



January 26, 2021



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on September 29, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the mail ballot election of union officers conducted by the American Postal Workers Union, Northwest Illinois Area Local (NWIAL), Local 7140, on September 1, 2020.

The Department of Labor 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. Following is an explanation of this conclusion.

You alleged that the NWIAL should not have permitted President Jackie Engelhart, Secretary Linda Retel, Chief Trustee Ray Wience, and Maintenance Director Joseph Golden, all incumbent officers, to run for reelection because they were are not members in good standing. Section 401(e) of the LMRDA provides, "every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)." 29 U.S.C. § 481(e).

The investigation found that Jackie Engelhart, Linda Retel, Raymond Wience and Joseph Golden (or "incumbents") were members in good standing at the time of nominations and the 2020 election and, thus, were eligible for candidacy. Specifically, Article 10(a) of the APWU Constitution and Article 11, Section 3 of the NWIAL Constitution prescribe the eligibility requirements for candidacy. Article 10(a) of the APWU Constitution provides that to be eligible for nomination, the candidate must be a "member in good standing." Article 11, Section 3 of the NWIAL Constitution provides, "no member of this Local shall be eligible for nomination or election to office unless he has been a "member in good standing" of the NWIAL for the one year preceding nominations."

The NWIAL and APWU constitutions do not expressly define “member in good standing.” However, according to the union officials interviewed by the Department during the investigation, the union has consistently interpreted good standing to mean a member who has paid dues for the year immediately preceding nominations and is current in the payment of such dues at the time of nominations. The Department’s regulations provide that “[t]he interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable.” 29 C.F.R. § 452.3.

In this challenged election, the nominations meeting was held on March 8, 2020. The one-year qualifying period for candidacy was March 7, 2019 to March 7, 2020. To determine whether Engelhart, Retel, Wience and Golden were current in their dues payments for that period, the Department reviewed various records, including the NWIAL dues records, USPS payroll and dues checkoff statements, and the APWU per capita tax (PCT) statements covering the period of March of 2019 to March of 2020.

This review disclosed that the NWIAL deducted full dues from the NWIAL paychecks of Engelhart, Retel and Wience for the months of March of 2019 to March of 2020. The Department’s review of the automatic USPS dues check off reports for Golden found that the USPS deducted full dues from his USPS paycheck bi-weekly during the months of January of 2019 to May of 2019. Following Golden’s retirement from the USPS, the NWIAL deducted full dues from his NWIAL paycheck for the months of June 2019 to March 2020. Based on the Department’s in-depth review of the relevant records the incumbents were current in their dues for the relevant period.

You questioned the authenticity of the records the Department reviewed. However, the investigation did not uncover any evidence of falsification or forgery of these records, documents, or cancelled check payments on behalf of Engelhart, Retel, Wience or Golden. Inasmuch as Engelhart, Retel, Wience and Golden were current in their dues during the candidacy qualifying period, they were in good standing at the time of the 2020 election and, therefore, eligible for candidacy.

In further support of your allegation challenging the candidacy eligibility of the incumbents, you asserted that since they do not pay dues and the PCT every two weeks as you do, pursuant to the USPS dues check off, they were not in good standing at the time of the 2020 election. However, neither the NWIAL Constitution nor the APWU Constitution requires continuity of good standing based on the payment of dues or the PCT every two weeks. *See* 29 C.F.R. § 452.37(b). In fact, Article 14, Section 2 of the NWIAL Constitution expressly permits members who do not have their dues automatically withheld by a USPS check-off arrangement to pay dues on a monthly basis. This constitutional provision provides in relevant part, “[t]he dues of this Local shall be Twenty-three Dollars and Sixty-nine Cents (\$23.69) per pay period [or bi-

weekly], which shall include National and State per capita tax. Dues shall be payable through the automatic [USPS] dues check-off payroll deduction. In the absence of the dues check off, dues shall be payable . . . each month." (Emphasis added).

The investigation found that Engelhart, Retel, and Wience were not on an automatic USPS dues check-off arrangement during the candidacy qualifying period. Their full monthly dues were deducted from their NWIAL paychecks by the NWIAL. Therefore, the NWIAL Constitution did not require the NWIAL to deduct their dues per pay period or bi-weekly. In addition, during the relevant period the USPS deducted full dues from Golden's USPS pay checks bi-weekly and the NWIAL deducted full dues from his NWIAL pay checks on a monthly or similar basis. The NWIAL's deduction of full dues on behalf of the incumbents during the relevant period was consistent with Article 14, Section 2 of the NWIAL Constitution and did not affect the incumbents' good standing.

With respect to the PCT payments, a member is not required to be current in the payment of the PCT to establish good standing. Pursuant to the union leadership's consistent and reasonable interpretation, a member is considered to be in good standing so long as the member has paid dues for the year immediately preceding nominations and is current in the payment of such dues at the time of nominations. Notwithstanding, the NWIAL paid the full PCT for these officers to the APWU quarterly during the appropriate period. You asserted that the NWIAL Constitution does not permit quarterly payment of the PCT and, therefore, the incumbents lost their good standing. However, the NWIAL Constitution does not contain any such proscription.

The APWU Constitution addresses the PCT. Article 16, Section 2(a) of the APWU Constitution provides, "[t]he revenues of this Union shall be derived from a per capita tax . . . , bi-weekly." Reference to "per capita tax, biweekly" concerns the PCT deducted from dues withheld "bi-weekly" from members' USPS paychecks under a USPS dues check-off arrangement. This constitutional provision does not expressly proscribe the quarterly deduction of the PCT from dues withheld by the NWIAL monthly from NWIAL paychecks. Further, the senior manager of the APWU Per Capita Department stated during the investigation that Engelhart, Retel, Wience and Golden were current in the PCT payments and in good standing at the time of the 2020 election.

You also alleged that Engelhart, Retel, Wience and Golden were not in good standing because, according to you, the NWIAL does not qualify as an employer and, thus, is not authorized to deduct dues. However, the employer status of the NWIAL is not a consideration in determining whether the incumbents were members in good standing and eligible for candidacy, for purposes of the union officer election provisions of Title IV of the LMRDA. *See* 29 U.S.C. §§ 481-483; *see also* 29 U.S.C. § 402(o). Such a

determination turns on whether they had satisfied the standards for candidacy and officeholding prescribed in the NWIAL and APWU constitutions at the time of the 2020 election. 29 U.S.C. § 481(e); 29 C.F.R. § 452.35. The investigation found that they had met such requirements and standards and, thus, were eligible for candidacy in that election.

Finally, you alleged that the NWIAL did not deduct dues for the incumbents because no such deductions were reported on Statement B, Lines 47 and 64 of the Form LM-2 Labor Organization Annual Report (LM-2 report) the NWIAL filed with the Department on March 4, 2020. Regardless of your allegation concerning the LM-2 report, the Department's in-depth review of the relevant records found that these incumbent officers were current in their dues payments during the relevant period and were eligible to run as candidates in the 2020 election.

On these facts, Engelhart, Retel, Wience and Golden were members in good standing and, thus, eligible for candidacy at the time of the nominations and the 2020 election. Therefore, the LMRDA was not violated when the NWIAL permitted them to run for office.

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 closed the file on this matter.

Sincerely,

A large black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker, Chief  
Division of Enforcement

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