



September 7, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on February 28, 2023. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the Hawaii Nurses and Healthcare Professionals (HNHP or Union) election of officers, completed on November 25, 2022.

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

You alleged that the incumbents used union funds to promote their candidacy by campaigning on official time and using union resources. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate for office. 29 U.S.C. § 481(g); 29 C.F.R. § 452.73. 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. The term “union or employer funds” is broadly construed and can include the use of union or employer resources and facilities as well as union- or employer-paid time. 29 C.F.R. §§ 452.76, 452.78. However, campaigning that is incidental to regular union business or legitimate work assignments is not a violation of section 401(g). *Id.*

You alleged that Team Lokahi included the Union’s logo as well as a link to the Union’s website on its campaign materials. The investigation disclosed that Team Lokahi included a solid purple heart logo on its campaign materials. The Union logo is a purple heart surrounded by a circle with the words “Hawaii Nurses and Healthcare Professionals United and Independent.” After comparing the Team Lokahi campaign

materials with the actual Union logo, the Department determined that while the Team Lokahi logo was similar to the Union logo, it was clearly distinguishable from the HNHP logo. Accordingly, with regard to the logo, there was no violation.

The Department's review of the Team Lokahi's campaign materials found that the materials stated, "HNHP Election 2022, Visit HNHP.org website for details." The Team Lokahi flyer also included a QR code with a link to the Team Lokahi website. The Department found that including a link to the HNHP website in this context does not implicate the use of union funds, and, instead, merely directs members to the Union website for more information about the election. The QR code directed members to the Team Lokahi website so it was clear that the link to the Union's website was for members to gain general, factual information about the upcoming election and the link to the Team Lokahi website was for the purpose of promoting the slate of candidates. Given the context in which it was provided, Team Lokahi did not violate the Act when it included the Union's website address on its campaign materials.

You also alleged that Carvalho-Luke of the Team Lokahi slate violated section 401(g) by posting her and her running mate's accomplishments in newsletters on the Union's website at the same time that she mailed the campaign materials out to members. The Department's investigation determined that there were two newsletters (September 5 and October 24) posted on the HNHP website during the election period. In the October 24 newsletter, the Union highlights an "Attendance Plan" agreed to between HNHP and the employer (Kaiser Permanente). Following the final sentence of this section, the newsletter states: "HNHP Representatives on the HI Attendance Standards Subcommittee: Terilyn Carvalho-Luke and Wolfgang Tarnowski." After reviewing the newsletter, the Department determined that this section is reporting on regular union business and does not constitute campaigning. Merely including the names of two incumbent officers who participated on this subcommittee does not constitute unlawful campaigning. The Union's report on legitimate union business and the decision to name officers who participated in these activities is not campaigning and does not violate the LMRDA.

You further alleged that HNHP employee [REDACTED] called HNHP member [REDACTED] and told [REDACTED] not to vote for candidate Trinh-Ng. You also alleged that [REDACTED] posted his business card on breakroom bulletin boards at Kaiser Permanente near the Lokahi slate campaign materials apparently as a means of supporting the Lokahi slate. As stated above, section 401(g) prohibits the use of union and employer funds to promote a candidate for union office. With regard to the posting of [REDACTED] business card, the Department's investigation found no evidence of campaigning. [REDACTED] did not

intentionally post his business card next to the Lokahi slate's campaign material, but even if he did, this would not constitute campaigning or promoting candidates in the election. There was no violation related to the posting of [REDACTED] business card.

With regard to the phone call to member [REDACTED], the Department's investigation disclosed that [REDACTED] and [REDACTED] are close family friends and that [REDACTED] occasionally calls to check on [REDACTED]. [REDACTED] explained that he stated to [REDACTED] that Trinh-Ng did not have the experience to be President. [REDACTED] was uncomfortable talking about it and changed the subject. [REDACTED] stated that he did not call any other HNHP members regarding the election, and that he was not being paid by HNHP at the time he called [REDACTED]. Additionally, the margin of victory in the election for President was 49 votes in favor of Carvalho-Luke. As such, to the extent that [REDACTED] call to [REDACTED] may have violated section 401(g), it could not have affected the outcome the election.

You alleged that Carvalho-Luke and incumbent Treasurer Wolfgang Tarnowski violated section 401(g) of the LMRDA by using employer funds to promote their candidacies. Specifically, you alleged that Carvalho-Luke and Tarnowski campaigned to members while on official time, that is, while being paid by the employer. The Kaiser Permanente Solicitation Policy states that solicitation is allowed in breakrooms but not in "Immediate Patient Care" areas, which are defined as "any area where patient care takes place and/or may be disrupted."

