



February 23, 2017

Mr. Daniel Warren
[REDACTED]

Dear Mr. Warren:

This Statement of Reasons is in response to your October 14, 2015 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) occurred in connection with the election of officers held by the New York State Public Employees Federation (PEF or the union), on June 23, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded no violation of the LMRDA occurred. This conclusion is explained below.

You alleged that PEF Division 167 Council Leader [REDACTED] used the combined, official Facebook page for PEF Divisions 167 and 243 to campaign for the New York Coalition of Union Professionals (NY CoUP) slate. The investigation revealed that there were three categories of Facebook pages in use during the campaign. First, PEF itself had an official Facebook page administered by the Information Technology (IT) and Member Information Services departments. Second, there were PEF Facebook pages maintained in the name of PEF divisions, which were not considered official. PEF did not provide IT support for division Facebook pages. Third, both the NY CoUP slate and NYUP slates maintained websites and Facebook pages. Your allegation relates to the second category of Facebook pages – the PEF divisions.

The investigation revealed that [REDACTED] used her personal laptop to create the PEF Divisions 167 and 243 Facebook page and used her personal iPad or cellphone to post the page's content. Union funds were not used to create and post the pages. There was no appropriation of the union's logo, which under certain circumstances can be considered a union resource. The pages contained a clip art style photo of three penguins as the logo. Further, nothing on the page implied that the union was officially endorsing the NY CoUP slate. There was no violation of the LMRDA.

The Department notes that, during the election campaign, the election chair sent a memo to all PEF members stating that no campaigning was allowed using PEF resources, including "less tangible assets like a PEF Division's web, blog and social media pages." While the election committee notified [REDACTED] after the election that her use of the Division Facebook pages

violated this prohibition and was not permissible, the Department does not concur that the use of the Division Facebook page, under the specific circumstances explained above, violates the Act.

You alleged that a candidate on the NY CoUP slate, [REDACTED], used PEF resources to campaign against opposing slate candidates [REDACTED] and [REDACTED] by posting the January-April 2015 edition of PEF's newsletter, *The Union Bug*, on PEF Division 202's website. Section 401(g)'s prohibition of the use of union resources to promote the candidacy of any person in a union officer election includes the use of a union publication to criticize or praise any candidate. *See* 29 C.F.R. § 452.75. To determine whether a union-financed newsletter constitutes impermissible campaigning in violation of section 401(g) of the Act, the Department evaluates the timing, tone, and content of the publication.

The investigation revealed that the January-April 2015 edition of *The Union Bug* was produced with union resources. With respect to its timing, the investigation revealed that the newsletter was distributed to Division 2 members four and one-half months before the tally. This is arguably within the election period. The newsletter did feature an opinion/editorial piece entitled, "*Impeachment?*" However, that article reported in a neutral tone that board members attending the meeting raised the subject of the union president's impeachment. The article was not hortatory in tone and did not urge members to any course of conduct. With respect to content, the article was newsworthy and reported events contemporaneous to its publication and of general interest to the membership. There was no mention of the election. Further during the investigation, a review of several newsletters from the period from the March – June 2006 issue through the January – April 2015 issue did not show that the newsletter at issue differed in its tone and content from the past newsletters. Thus, the evidence does not provide a basis for finding that the tone, timing, and content of the newsletter promoted the candidacy of the NY CoUP slate by criticizing the incumbent candidates' slate. Accordingly, there was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file regarding this matter.

Sincerely,

[REDACTED]

Chief, Division of Enforcement

cc: Lisa M. King, General Counsel
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