



March 26, 2009



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor on July 7, 2008, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Local 32 (Local 32 or local), American Postal Workers' Union, conducted on January 31, 2008.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations.

You alleged that 118 members did not receive ballots for the 2008 election because the local's membership addresses were inaccurate, having not been updated since at least November 2007. You compared the 103 pieces of campaign literature returned to you as undeliverable in your successful election for clerk craft director in the Local's 2005 election with a November 2007 membership list. You found that the addresses of these 103 members plus an additional 15 members (118 total) on the November 2007 list matched the addresses of your 2005 undeliverable campaign pieces. You surmised that the local had failed to make any updates to the local's membership list since November 2007.

Section 401(e) of the LMRDA mandates, in relevant part, that every member in good standing be provided the opportunity to vote. 29 U.S.C. § 401(e). While section 401(e) does not contain specific instructions with regard to a union's conduct in a mail ballot election, the right of every union member in good standing to vote requires, at a minimum, that a union take reasonable steps to maintain current mailing addresses for its members and to distribute election ballots to all those entitled to vote. See 29 C.F.R. § 452.100. The investigation disclosed that all 118 members you identified were mailed a ballot package, with 6 ballot packages returned as undeliverable. However, the local mailed each of these six members a duplicate ballot.

The investigation further disclosed that the local mailed 3,394 ballot packages, of which 84 were returned as undeliverable. The election committee made a reasonable effort to contact those 84 members, and succeeded in finding current addresses for 68 of them. However, the local was unable to find current addresses for 16 undeliverable ballot addresses which constitutes only .47 percent of the local's entire membership. Given that the local had bad addresses for only 16 of 3,394 members, the local can be said to have met its statutory obligation to make a reasonable effort to maintain its membership list, and consequently, provided members a reasonable opportunity to vote. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election in violation of section 401 (c) of the Act, 29 U.S.C. § 481(c). Pursuant to that section, a union's wide range of discretion in conducting its election is circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110. Specifically, you alleged that the local's duplicate ballot procedure merely required that a member call directly to the local to request a duplicate ballot, and the local, without eligibility verification, then mailed a duplicate ballot to the requestor. You identified one member whom you alleged received more than one duplicate ballot. You allege that this evidences the lax procedure for obtaining a duplicate ballot.

In the November 2007 issue of its newspaper, the local provided a combined nominations and election notice, which, among other things, advised members that if they had not received a ballot by January 14, 2008, they were to contact the election committee for a duplicate ballot. The notice provided a telephone number. The investigation disclosed that the election committee maintained a daily log of duplicate ballot requests. A total of 168 members were mailed a duplicate ballot. With respect to the member you identified as having received more than one duplicate ballot, the duplicate ballot log reflects that the member in question did not request or receive a duplicate ballot. Five members out of the 168 did receive an additional duplicate ballot because they spoiled or lost their first duplicate ballot. In any event, the investigation revealed that no member was allowed to have his or her vote counted twice and that no one ineligible to vote participated in the election. There was no violation.

You alleged that the circumstances in which the voted ballots were maintained at the Forest Park Post Office (FPPO) could lead to ballot tampering or fraud because the bins in which the ballots were contained were not locked, and former members of Local 32 were employed at this facility and could have gained access to the bins. The investigation disclosed that the FPPO has no current local members or former members at this location, and it was precisely for this reason that the election committee selected the FPPO site to receive voted ballots and undeliverable mail. Voted ballots were returned in business reply envelopes. FPPO is a small facility with few workers. To

hold all of the business reply envelopes in which voted ballots were contained, the post office provided three unlocked wooden bins. According to [REDACTED], the business reply clerk at this facility, the three bins were always in her view while she was at work. She maintained a daily count of the number of business reply envelopes received and placed those envelopes in one of the three bins. When unable to be at work, [REDACTED] left written instructions for her co-workers to keep a written record of the quantity of business reply envelopes received each day, and also explained the proper procedure for handling business reply envelopes. Nothing in the election record indicates any evidence of fraud. There was no violation.

You alleged that the tally was inaccurate because it did not include voted ballots, which remained uncollected at the FPPO in two and one-half holding trays. You believe that the exclusion of those ballots, well over 500 because each holding tray holds 250 envelopes, would have affected the outcome for all contested offices as the largest margin of victory in the election was 276 votes. The investigation disclosed that official ballot instructions, included in the ballot package mailed to all members on January 8, 2008, notified members that voted ballots had to be returned no later than 2 p.m. on January 31, 2008. According to [REDACTED], 1,707 business reply envelopes were collected at 2 p.m. on January 31, 2008, the deadline for receiving voted ballots. The investigation disclosed that no ballots in holding trays were left uncollected prior to the deadline. The election committee chair stated that she collected all ballots from the FPPO at 2 p.m. on January 31, 2008. Her statement was corroborated by [REDACTED]. [REDACTED] added that she telephoned the election committee chair the following day to inform her that additional envelopes had been delivered, subsequent to the deadline. The local properly did not include in its tally any ballots returned after the stated deadline. There was no violation.

You alleged that the number of ballots collected from the FPPO did not reconcile with the number of ballots tallied on January 31, 2008. The investigation disclosed that the election committee collected 1,707 ballots from the FPPO, as evidenced by [REDACTED]'s records. The Department's review disclosed that 1,719 ballot envelopes were brought to the tally table, a discrepancy of twelve ballots. [REDACTED] explained that she received business reply envelopes as well as voted ballots contained in non-business reply envelopes; however, she only counted business reply envelopes because those are the only ones for which the union was required to pay postage. There was no violation.

You alleged that some members may have voted twice given that the election committee did not verify the content of return ballot envelopes, which should have contained no more than two ballots, a general offices ballot and a craft ballot. The investigation disclosed that the local mailed members two ballots, one for all general offices and the other for the craft in which the recipient was employed. The investigation disclosed that the election committee chair confirmed the eligibility of

each voter's name as displayed on the outer envelopes, using a dues check off list. This confirmation was done prior to opening any envelopes, and in full view of observers. The envelopes were then opened in full view of the observers. No one protested at that time or later claimed that the return ballot envelopes contained more than the requisite two ballots. The eligibility confirmation process operated to ensure that no one voted twice. There was no violation.

You alleged that ineligible members voted when the local permitted mail handlers, who pay no dues, to vote in this election. Article 10, Section D of the Local Constitution conditions eligibility to vote on a member's "good standing according to official records of the [local] on December 1<sup>st</sup> of the year preceding an election year." However, "good standing" is not defined in the Local Constitution. The local has interpreted "good standing" to mean being current in dues for the year preceding the election. The investigation disclosed that mail handlers who paid dues for the requisite period were entitled to vote for general offices only. Because there is no mail handlers craft within this union, mail handler members received no craft ballot. The local mailed a general ballot to fifty mail handlers who were in good standing and eligible to vote. Only fifteen of those mail handlers returned a voted ballot. The local properly included those voted ballots in the tally. There was no violation.

You alleged that the incumbent Secretary Treasurer may have gained an unfair advantage because he had access to membership labels as he was living at the union hall and had many opportunities to tamper with the membership list. The investigation disclosed that the Secretary Treasurer Carl Hudson was not living on the premises of the union. Further, Hudson only made campaign mailings through the election committee, like all other candidates. Hudson made no independent use of the membership list. There was no violation.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Acting Chief, Division of Enforcement

cc: President William Burrus

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