



June 1, 2010

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on July 18, 2008. In the complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers completed by the American Postal Workers Union, California Area Local 4635 (union), on March 31, 2008.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that no violation of the Act occurred that may have affected the outcome of the election. Following is an explanation of this finding.

You alleged that the union failed to follow its constitution when it conducted a new election prior to the completion of the regularly scheduled election. The investigation found no violation regarding this allegation. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union must conduct an election of union officers in accordance its constitution and bylaws. The investigation disclosed that the union's constitution is silent regarding the basis or the procedure for conducting a remedial election of union officers. In any event, the investigation disclosed that the election committee reran the regularly scheduled election because the private company that printed, mailed and tallied the ballots mailed the wrong ballot to some members. Neither the union's constitution nor the Act was violated.

You alleged that the election committee reran the regularly scheduled election to afford the losing incumbent candidates a second opportunity to win. The investigation found no violation regarding this allegation. The Department will not seek to reverse a union's remedial decision to hold a new election, even if the evidence could be viewed as insufficient to support a decision by the Department to sue to overturn the original

election, unless it is apparent that the decision was based on the application of a rule that violates the Act, the decision was made in bad faith (for example, in order to afford losing candidates a second opportunity to win), or the decision is unreasonable or otherwise contrary to the principles of union democracy embodied in the statute. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. See 29 C.F.R. § 451.110. The investigation substantiated the union's findings that adequate safeguards were not ensured during the regularly scheduled election in that some members received the wrong ballots. As a result, the union conducted a new election to remedy that violation. The Act was not violated.

You alleged that members were confused when they received the ballot for the rerun election and did not vote that ballot because they already had voted in the regularly scheduled election. The investigation found no violation regarding the alleged confusion. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation revealed that the election committee stopped the regularly scheduled election, mailed out new ballots, and rescheduled the vote tally because the election service hired by the union mailed the wrong ballot to some members. The union, which had mailed the ballots for the regularly scheduled to members on February 29, 2008 for a March 25, 2008 tally, set the new ballot mailing date as March 15, 2008, and the ballot tally date as March 31, 2008. The union mailed notice of this change to the members on March 13, 2008, and members were aware that a rerun election was underway prior to receiving the new ballots. The instructions were clear and the investigation did not disclose that there was significant confusion among the membership regarding the new ballot for the rerun election or that that members did not vote in that election as a result of any such confusion. The Act was not violated.

You alleged that the union should have completed the regularly scheduled election and then relied on the union's internal grievance process to address issues regarding members being mailed the wrong ballot. The investigation found no violation regarding this allegation. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. Thus, a union's conduct of an election of union officers must be circumscribed by a general rule of fairness. See 29 C.F.R. § 452.110. The investigation substantiated that such fairness was lacking in the regular election in that members received the wrong ballots and a member of your slate collected and had unsupervised possession of voted ballots. Thus, the union's decision to conduct a new election was not unreasonable or otherwise contrary to the principles of union democracy embodied in the statute. The Act was not violated.

You alleged and the investigation substantiated that Article VIII, section 20 of the union's constitution requires the executive board to authorize all contracts and purchases exceeding \$500.00. You also alleged that the executive board never voted on the funding for the rerun election. The investigation found no violation regarding this allegation. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union must

conduct an election of union officers in accordance its constitution and bylaws. The investigation disclosed that the cost the union incurred in conducting the rerun election was absorbed by the private company that conducted the ballot mailing for the regularly scheduled election. Thus, the rerun election was conducted at no additional cost to the union. Neither the union's constitution nor the Act was violated.

You alleged that you were denied the right to inspect the membership mailing list within 30 days of the election. Section 401(c) of the Act, 29 U.S.C. § 481(c), provides in part, "[e]very bona fide candidate shall have the right, once within 30 days prior to an election . . . in which he is a candidate to inspect a list containing the names and last known addresses of all members of the labor organization" When, as in this case, a mail ballot system is employed under which ballots are returnable as soon as received by members, the right to inspect a list must be accorded within the 30-day period prior to the mailing of the ballots to members. See 29 C.F.R. § 452.72. Here, members first learned that the union would conduct a second election and that the ballots for that election would be mailed on March 15 when they received the notice announcing the rerun election. The announcement was mailed to members on March 13, 2008. After you received the announcement, you contacted the union and requested to inspect the membership mailing list. You were not permitted to do so because the ballots had already been mailed out when you made your request. However, any delay in your request was due to the union's failure to timely notify you of the date of the ballot mailing. Thus, the Act was violated in that you were not accorded the right to inspect the list within the 30-day period prior to the mailing of the ballots to members. However, section 402(c) of the Act, 29 U.S.C. § 482(c), provides that an election will only be overturned where a violation affected the outcome of the election. The investigation disclosed that the membership list was accurate, all eligible members were mailed a ballot, and only the ballots of eligible voters were include in the vote tally. No violation occurred that may have affected the election outcome.