First, you alleged that Carvalho-Luke campaigned at the Kaiser Permanente facility by passing out flyers, trinkets, and candy. The investigation disclosed that Carvalho-Luke campaigned on October 26, 2022 in the afternoon, on October 28 at 3:30 p.m., and on October 30 at 6:00 a.m. The Department's review of payroll data disclosed that Carvalho-Luke worked on October 26 from 6:00 a.m. to 3:00 p.m., on October 28 from 10:00 a.m. to 12:00 p.m., and did not work on October 30. Additionally, witness testimony disclosed that Carvalho-Luke was not seen distributing campaign materials or promotional items outside of the Kaiser Permanente breakrooms. Second, you alleged that, on October 27, 2022, Tarnowski was working on Team Lokahi campaign flyers while at the Kaiser Permanente facility and on employer time. Tarnowski was observed working on flyers between approximately 12:30 p.m. and 4:00 p.m. The Department's review of payroll data disclosed that Tarnowski worked on October 27 from 7:09 p.m. to 7:56 a.m. and was therefore not working at the time of his alleged campaign activities. Accordingly, there was no violation.

You alleged that the Union violated section 401(g) of the LMRDA when at a stewards' meeting, Carvalho-Luke spoke about her own accomplishments and allowed an

election committee member to boast about Carvalho-Luke, but did not allow opposition candidate Trinh-Ng to speak. The investigation disclosed that, at regular stewards' meetings, Trinh-Ng would normally update those in attendance on the eight committees on which she participated. However, the Department's investigation revealed that Trinh-Ng did not attend the meeting at issue. During this stewards' meeting at issue, Carvalho-Luke conducted a four-hour training where she talked for much of the time. During the meeting, Carvalho-Luke led a "showing of gratitude" where members were put into pairs and said kind things about each other, including Carvalho-Luke. Carvalho-Luke's training and "showing of gratitude" during the stewards' meeting do not constitute campaigning, and Trinh-Ng was not prevented from speaking at the meeting because she was not present. Accordingly, there was no violation.

You next alleged that the Union failed to provide adequate safeguards by calling an urgent meeting to amend and ratify certain election provisions, causing confusion amongst the members. Section 401(c) requires that unions provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Further, the Department's regulations state that a labor organization has wide discretion regarding the conduct of its election, circumscribed by a general rule of fairness. 29 C.F.R. § 451.110(a). The investigation disclosed that, after ballots had been mailed, a Zoom meeting titled "Special Urgent Executive Board Meeting" was called on November 12, 2022. The purpose of the meeting was to ratify six motions proposed at a previous Executive Board meeting held on September 10, 2022. Another email was sent on November 13, 2022, stating that the meeting was canceled because there was no quorum.

Article III, Section E of the HNHP Constitution states that, "[t]he Board of Directors may convene for special meetings. A Special Meeting may be called by the President or by five (5) members of the total Board of Directors by written request to the Secretary. The Special Meeting must convene no later than ten (10) days following receipt by the Secretary of such request." Additionally, Article III, Section F permits such meetings to be held digitally via teleconference, and that a quorum of at least two-thirds of the Board of Directors must be present. Accordingly, the Union's actions when calling and ultimately cancelling the meeting were consistent with its governing documents. As no meeting occurred, no amendments to the HNHP Constitution were made. The Department's investigation did not reveal any evidence that members were confused or that the Union's actions in any way impacted the officer election. There was no violation.

You alleged that the Union failed to provide adequate safeguards by including confusing slate voting instructions on the election ballot. With regard to voting instructions and slate voting, the Department's regulations provide that a union may employ slate ballot voting so long as slate balloting is permissible under the union's constitution and bylaws. 29 C.F.R. § 452.122. The regulations further state, however, that there must be a provision for the voter to choose among individual candidates if they do not wish to vote for an entire slate. *Id.* The voting instructions should specifically inform the voter that they need not vote for an entire slate. *Id.*

The Department's investigation disclosed that, although several members testified that they were confused by the ballot instructions, no ballots were voided due to the voter's failure to comply with the slate balloting instructions. The Union's voting instructions provided adequate instructions for properly casting ballots in the election. Specifically, the instructions read, in bold, "**YOU MAY VOTE FOR INDIVIDUAL CANDIDATES OR YOU MAY VOTE FOR A SLATE OF CANDIDATES.**" Additionally, the instructions included the following:

USE THIS SIDE OF THE BALLOT IF YOU WANT TO VOTE FOR A SLATE OF CANDIDATES. If you vote for a "slate" of candidates, you should not vote for individual candidates, unless the slate does not have candidates running for every office. In that case, you should vote for an individual candidate only for the office where there is no candidate running on the slate. If you vote for individual candidates, you should not vote for a "slate" of candidates.

