revealed that [REDACTED] name was on all the ballots. There was no violation.

You alleged that Local 284's Election Committee did not allow you to inspect the membership list. The investigation revealed that the Election Committee provided you with two separate appointments to inspect the membership list. You acknowledged that you were told that you could inspect the membership list, but you were confused about the dates and failed to show up for the appointments. There was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of 29 C.F.R. § 458.29, and I have closed the file regarding this matter.

Sincerely,

[REDACTED]

[REDACTED]

Chief, Division of Enforcement

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Initials				
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Last Name	KING	HANLEY		
Title	DOE Inv.	DOE Chief		

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