



January 27, 2017



Dear [REDACTED]:

This Statement of Reasons is in response to your October 27 and October 30, 2015 complaints 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.

In these protests and subsequent complaints, you made five allegations which implicate requirements of the LMRDA. The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that a possible violation of the LMRDA may have occurred in one instance, but was remedied by the union. No violation was found with respect to your remaining allegations. Below is an explanation of these conclusions.

You alleged that an election rule violation and ballot irregularities occurred in connection with the election such that the outcome of the election may not reflect the intent of the voters. Section 401(e) of the Act requires unions to conduct elections in accordance with the constitution and bylaws, which may include election rules formally adopted by the union. The investigation revealed that the PEF election rules are part of the constitution and bylaws and that the rules stated that members might receive up to two ballots for the 2015 election; one listing statewide officers, Trustees, and their appropriate Regional Coordinator and the other listing the appropriate candidates for the executive board. However, in Region 2, the election committee decided, contrary to the election rules, to send three separate ballots; one for statewide officers, one for the regional coordinator, and one for executive board members.

The American Arbitration Association (AAA) ran the election for the union. According to AAA, on June 1, 2015 only two ballots were sent to Region 2 members. The ballot for statewide officers mistakenly was not sent. The investigation showed that the election committee, once alerted to the error, informed AAA of the problem on June 8. To correct the error, AAA created a new ballot, consolidating the original Region 2 Coordinator ballot and the statewide offices ballot into a single ballot. AAA mailed the corrected ballot to the members of Region 2 on June 9. The corrected ballot mailing included a different color ballot. The instructions accompanying the corrected ballot explained the reason for the second mailing and informed members that voted ballots had to be received by June 22. The investigation showed that the union took reasonable measures to correct the error relating to the omitted ballot and that there was sufficient time for members to return the second ballot. Further, the investigation found no evidence that the initial decision to exceed

the two-ballot limit or the mailing error prevented anyone from voting. Accordingly, even if the union's election rules rise to the level of its constitution and bylaws, the union's failure to initially follow the rules was remedied and could not have affected the outcome of the election.

You allege that members who know the election rules would see no reason to open the June 9 corrected ballot and that some of the members returning the first ballot, the regional coordinator ballot, may have believed they were voting a slate ballot and had already voted for statewide offices. The OLMS records review revealed that of the 189 ballots counted at the tally, 77 came from members who only returned the ballot from the first mailing. A telephone survey of members did not indicate that anyone did not open a ballot out of a belief that s/he would only receive two ballots or that anyone believed that the Region 2 Coordinator ballot was a slate ballot. Further, the evidence indicated that PEF conducts frequent elections during the year so that members are accustomed to receiving ballots throughout the year. There was no violation.

You alleged that PEF failed to count 82 returned ballot envelopes that were set aside as duplicates. The investigation revealed that 271 returned ballot envelopes were received by the deadline of June 22. As part of its procedures to correct the mistake that had occurred with respect to the Region 2 ballot, the return ballot envelopes were coded so PEF could distinguish the return envelopes of each ballot mailing. In addition, the corrected ballot was printed on blue paper, the original ballots on yellow. If a member submitted only the first ballot, that ballot was counted. If a member submitted both ballots, only the second ballot was counted. Of the 271 ballots envelopes returned by the members, 82 were set aside as duplicates. OLMS confirmed that all 82 were from members who mailed back two ballot return envelopes. OLMS conducted a phone survey of members that indicated that members were not confused about which ballot was to be returned. Thus, the union followed its corrective procedure consistently, which allowed those members who voted twice to have their corrected ballots counted. Accordingly, there was no violation.