The only ballot that contained votes both for the slate and individuals on the opposite side was counted because the slate did not have candidates running for those offices where the voter selected individual candidates. Thus, voters were provided adequate instructions for filling out their ballots and adequate notice that failure to comply with the voting instructions would result in their ballot being voided. Accordingly, there was no violation.

You alleged that the incumbent and opponent slates were treated differently throughout the election process. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for office. 29 U.S.C. § 481(c). Specifically, you alleged that the Team Lokahi slate had unfair access to ballot-printing information, allowing them to mail their campaign literature at the same time that ballots were mailed. The investigation disclosed that candidates were notified that a candidate package containing information about campaign mailing was available for download on the

Union's website. Every candidate had the same information with regard to how and when to conduct a campaign mailing and each were given the opportunity to conduct a mailing. Candidate Trinh-Ng testified that, although she did not notice the downloadable package contained instructions on having Service Printers Hawaii (SPH) help with mailing campaign materials, she would not have conducted a mailing because it was too expensive. Accordingly, there was no violation.

You also alleged disparate candidate treatment in that Carvalho-Luke removed Trinh-Ng's access to the Stewards Communications List during the election, preventing her from performing her Vice President duties. The investigation disclosed no evidence that Carvalho-Luke revoked Trinh-Ng's access to the Stewards Communications List. Trinh-Ng testified that she lost access to the list at some point during the election, but she failed to raise her loss of access to anyone's attention. There is no evidence to suggest that Carvalho-Luke or the Union revoked Trinh-Ng's access to the list at issue. Accordingly, there was no violation.

You alleged that the Union failed to follow the HNHP Constitution and Bylaws during the election by allowing ineligible members to vote. Section 401(e) of the LMRDA requires a union to conduct its election in accordance with its constitution and bylaws. 29 U.S.C. § 481(e). Specifically, you alleged that voting for both the Home Health and Physical Therapy Executive Board positions should have been restricted to their respective bargaining unit members and not opened to an at-large vote by the entire membership. The Department's investigation found that the HNHP Constitution is silent on the issue of at-large voting for these director positions. The Department's regulations provide that the Department will defer to the union's interpretation and application of its own governing documents unless the interpretation is clearly unreasonable. *See* 29 C.F.R. § 452.3. Given that the Union's governing documents are silent on this issue, the Union's decision to make these at-large positions was not clearly unreasonable and did not violate the LMRDA.

You next alleged that the Election Committee unilaterally decided to allow slate voting on the ballot without approval from the Board of Directors, in violation of the HNHP Constitution, and section 401(e) of the LMRDA. You further stated that an invalid version of the HNHP Constitution, which allowed for slate voting, was posted on the Union's website during the election. The investigation disclosed that the HNHP Constitution is silent on the issue of slate voting, and that Article VII, Section 6.A of the Constitution states the following:

The Election Committee (EC) shall oversee all facets of all elections and balloting in accordance with the HNHP Constitution and Federal Law. The duties of the EC shall include but not be limited to: (1) supervising election and balloting procedures; (2) determining eligibility of nominees; (3) overseeing the preparation of ballots; (4) determining ballot validity; and (5) certifying results of the election to the Secretary, with the exception of the contract ratification procedures provided in Article VIII Section 1 of this Constitution.

Although records indicate that some Executive Board members desired to hold a meeting in order to vote against slate voting and may have drafted an amendment to the Constitution that would have expressly prohibited slate voting, the controlling version of the HNHP Constitution explicitly leaves “all facets of all elections and balloting” within the oversight of the Election Committee. With no express prohibition against slate voting, the HNHP Constitution provides the Election Committee the discretion to implement such an election decision. As stated above, the Department will defer to the union’s interpretation and application of its governing documents unless the union is clearly unreasonable. *See* 29 C.F.R. § 452.3 The Election Committee’s decision was not clearly unreasonable. Accordingly, the Election Committee did not violate the HNHP Constitution by implementing slate voting in the 2022 HNHP election and did not violate the LMRDA.


For the reasons set forth above, the Department has concluded that no violation of the Act occurred that may have affected the outcome of the election in connection with your allegations. Accordingly, I have closed the file on this matter.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Terilyn Carvalho-Luke, President
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