U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

May 9, 2011

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint filed on February 1, 2011, alleging that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the Communication Workers of America ("CWA") Local 1109 ("Local" or "Union") election held on October 21, 2010.

The Department of Labor ("Department") conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election.

You alleged that the Union failed to insure a fair election when it accepted nomination petition forms that did not identify the name of the nominee for the office sought. You alleged that the absence of the nominee's name on each page of the petition cast doubt as to whether members actually signed for the intended nominee. The Act contains a general mandate that adequate safeguards shall be provided to insure a fair election. 29 U.S.C. § 481(c). As articulated in the Department's regulations, adequate safeguards "are not required to be included in the union's constitution and bylaws, but they must be observed." 29 CFR 452.110. The Union's constitution and bylaws are silent regarding this issue but the Election Committee required in its guidelines that "each petition must name one (1) candidate for one (1) office." The Department's investigation revealed that the Union's petition form failed to include a space for the nominee's name on each page of the petition form and several forms were accepted without a name. The investigation also revealed that nominees, for both slates, solicited signatures for petitions by asking members to sign for an entire slate thus creating the potential for confusion among members. Therefore, an adequate safeguards violation occurred.

However, the LMRDA requires that an election will be set aside only where a violation may have affected the outcome of the election. See 29 U.S.C. § 482. The Department conducted a survey of petition signers which revealed that almost all members that had signed a blank petition form knew whose petition they had signed. There was no evidence to suggest that the petition forms actually caused confusion among the members. Similarly, there was no evidence that any members were misled. Thus, the violation had no effect on the outcome of the election.

You alleged that the opposing slate used the union logo in a campaign letter dated August 18, 2010 giving the appearance of an endorsement by the union. Section 401(g) provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election." 29 U.S.C. § 481(g). The use of a logo on campaign literature may constitute a violation of Section 401(g) of the LMRDA under certain circumstances. Generally, where use of the logo is not prohibited by the union, does not give the appearance of union sponsorship or endorsement and where the logo is available for use by other candidates, there is no prohibited use of union resources. The incumbent slate used a modified logo, which is not the union's own logo, as part of its campaign letter. The campaign letter does not appear to be an official union communication. The letter was clearly campaign material and as such did not create a reasonable inference whereby members would assume the union had endorsed their candidacy. Further, the union discourages, but does not prohibit use of the logo. For all of the foregoing reasons, the investigation established that the opposing slate's use of the modified logo on campaign material was not a violation of the Act.

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You alleged that the incumbent president campaigned at an employer's facility, the Verizon Third Street garage. The Act provides that "no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election." See 29 U.S.C. § 481(g). The Department's investigation revealed that the incumbent president held a short meeting at an employer's facility where he made campaign related statements bolstering his own candidacy and criticizing a candidate for the office of

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You alleged that the union's incumbent president entered into a contract with the American Arbitration Association (AAA) to conduct the election and in doing so created an appearance of impropriety. The union did hire AAA to conduct the election but there is no indication that there was an impropriety on the part of the union or incumbent president for entering into such an agreement. Locals are free to enter into contracts with election services to conduct aspects of an election. Those agreements do not violate the Act and are not inherently suspicious. Thus, no violation occurred.

You also alleged that AAA failed to inform you that members' names had been added to the membership mailing list after the official mailing had taken place. You alleged that failing to inform you of the new names prevented you from having an observer present for the mailings. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that candidates have a right to an observer at the polls, which is interpreted to include a right to observe the mailing of ballots in a mail ballot election. 29 C.F.R. § 452.107(c). The Department's investigation determined that AAA did mail ballots to 54 members whose names were added to the list after the initial ballot mailing on September 30, 2010. The missing names appear to have been the result of an employer error. Further, the evidence indicates that you were not informed that new ballots were being sent and thus, you did not have the opportunity to request to have an observer present at the mailing. Thus, there was a violation of the Act. However, there is no indication that there was any tampering with the ballots and the number of members receiving a ballot after the official mailing was too small to affect the outcome of the election, in any event. The violation had no effect on the outcome of the election.

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Sincerely,

Patricia Fox
Chief, Division of Enforcement

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You alleged that the Union failed to insure a fair election when it accepted nomination petition forms that did not identify the name of the nominee for the office sought. You alleged that the absence of the nominee's name on each page of the petition cast doubt as to whether members actually signed for the intended nominee. The Act contains a general mandate that adequate safeguards shall be provided to insure a fair election. 29 U.S.C. § 481(c). As articulated in the Department's regulations, adequate safeguards "are not required to be included in the union's constitution and bylaws, but they must be observed." 29 CFR 452.110. The Union's constitution and bylaws are silent regarding this issue but the Election Committee required in its guidelines that "each petition must name one (1) candidate for one (1) office." The Department's investigation revealed that the Union's petition form failed to include a space for the nominee's name on each page of the petition form and several forms were accepted without a name. The investigation also revealed that nominees, for both slates, solicited signatures for petitions by asking members to sign for an entire slate thus creating the potential for confusion among members. Therefore, an adequate safeguards violation occurred.

However, the LMRDA requires that an election will be set aside only where a violation may have affected the outcome of the election. See 29 U.S.C. § 482. The Department conducted a survey of petition signers which revealed that almost all members that had signed a blank petition form knew whose petition they had signed. There was no evidence to suggest that the petition forms actually caused confusion among the members. Similarly, there was no evidence that any members were misled. Thus, the violation had no effect on the outcome of the election.

