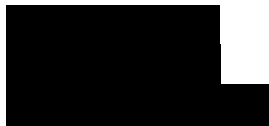




December 22, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on October 2, 2022, with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act), 29 U.S.C. §§ 481-483, occurred in connection with the election of officers of United Federation of Teachers, Local 2 (Local 2 or Union), conducted on May 10, 2022.

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 the Union improperly used union funds, equipment, supplies, or time to campaign. Specifically, you alleged that the Unity Caucus (UC) candidates and supporters, which was comprised of incumbent officers, used the Union's social media accounts and images to promote its candidates. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in union officer elections. 29 U.S.C. § 481(g). In determining whether union communications promote a person's candidacy, courts evaluate the communication's tone, timing and content. The investigation confirmed that union resources were used, including the Union's official social media accounts named "UFT" on Twitter, "United Federation of Teachers" on LinkedIn, and "UFTNY" on Facebook and Instagram. The tone of the postings did not promote the incumbent officers and was not critical of any potential opposition nominees. The content of the postings did not encourage or endorse the reelection of the incumbent officers. Thus, the social media postings did not constitute campaign material. For example, a video posted to the Union's UFTNY Facebook account on January 28, 2021, highlighted information about winning a grievance that was in process for four years; its contents were not relevant to the election and did not promote or endorse any candidate. Consequently, union resources were not unlawfully used for campaign purposes and the LMRDA was not violated.

You next alleged that Union representatives, Winnie Thompson, Dana Falciglia and Servia Silva, unlawfully campaigned using union resources when they distributed campaign literature in school buildings, during Union meetings, and using Union email addresses. The Department's investigation did not reveal any instances of these three individuals or any Union representatives distributing campaign literature in school buildings, during Union meetings, or through Union emails during union time, though one representative acknowledged distributing campaign literature at one school while on her personal time. As for the alleged campaign email from Winnie Thompson on March 17, 2022, that email merely indicated that campaign flyers would be dropped off at schools; however, the email itself did not contain any campaign content or material. There was no violation of the Act.

You alleged that the Union disparately treated candidates when it allowed the UC to distribute campaign literature on union time while denying other slates the same opportunity. Section 401(c) of the Act prohibits disparate treatment of candidates for union office. 29 U.S.C. § 481(c). Specifically, you alleged that the Union allowed UC candidates to campaign at a Union-sponsored happy hour on March 25, 2022, while preventing United for Change (UFC) candidates Peter Zucker and Christine Gavin from passing out campaign literature at the same event. UFC candidates Dan Leviatin and Christine Gavin admitted to distributing flyers at the event. An audio recording of the event also indicated that both UFC and UC candidates campaigned at the event. Thus, there was no disparate treatment of candidates at the happy hour. There was no violation of the Act.

Next, you alleged that the Union failed to comply with a reasonable request to distribute campaign literature. Section 401(c) requires that unions must comply with reasonable requests to distribute campaign literature. 29 U.S.C. § 481(c). Specifically, you alleged that the Union denied you and the UFC slate access to school mailboxes at about 39 schools to distribute campaign literature. The investigation disclosed that the Union did not deny any request to distribute campaign literature. However, twelve of the schools you visited to distribute campaign literature initially resisted permitting your campaign volunteers access to their campuses to campaign. The investigation revealed that most of these schools granted access to your volunteers at a later date or gave volunteers the option to return later to distribute flyers in staff mailboxes or to leave flyers with school personnel to distribute. Further, three of the twelve schools were found to have restricted access to school grounds due to safety reasons such as a shooting or shelter-in-place restrictions. Nonetheless, the Department's investigation did not disclose any instances of the Union interfering with any candidate's attempt to access school grounds for the purposes of distributing campaign literature. Rather, the Union instructed candidates to carry to schools a Department of Education Chancellor's memo regarding access to school mailboxes to distribute campaign literature, and to contact Election Committee (EC) Chair Carl Cambria if they had problems accessing a

particular school. Amanda Vender, the UFC representative to the Election Committee, also emailed EC Chair Cambria when she was notified that a UFC volunteer was unable to access a school. Vender attested that EC Chair Cambria contacted all the schools about access for mailbox flyers upon Vender's notification. There was no violation of the LMRDA.

