



March 9, 2018

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on November 1, 2017, 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 SAG-AFTRA New England Local on August 18, 2017.

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

You alleged that candidate [REDACTED] improperly campaigned via Facebook while at work. Section 401(g) of the LMRDA prohibits the use of employer resources to promote any candidate for union office. The investigation confirmed that [REDACTED] posted campaign-related comments on Facebook, including one post during his work hours. However, the investigation did not establish that [REDACTED] used employer resources when posting campaign-related comments. [REDACTED] stated that any Facebook comments he posted while at work were made during break time or lunch time, using his personal Facebook account and his personal cellphone. The investigation disclosed that [REDACTED] employer, WBZ Radio, imposes no set schedule for [REDACTED] off-air time and has no work policy governing the use of social media or personal cellphones. The SAG-AFTRA Nominations and Election Policy provides that "campaigning incidental to work or during paid vacation, paid lunch hours or break, or similar paid time off is permitted." There was no violation.

You also alleged that candidate [REDACTED] used the SAG-AFTRA name and logo on his Facebook and Twitter accounts for campaigning. You specified that you objected to a retweet by [REDACTED] on July 18, 2017, of a pro-union advertisement from SAG-AFTRA that included the SAG-AFTRA name and logo; a campaign poster tweeted by [REDACTED] on August 6, 2017, titled "SAG-AFTRA Elections 2017"; and a tweet by [REDACTED] on August 15, 2017, directed at "SAG-AFTRA Members" and using the hashtag

“#SAGAFTRA.” You also alleged that one or more of these items should have included a disclaimer that it was not paid for by the union.

Section 401(g) of the LMRDA prohibits the use of union resources to promote any candidate for union office. Use of a union logo for campaign purposes may violate section 401(g) where the logo has market value, such as when the logo is protected by trademark, and where the union restricts the use of its logo in some manner (such as requiring permission before the logo may be used for any purpose), and where the manner of its use implies that the union has endorsed a candidate.

Here, the SAG-AFTRA name and logo are protected by trademark, and the SAG-AFTRA Nominations and Election Policy prohibits candidates from using the union’s logo or name “in a manner which would reasonably be construed as an endorsement by the Union.” However, there was no violation of section 401(g) in the instant case. None of [REDACTED] uses of the union name or logo could reasonably be construed as an endorsement of his candidacy or his slate by the union. The investigation revealed that it was apparent that these were candidate campaign tweets not tweets coming from the union. The investigation also established that there was no requirement that all campaign materials contain a disclaimer stating that they were not paid for by the union; only campaign mailings and email messages sent through the union or its third-party vendor were required to contain such a disclaimer. There was no violation.

You next alleged that the “Meet the Candidates” event held on July 31, 2017, was hosted and catered by the union office staff and that campaign materials that were printed on union office equipment were distributed at the event. You further alleged that “no candidate was afforded an equal opportunity to address the membership” at the event. The investigation uncovered no evidence that union funds were used to promote any candidate during the Meet the Candidates event on July 31, 2017, or that any candidate received either preferential or adverse treatment during the event. The investigation established that the only campaign literature distributed at the event was the Voter Information Guide. All candidates were given an equal opportunity to submit statements for inclusion in the guide, and your submissions were included in the guide for the races in which you were a candidate. During the investigation, you acknowledged that all candidates were allowed to mingle with attendees at the Meet the Candidates event and that no candidates were permitted to present speeches. There was no use of union funds to promote one candidate over another. There was no violation.

You also alleged that the SAG-AFTRA vendor, Integrity Voting Systems (IVS), engaged in voting fraud. You alleged that the ballots were supposed to be picked up from the post office at 8:30 a.m. on August 18, 2017, but were not picked up until 8:45 a.m. that day. You alleged that you witnessed IVS staff “flipping” votes, missing votes, and making other errors. You also alleged that you heard double beeps when some ballots were scanned. You stated that you demanded an immediate recount and that your request was denied.

Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure that their elections are fair. Section 401(e) provides that in any secret election, “[e]ach member in good standing shall be entitled to one vote.”

The investigation yielded no evidence of fraud or other flaws in IVS’s vote counting process. The investigation established that the last election ballots processed to the IVS post office box were 49 pieces at 7:26 a.m. on August 18, 2017. No additional envelopes were received or processed for the remainder of the day. The Department’s review of the election ballots and other election records revealed no evidence of any tampering with either the ballots or the election records. The Department’s investigation established that IVS had a system of checks and balances to verify that all the ballots were counted and that none were counted twice, and the review revealed that the ballots and envelopes were properly counted and scanned. The Department confirmed the accuracy of the vote-counting machines by conducting a manual count of ballots for the vice president–broadcast position. The results were identical to the IVS count. The Department also supervised recounts of the national board member, vice president–actor/performer, vice president–broadcast, and local board member–broadcast positions; those results were also identical to the original IVS counts. There was no violation.

Finally, you raised an allegation in your complaint that had not been raised in your protest to the union. Section 402(a) of the LMRDA requires that a member exhaust the remedies available to him or her under the union’s constitution and bylaws before filing a complaint with the Secretary of Labor. This allegation was not properly exhausted and was not investigated by the Department.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,

A solid black rectangular redaction box covering the signature of Sharon Hanley.

Sharon Hanley
Chief, Division of Enforcement

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