You alleged that the email list compiled by a candidate on the opposing slate, in connection with bus trips, was a union list which was used for campaign purposes. The investigation revealed that, on January 4, 2015, Jones sent an email to certain PEF members that included the phrase, "Clueless ██████████" The investigation further revealed that, on June 11, 2015, ██████████ sent an email to certain PEF members inviting the addressees to a "pre-board meeting" and, the last sentence read, "Finally, please continue to encourage all the PEF members you meet to return their ballots and vote CoUP, if they already haven't." Over the years, ██████████ had compiled a list of email addresses in connection with recreational bus trips that he organized for union members and others.

Assuming that the emails constituted campaigning, it is not necessary for the Department to determine whether the bus list is a union asset, because the investigation determined that the bus list was not used to send the emails. OLMS compared the 799 email addresses on the bus list to the 92 email addresses ██████████ used for the January 4, 2015 email to members. OLMS found that only four addresses were on both lists. Likewise, comparing the bus list to the list of 94 addresses used for the June 11, 2015 email, OLMS concluded that only three addresses were on both lists. That the bus and email lists contained such minimal overlap indicates that the bus list was not used to send the two emails at issue. In addition, OLMS also sent a survey to a sample of

the addresses on the bus list to determine whether any of them had received campaign emails and received no affirmative responses. The investigation found no evidence that bus list was used to send campaign emails. Accordingly, there was no violation.

You alleged that PEF Division 167 Council Leader ██████████ used the combined official Facebook page for PEF Divisions 167 and 243 to campaign for the 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. 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.

With respect to the PEF Division 167 and 243 Facebook page, the investigation revealed that this was not an official Facebook page of PEF. The investigation revealed that ██████████ used her personal laptop to create it and used her personal iPad or cellphone to post the page's content. PEF did not provide IT support for the divisions' Facebook page. During April and May 2015, ██████████ was the primary administrator for the PEF Division 167 and 243 Facebook page. She used the Facebook page mainly to post information regarding union activities, but also posted campaign material supporting the NY CoUP slate. However, Facebook is a free service that does not charge money for creating a page or for posting content. The investigation did not reveal that any union resources were used to create or maintain this Facebook page.

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 ██████████ 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.

Lastly, you alleged that other union resources were used to disparage the New York Union Proud (NYUP) slate throughout the campaign. Specifically, you claimed that the Albany Times Union, Facebook pages and websites for PEF Divisions 202, 248, 167 and 243, NY CoUP, PEF Employees Uncensored, PEF Takeback, the PEF email system, and the PEF Debate on the PEF website were used to convey “defamatory and negative information,” also characterized as “deliberate misinformation,” “false accusations,” and “false attacks.”

The LMRDA does not regulate the content of campaign literature which candidates may wish to distribute. 29 C.F.R. 452.70, thus, the nature of the comments made in campaign literature does not raise any issue under the Act. Further, after examining the websites, emails and publications alleged to have conveyed defamatory information about your candidacy, the investigation concluded that, with the exception of the PEF email system and website, none of them were union resources subject to the prohibition on campaigning, no matter what the content.

With regard to the PEF email, the investigation found no emails critical of your candidacy that could be construed as campaigning. While some emails contained criticisms of you, they concerned legitimate union business and were not distributed to the general membership. Your allegation with regard to the PEF website focused on the posting of a transcript of a debate between you and your challenger, in which you allege that your opponent made incorrect factual assertions. The Department regulations permit unions to utilize union resources to sponsor debates where candidates are treated equally. 29 C.F.R. § 452.74. The investigation determined that you and your opponent were given equal treatment during the debate. In sum, the investigation did not find that any PEF resources were used to campaign, and there was no violation.

Finally, you raised additional allegations for the first time during the Department's investigation of your complaint that were not raised with the union. In order to file a complaint with the Secretary of Labor, Section 402(a) of the LMRDA requires that a member first exhaust the remedies available to him or her under the union's constitution and bylaws. Accordingly, those claims were not properly within the scope of your complaint to the Department, and were not included in the investigation. 29 C.F.R. § 452.136(b-1).

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,

Sharon Hanley

Chief, Division of Enforcement

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