You also alleged that the Union unlawfully permitted Chapter Leader (CL) Damian Jones to: a) ask members to bring their voted ballots to work instead of mailing them to the Union, and b) send members a campaign email showing them how to vote with an "X" in the box for the UC. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. Here, CL Jones denied sending campaign emails or collecting ballots. The investigation disclosed no evidence that CL Jones sent the alleged emails or collected ballots. Likewise, there was no evidence that any members submitted a voted ballot to a CL. There was no violation of the Act.

You next alleged that the Union disparately treated candidates when it allowed CLs to campaign for UC candidates at schools while denying other candidates the same opportunity. Specifically, you alleged that the Union permitted some of its CLs to send emails and hang flyers in public view at schools in support of UC candidates but not UFC candidates. Although two CLs informed the Department that they sent campaign emails for UC candidates using their personal email addresses, this activity is permissible because CLs are neither officers nor employees of the Union, and thus union resources were not used to campaign. *See* 29 C.F.R. § 452.76. There was also insufficient evidence that any CL allowed flyers to be posted on school bulletin boards for some candidates and not others. The Department's investigation did not reveal any evidence that the Union influenced CLs to campaign for or against any candidate. There was no violation of the Act.

Next, you alleged that the Union failed to comply with a reasonable request to distribute campaign literature when it failed to communicate campaign literature procedures and improperly delayed responding to a request for mass emailing on February 7, 2022. Section 401(c) requires that unions must comply with reasonable requests to distribute campaign literature. 29 U.S.C. § 481(c). Labor organizations are not required to distribute campaign literature free of charge but must treat each candidate equally with respect to distribution expenses. 29 C.F.R. § 452.69. The investigation confirmed that the Union communicated campaign literature procedures to candidates throughout the election process. On December 9, 2021, you attended an Election Committee meeting that discussed the election calendar and distribution of campaign literature. The election rules and nomination notice, which contained provisions regarding campaign literature distribution, were posted to the Union's

website on December 13, 2021, and mailed to the membership on December 16, 2021. Campaign rules were posted on the Union's website and emailed to CLs on April 11, 2022, so that these rules could be posted on worksite bulletin boards.

On February 7, 2022, candidate Christine Gavin requested a mass campaign emailing for the UFC slate. The Union then sought information from a communications services vendor as well as its internal marketing staff to calculate a price quote on a mass email. On or about March 30, 2022, the Union President and General Counsel met with candidates, including representatives from both slates, to discuss campaign email distribution through the vendor. The Union advised that the \$4,200 cost of mass emails would be divided between candidates who wished to participate. Ultimately, no candidate purchased a mass email distribution. On May 4, 2022, the Union distributed campaign literature – for free on behalf of all candidates – by emailing election information to the membership that contained internet links to each candidate or slate's campaign literature. Thus, all candidates were treated equally with regard to campaign literature distribution. There was no violation of the LMRDA.

Next, you alleged that union time and resources were used to campaign when a CL distributed UC slate campaign literature from a Union-branded bag. The investigation disclosed that the bags were available to all members either as giveaways for non-election purposes (e.g., disaster relief) or to be purchased online. Further, CLs are neither officers nor employees of the Union. Thus, no union time or resources were used. There was no violation of the Act.

You further alleged that Election Committee members unlawfully used union resources for UC slate campaigning. Section 401(g) of the LMRDA prohibits using union resources for campaigning but acknowledges that union resources may be used for "other expenses necessary for the holding of an election." 29 U.S.C. § 481(g). Specifically, you alleged that Election Committee members used their official Union email addresses for UC slate business and to email each other. You did not provide any evidence that Election Committee members used their Union email address to promote the candidacy of any member. Election Committee members' use of their official Union email addresses for non-campaigning election purposes is permissible under the LMRDA. There was no violation of the Act.

You also alleged that the Union president unlawfully used union time to campaign for incumbent candidates. Specifically, you alleged that the incumbent President campaigned during delegate assembly (DA) meetings on February 16, March 23, and April 12, 2022, by saying the UC slate's slogan, increasing the length of president's reports, and refusing to recognize a UFC candidate during a motion period. The Department's review of audio recordings of these DA meetings revealed that the President did not say the slogan "We Do the Work," nor did the President's reports

highlight his accomplishments. Thus, the content and tone of the President's remarks did not constitute campaigning. In contrast, the UFC candidate for president appeared to campaign by announcing herself as the "leader of the opposition - United for Change caucus" during the February 16, 2022, DA meeting without speaking about a motion; she was ruled out of order for campaigning. There was no violation of the Act.

