



June 28, 2011

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]

This Statement of Reasons is in response to your January 21, 2011 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers conducted by the Committee for Fair and Equal Representation (CFER) on December 18, 2010.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation occurred which may have affected the outcome of the election.

You alleged that the union failed to provide you with a mailing list that only included members in good standing. The investigation revealed that the union constitution allowed all candidates to request a copy of the "union membership list," not a list of members in good standing. The LMRDA does not give union members a right to a list of eligible members. The LMRDA provides candidates for union office the right to inspect the union membership list once within 30 days of the election. 29 U.S.C. § 481(c).

The LMRDA does not require that the list of members available for inspection be one that includes only eligible members. Here, the investigation revealed that the union provided you with the "union membership list." It provided you with the same list that it provided to other candidates and the same list used by the union for mailing the ballots. With respect to access to the list of union members for campaign purposes, the LMRDA requires that the union refrain from discrimination among candidates and requires that a union comply with a candidate's reasonable request to distribute

campaign literature. 29 U.S.C. § 481(c). A union discriminates among candidates with respect to a list of members if the union provides any candidate with a more accurate list than it provides to other candidates. The union can not be said to have denied a reasonable request for the mailing list that contained only members in good standing as no such list existed. The union is not required to create a list in order to comply with campaign literature distribution requests. The Department determined that your slate was treated no differently than the incumbent slate or the election committee and the union did not violate the LMRDA when it denied your request to create a new membership mailing list.

In a related allegation, you asserted that the union failed to obtain an updated list of members 14 days prior to mailing the ballots, as required by the union's bylaws. Section 401(e) of the LMRDA requires that unions must conduct election in accordance with the constitution and bylaws. Article 1(C) of the CFER Bylaws requires that the union contact all employers holding contracts with CFER to request updated employee lists 14 days prior to mailing the ballots. The Department's investigation determined that the union made such a request to each employer 23 days before the ballots were mailed, and received the updated employee lists from the employers 18 days prior to mailing the ballots. There was no violation.

You also alleged that the union failed to follow its bylaws by improperly permitting unopposed candidate for Recording Secretary, Reginald Gilbert, to assist the election committee with the preparation and mailing of the ballots in violation of section 401(e). Article 1, Section 1(A) of the CFER Bylaws states that if a nominee for office is unopposed, then the position need not be included on the election ballot. And, while Article 1, Section 1(B) of the CFER Bylaws prohibits candidates from serving on the election committee, the Bylaws are silent with respect to officers elected by acclamation.

The Department's investigation determined that Recording Secretary Gilbert was elected by acclamation. Gilbert was not a nominee and was not included on the ballot. Accordingly, Gilbert's assisting the election committee during the election process did not violate CFER's Bylaws and did not violate the LMRDA. Further, there was no violation of the LMRDA affecting the outcome of the election that was attributable to Gilbert's participation in the election.

You also alleged that Election Committee Chair, [REDACTED] improperly gave the keys to the post office box for the returned ballots to Reginald Gilbert in violation of section 401(c) of the Act. Section 401(c) requires, in pertinent part, that a union provide adequate safeguards to insure a fair election. See also 29 C.F.R. § 452.66. The Department's investigation found that [REDACTED] rented two post office boxes for the election, one for voted ballots and one for undeliverable ballots, and that the keys were issued to King. The application for use of the post office boxes granted access to the boxes without a key to four election committee members: [REDACTED] [REDACTED]

██████████ and ██████████ The Department's investigation revealed no evidence that ██████████ gave his keys to anyone, or that Gilbert improperly accessed the post office boxes. Accordingly, there was no violation of the LMRDA.

You alleged that the Election Committee Chair, ██████████ concealed the names of the election committee members who you assert were biased against your slate in violation of the adequate safeguards provision of section 401(c) of the LMRDA. The Department's investigation found that due to work schedules and other conflicts, it was difficult for the election committee to complete all tasks together. As such, there were different individuals on the election committee that assisted with certain tasks and not with others. Although you may not have been provided with the names of all the election committee members, this is not required by either the bylaws or the LMRDA. More importantly, there is no evidence that an effort was made to conceal names or that any election committee member engaged in improper activities during the election period. There was no violation.

You also alleged that the union counted ballots cast by terminated members and counted more than one ballot for some members in violation of section 401(c) and section 401(e) of the LMRDA. Specifically, section 401(e) requires that every member in good standing shall have the right to vote in the union election.

The Department conducted an extensive review of the election records and found that the union properly determined the eligibility of terminated members, as no ballot cast by a terminated member was counted. However, the Department did find that the union incorrectly declared one member ineligible and incorrectly voided his ballot. The Department also determined that six member were mailed two ballots because these members appeared on two employer lists due to recent transfers. Two of these members returned both ballots, but the union only counted one ballot for each member at the tally. The Department further determined that the union improperly voided ballots for three members who recently transferred and did not have a break in dues payment. These three members were eligible and their ballots should have been included in the tally.

Finally, the Department's review of the election records revealed that the union improperly permitted two additional transfers to vote. These two members transferred from management back to guard status, but did not resubmit dues authorization cards, were delinquent in their dues payment, and thus ineligible to vote.

Given these investigative findings, the Department determined that the union violated section 401(e) of the LMRDA by permitting two ineligible members to vote in the election and by failing to count the votes of four members in good standing who were eligible to vote. Thus, these violations may have affected a total of six votes. However, section 402(c)(2) of the LMRDA provides that an election will only be overturned where

a violation may have affected the outcome of the election. The smallest margin of victory in this election was for the office of Vice President at Large, and this office was decided by 31 votes. Accordingly, these violations would not have affected the outcome of the election.

You also alleged that the union used conflicting membership lists to check eligibility at the tally in violation of section 401(c) of the LMRDA. The Department found that during the election tally, one of the members of the election committee lost his place on the eligibility list as another election committee member was reading off the names of voters. The two election committee members briefly stopped this process so that they could review their work, but once the confusion was resolved the members immediately proceeded with the eligibility check. The Department's recount of the election results disclosed a change of one vote, in favor of the winner, for the position of Treasurer. This is not a violation of the adequate safeguards provision, and even if it was, the Department's recount found that the union's tally was only incorrect with respect to one vote and this vote increased the margin of victory of the winning candidate for Treasurer.

You also alleged that the union failed to follow its bylaws in violation of section 401(e) of the LMRDA, because members were not informed of their membership status by mail within 30 days of the election. You were unable to provide the specific bylaw provision to which you referred to in your protest. The Department reviewed the CFER Bylaws and determined the union's bylaws do not contain a requirement that the union must inform individual members of their membership status by mail within 30 days of the election. Accordingly, there is no violation of the Act.

In addition to the allegations discussed above, the Department notes that you also included in your complaint one allegation which was not raised in your internal union protest, and therefore, is not properly before the Department for investigation. For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Ms. Nancy Wnuk, President
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