



May 23, 2018



Dear [REDACTED]:

This Statement of Reasons is in response to the complaints you filed with the Department of Labor on January 5, 2018 and January 16, 2018, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act), as made applicable to 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 regularly scheduled election of union officers conducted by the National Treasury Employees Union (NTEU), Chapter 22, on September 25, 2017.

The Department of Labor (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. The following is an explanation of this conclusion.

You alleged that the NTEU National President's refusal to disqualify certain members of the incumbent slate from candidacy in the April, 2018 re-run election was improper. The investigation disclosed that, as a result of your protest to the NTEU, challenging the conduct of the September 2017 election of union officers, the National President ordered Chapter 22 to rerun all offices won by the Team Horatio, your opponents in the September 2017 election. You asserted that because the workspaces of certain Team Horatio candidates were relocated to the Philadelphia IRS Service Center, which is located within the geographic jurisdiction of Chapter 71, these candidates were not members of Chapter 22, were not eligible to run in the 2017 election, and were not eligible to run in the new April, 2018 election.

Section 401(e) of the LMRDA provides that elections shall be conducted in accordance with the constitution and bylaws of the union. Further, the Department's regulations provide that it will defer to a union's consistently applied interpretation of its governing documents unless it is clearly unreasonable. 29 C.F.R. § 452.3. The

investigation disclosed that in 2013, Chapter 22 members approved a bylaw change that permitted members whose workspaces were relocated to the larger Philadelphia IRS Service Center, as a result of space consolidation by the agency, to retain membership in Chapter 22. In addition, several years ago Chapter 22 and Chapter 71 entered into an agreement permitting Chapter 22 members whose workspaces were relocated to the Philadelphia IRS Service Center to remain members of Chapter 22. In this regard, although the members' workspaces were consolidated and relocated to that service center, the members' position, duties, pay, and job functions remained unchanged. On these facts, the National President's decision to permit the subject Chapter 22 candidates to run for union office in the 2017 and 2018 elections was not clearly unreasonable.

In connection with this allegation you asserted that the provision of the Chapter 22 bylaws permitting such consolidation and relocation was not ratified by a majority vote of Chapter 22's entire membership, in violation of Article IV, Section 5 of the NTEU constitution and, thus, invalid. Article IV, Section 5 of the NTEU constitution provides, "the National President may realign the jurisdiction of existing NTEU Chapters, provided the NTEU Chapter members who seek realignment, and the Chapter into which they seek to be realigned, each by majority vote, ratify the proposed realignment of jurisdiction." This provision is silent concerning whether this bylaw, which acknowledges the relocation of members' workspaces, without changing the Chapter's jurisdiction over any member or position, must be ratified by a majority vote of the Chapter's entire membership. In any event, the bylaw change was voted on and approved by a majority of the Chapter 22 members present at the meeting at which the bylaw change was ratified. Neither the NTEU constitution nor the LMRDA was violated.

You also alleged that, during the 2017 election, the Chapter 22 election committee voided voted ballots and did not include them in the vote tally, even though the voter's intent was clear. You also questioned the accuracy of the NTEU's recount of the ballots cast in that election. The Department's review of the voided ballots revealed that voter intent was clear, but the voters' failure to follow the ballot instructions resulted in their ballots being voided. In an effort to resolve the voided ballots during its review of the election, the NTEU revised the vote tally by adding the votes from the voided ballots to the original vote tally, where it was possible to discern the intent of the voter. The revised tally yielded the same results as the election committee's original count of the ballots. Also, the Department counted the ballots that the election committee voided. The result of that count confirmed that, even if the election committee had included these ballots in the ballot tally, there would have been no change in the outcome of the election. To the extent that the LMRDA may have been violated in the initial count of the ballots, any violation could not have affected the outcome of the election.

You also took issue with the National President's decision to rerun the 2017 election. Specifically, you asserted that the National President's decision ordering the new election permits your opponents, the Team Horatio slate, to benefit from their intentional violations of the election rules. You also asserted that conducting a new election would provide that slate with the benefits of incumbency and afford them an unfair political advantage over your slate. The standard applicable to the Secretary in deciding whether a new election is required, i.e., the finding of a violation that may have affected the outcome of the election, is not applicable to a union's internal decision to conduct a new election. The LMRDA envisions providing unions with an opportunity to correct election problems and deficiencies before complaints are filed with the Secretary of Labor, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a degree of deference to decisions on internal union election protests providing for the conduct of a new election. The Department will not seek to reverse a union's remedial decision to hold a new election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; the decision is otherwise contrary to the principles of union democracy embodied in the statute, or; the union's decision to hold a new election is otherwise unreasonable.

Here, the Department's investigation substantiated that the National President ordered Chapter 22 to conduct a new election for all offices won by Team Horatio after finding that the slate's candidates improperly used the official NTEU logo on their campaign material and another slate candidate used a government email system to transmit a partisan campaign email to a significant number of members located at the candidate's work site. Section 401(g) of the LMRDA prohibits the use of union or employer resources to promote the candidacy of any person in an election of union officers. The Department's investigation showed that five of the seven candidates on the ballot who were endorsed by the campaign material and e-mail won the election. Thus, the Horatio slate's use of the union or employer resources may have contributed to the over-all effectiveness of its campaign and disadvantaged your campaign. Under these circumstances, the National President's decision ordering the new election was not unreasonable.

You appealed the National President's decision ordering the new election to the NTEU Executive Board (NEB). You stated in the appeal that, if the NEB refused to grant your appeal by overturning the National President's decision, the Team Horatio candidates should not be permitted to run in the new election. The National President, on behalf of the NEB, refused to disqualify the Team Horatio members from candidacy on the

grounds that he lacked the authority under federal law and the NTEU constitution to bar any "member in good standing" from running for union office.

Section 401(e) of the LMRDA provides, "every member in good standing shall be eligible to be a candidate and to hold office" Section 3(o) of the LMRDA defines member or member in good standing to include "any person who has fulfilled the requirements for membership, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings. . . ." Therefore, absent disciplinary action by the union which allowed notice and fair hearing to these members, it would be a violation of section 401(e) of the LMRDA to disqualify their candidacy in the manner you suggest. As there is no requirement that the union take disciplinary action in this situation, and no allegation or evidence that the union did take disciplinary action, the National President's decision permitting these members to run for office in the April, 2018 election is consistent with the Act. The LMRDA was not violated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director within 15 days of service of this notice of dismissal. A copy of your request must be served on the District Director and the union and a statement of facts must be filed with the Director. The request for review must contain a complete statement of facts and the reasons upon which your request is based. *See* 29 C.F.R. § 458.59.

Sincerely,

A large black rectangular redaction box covers the signature area.

Sharon Hanley
Chief, Division of Enforcement

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