You alleged that the opposing slate used the union logo in a campaign letter dated August 18, 2010 giving the appearance of an endorsement by the union. Section 401(g) provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election." 29 U.S.C. § 481(g). The use of a logo on campaign literature may constitute a violation of Section 401(g) of the LMRDA under certain circumstances. Generally, where use of the logo is not prohibited by the union, does not give the appearance of union sponsorship or endorsement and where the logo is available for use by other candidates, there is no prohibited use of union resources. The incumbent slate used a modified logo, which is not the union's own logo, as part of its campaign letter. The campaign letter does not appear to be an official union communication. The letter was clearly campaign material and as such did not create a reasonable inference whereby members would assume the union had endorsed their candidacy. Further, the union discourages, but does not prohibit use of the logo. For all of the foregoing reasons, the investigation established that the opposing slate's use of the modified logo on campaign material was not a violation of the Act.

You alleged that the opposing slate produced a leaflet which included a group photo of union officials creating the appearance of an endorsement by those officials. You also alleged that the photo was taken with a union camera. As stated above, Section 401(g) prohibits use of union funds, such as union equipment for campaign purposes. 29 U.S.C. § 481(g). The Department's investigation however revealed that the photo was taken by a candidate's personal camera demonstrating that the photo is not in fact, union property. Further, the leaflet does not identify the officials in the photo and the photo is clearly not an explicit endorsement of the slate. Therefore, no violation of the Act occurred in connection with the leaflet.

You alleged that the incumbent president campaigned at an employer's facility, the Verizon Third Street garage. The Act provides that "no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election." See 29 U.S.C. § 481(g). The Department's investigation revealed that the incumbent president held a short meeting at an employer's facility where he made campaign related statements bolstering his own candidacy and criticizing a candidate for the office of

Business Agent At Large. Thus, a violation of the Act occurred. However, the Business Agent At Large position is not a position covered by the LMRDA. Further, the Department's investigation revealed that no more than 45 members were in attendance at the meeting. The smallest margin of victory was 245 votes, nearly four times the number in attendance at the meeting. Therefore, the meeting could not have affected the outcome of the election.

You alleged that the union's incumbent president entered into a contract with the American Arbitration Association (AAA) to conduct the election and in doing so created an appearance of impropriety. The union did hire AAA to conduct the election but there is no indication that there was an impropriety on the part of the union or incumbent president for entering into such an agreement. Locals are free to enter into contracts with election services to conduct aspects of an election. Those agreements do not violate the Act and are not inherently suspicious. Thus, no violation occurred.

You also alleged that AAA failed to inform you that members' names had been added to the membership mailing list after the official mailing had taken place. You alleged that failing to inform you of the new names prevented you from having an observer present for the mailings. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that candidates have a right to an observer at the polls, which is interpreted to include a right to observe the mailing of ballots in a mail ballot election. 29 C.F.R. § 452.107(c). The Department's investigation determined that AAA did mail ballots to 54 members whose names were added to the list after the initial ballot mailing on September 30, 2010. The missing names appear to have been the result of an employer error. Further, the evidence indicates that you were not informed that new ballots were being sent and thus, you did not have the opportunity to request to have an observer present at the mailing. Thus, there was a violation of the Act. However, there is no indication that there was any tampering with the ballots and the number of members receiving a ballot after the official mailing was too small to affect the outcome of the election, in any event. The violation had no effect on the outcome of the election.

You alleged that AAA did not adequately maintain the security of the ballots during the course of the election. Specifically, you alleged that ballots were left in an unlocked closet in an unlocked office. You also alleged that AAA reported receiving one ballot on October 5, 2010, even though your observer was present at the pickup and the AAA representative was told by a postal official there was no mail for AAA. The Department investigated your complaint and found there was no evidence to substantiate the allegation. The ballots were kept in a locked office to which only AAA staff has access. Further, AAA operates out of a building with security guards at every entrance. No one is allowed entry to the building without presenting identification. Visitors accompanied by AAA staff members are not required to show identification, however. The Department also performed a records review of all printed ballots and further

confirmed that there was no evidence of any ballot tampering. Thus, there was no violation of the Act.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act which may have affected the outcome of the election. Accordingly, we are closing our file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Larry Cohen, President
Communication Workers of America
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U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

May 9, 2011

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your complaint filed on February 1, 2011, alleging that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the Communication Workers of America ("CWA") Local 1109 ("Local" or "Union") election held on October 21, 2010.

The Department of Labor ("Department") conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election.

You alleged that the Union failed to insure a fair election when it accepted nomination petition forms that did not identify the name of the nominee for the office sought. You alleged that the absence of the nominee's name on each page of the petition cast doubt as to whether members actually signed for the intended nominee. The Act contains a general mandate that adequate safeguards shall be provided to insure a fair election. 29 U.S.C. § 481(c). As articulated in the Department's regulations, adequate safeguards "are not required to be included in the union's constitution and bylaws, but they must be observed." 29 CFR 452.110. The Union's constitution and bylaws are silent regarding this issue but the Election Committee required in its guidelines that "each petition must name one (1) candidate for one (1) office." The Department's investigation revealed that the Union's petition form failed to include a space for the nominee's name on each page of the petition form and several forms were accepted without a name. The investigation also revealed that nominees, for both slates, solicited signatures for petitions by asking members to sign for an entire slate thus creating the potential for confusion among members. Therefore, an adequate safeguards violation occurred.

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Patricia Fox
Chief, Division of Enforcement

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