You also alleged that you were not able to comply with the election and campaign rules that were mailed to members on March 14 because you did not receive the rules until after the ballots had already been mailed. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation substantiated that adequate safeguards were not ensured during the election, in that members did not receive the election and campaign rules until after the ballots were mailed. In this regard, the adequate safeguards provision of section 401(c) of the Act was violated. However, the investigation disclosed that ballots were mailed to all eligible members, only the ballots of eligible voters were included in the vote tally, and there is no evidence that members failed to vote because of the delay in mailing the election rules. No violation occurred that may have affected the outcome of the election.

You alleged that the union failed to provide adequate advance notice of the rerun election. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides, "[n]ot less than fifteen days prior to the election notice thereof shall be mailed to each member at his last

known home address.” See also 29 C.F.R. § 452.102. The investigation disclosed that the notice announcing the new ballot mailing and the new tally date was mailed to the last known home addresses of members by express mailed on March 13, 2008, the ballot packages containing the election notice were mailed on March 15, and the voted ballots were tallied on March 31, 2008. Thus, the time within which the election notice was mailed was in compliance with the statutory requirement. The Act was not violated.

You alleged that members did not have sufficient time to vote the ballot for the rerun election. The investigation found no violation regarding the time within which members could vote their ballots. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation showed that the ballots for the rerun election were mailed on March 15 and that they were tallied on March 31, 2008, leaving more than 15 days from the date of the ballot mailing to receive, vote, and return their voted ballots. The Act was not violated.

In connection with the March 15 ballot mailing, you further alleged that the mailing of the ballots did not comply with Article XII, section 8 of the union’s constitution. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union must conduct an election of union officers in accordance its constitution and bylaws. That constitutional provision requires ballots to be mailed in time to permit, at a minimum, 15-days notice of the election before the date that voted ballots are due back to the union. The investigation disclosed that the ballot packages were mailed to members on March 15 and the ballot tallied was conducted on March 31. The ballots were sent by regular mail. Thus, it is unlikely that members received the ballots at least 15 days prior to the March 31 tally. Under these circumstances, the union violated section 401(e) of the Act and its constitution in failing to comply with the ballot mailing requirement in its constitution. However, the investigation did not disclose that any member did not vote in the election because the member received the ballot less than 15 days prior to the ballot return date. No violation occurred that may have affected the election outcome.

You alleged that the union denied some candidates the right to observe the ballot tally. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election, including the right of each candidate to have an observer present at the ballot tally. The investigation disclosed that you received the election and campaign rules on March 14, 2008, which informed candidates that the ballot tally would be conducted on March 31, 2008, at the union’s office and requested candidates to inform the election committee by mail of their observers no later than 72 hours prior to the tally. Instead of notifying the union by mail, you gave your notice to an election committee member, who subsequently faxed the notice to the union office. The notice indicated that you and other members would be attending the ballot tally. The election committee member stated during the investigation that you were denied entry to the ballot tally for failing to inform the union by mail that you would be attending the tally. It is reasonable for a union to require observers to notify the union by mail of the observers’ intent to attend the ballot tally to avoid overcrowding in the tally room and to ensure that observers can adequately witness the tallying process.

However, in this case, the investigation disclosed that the union arbitrarily enforced the rule requiring observers to provide advance notice to the union by mail of their intent to observe the tallying process. The investigation did not disclose that there was overcrowding or similar conditions in the tally room during the tally process. Further, the tally room could have accommodated you and other observers who were prevented from entering the tally room to observe the tallying process. Thus, the LMRDA was violated when adequate safeguards were not ensured during the election in that you and several other members were denied entry to the tally room merely because you had submitted your notice to a union official by hand rather than mailing that notice to the union. However, the investigation disclosed that only the ballots of eligible voters were included in the vote tally. There is no evidence of ballot tampering or similar election impropriety. Therefore, no violation occurred that may have affected the outcome of the election.

Finally, you alleged that the candidates on your slate did not have an opportunity to observe the preparation and mailing of the ballots because such candidates did not receive notice of the ballot mailing until the day before the mailing and, due to prior commitments, you and members of your slate were not able to make arrangements to observe these phases of the election process. You also alleged that two other members of your slate never received the notice. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the preparation and mailing of the ballots. See 29 C.F.R. § 452.107(c). The investigation disclosed that adequate safeguards were not ensured during the election, in that the union failed to provide your slate with timely notice of the preparation and mailing of the ballots, thereby denying you an opportunity to observe these phases of the election process. However, the investigation disclosed that each eligible member was mailed a ballot. No violation occurred that may have affected the election outcome.

For the reasons set forth above, it is concluded that there was no violation of the Act that may have affected the outcome of the election, and I have closed the file on this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement
Office of Labor-Management Standards

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