Next, you alleged that the Union disparately treated candidates in the order and allocation of campaign ad space in the Union newspaper. Specifically, you alleged that the Union improperly gave the We CU Caucus a two-page spread in *The New York Teacher* union newspaper, and that they should not have appeared last amongst the campaign ads. Meeting minutes show that pursuant to a unanimous motion at the February 2, 2022, Election Committee meeting, the UC and UFC committee members flipped a coin to determine whose ad would appear in the February and April 2022 issues of *The New York Teacher*, with any additional caucuses appearing after those two slates. Nobody objected to this motion. The UC slate won the coin toss and chose to appear first in the April issue, which meant that the UFC slate would appear first in the February issue. The We CU caucus did not qualify for the ballot until after this meeting and thus their ad appeared last in the April issue.

You contended that the We CU Caucus was not entitled to a two-page ad because it was not a full caucus, having less than forty candidates. The investigation disclosed that the Union's past practice was to give two-page ads to caucuses or slates and quarter-page ads to individual candidates. Because the We CU Caucus had six candidates, giving each We CU Caucus candidate a quarter-page ad would have taken almost as much space as two pages. The Election Committee decided to treat the We CU Caucus as a full slate and to give it a two-page ad like any other slate. There was no violation of the Act.

You further alleged that Union resources were unlawfully used to campaign on behalf of incumbent candidates in the form of the Union's newspaper. Specifically, you alleged that the Union promoted 49 candidates in 19 articles in the February and April 2022 issues of *The New York Teacher*. The Department's review of these articles indicated that their tone did not promote the incumbent officers and was not critical of any potential opposition nominees. The content of the articles did not encourage or endorse the reelection of the incumbent officers. The articles also did not contain slate names or candidate statuses. Thus, the articles did not constitute campaign material. Consequently, union resources were not unlawfully used in the Union's newspaper. There was no violation of the LMRDA.

Next, you alleged that the Union failed to provide adequate safeguards to ensure a fair election by failing to clearly establish election rules at the outset of the election. Specifically, you alleged that the Union failed to publish election rules until April 11,

2022. As previously mentioned, the election rules and nomination notice were posted to the Union's website on December 13, 2021, and mailed to the membership on December 16, 2021. Election and campaign rule reminders were emailed on January 31 and April 11, 2022. There was no violation of the Act.

You further alleged that members were unlawfully denied the right to vote in the election. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e). This requires that members be given a reasonable opportunity to vote. 29 C.F.R. § 452.94. Specifically, you alleged that the Union unduly gave members less time to request replacement ballots than in previous elections. The investigation found that the Election Committee, in fact, gave more time to request replacement ballots than in previous elections. Ballots were mailed to the membership on April 8, 2022. Members could request replacement ballots from the American Arbitration Association (AAA) by phone, email, or in-person between April 15 and April 25, 2022. Members were also permitted to appear in-person to receive a duplicate ballot and vote at the AAA headquarters on April 29, 2022. Thus, members had up to fourteen days to request a replacement ballot. In the 2016 and 2019 elections, respectively, members only had a seven to eight-day period to request replacement ballots and could only make such requests in-person. There was no violation of the LMRDA.

Finally, you alleged that the Union placed improper restrictions on observers during the ballot tally. Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election include the right of any candidate to have an observer at the counting of the ballots. 29 U.S.C. § 481(c). Specifically, you alleged that the Union failed to provide observers with an adequate view of the ballot tally, counting the ballots too far from the observers and only providing two monitors to view the ballots. The investigation determined that the AAA scanners were situated in the middle of the room, and when some observers stated that they could not see the count, the Election Committee Chair added monitors in plain view of the observers so that they could watch the ballots being scanned. Afterward, no further concerns were raised with the Union or AAA about observers' ability to view the ballot tally. Further, the investigation found no evidence of fraud or misconduct during the counting of the ballots. There was no violation of the Act.

In sum, as a result of the investigation, the Department has concluded that there was no violation of the Act that may have affected the outcome of the election in connection with your allegations that were properly filed. Section 402 of the LMRDA requires a union member to exhaust available internal union remedies prior to filing a complaint with the Secretary of Labor. *See* 29 U.S.C. § 482(a). Accordingly, allegations in your complaint to the Department not addressed in this Statement of Reasons were not

investigated because these allegations were not properly exhausted. I have therefore closed the file on this matter.

Sincerely,

[REDACTED]

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Chief, Division of Enforcement

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