



March 24, 2017

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your September 30, 2016 complaint filed with the U.S. Department of Labor alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA" or "the Act") as made applicable to federal-sector labor organizations subject to the requirements of the Civil Service Reform Act of 1978 ("CSRA") by the Department's regulations, 29 C.F.R. § 458.29, in connection with the election of officers conducted by the National Treasury Employees Union Chapter 68 ("the Local") on May 31, 2016.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation occurred that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the Local denied members' the right to vote, in violation of section 401(e), because the union used outdated mailing labels for the mailing of both election notices and ballots. The Department's investigation confirmed that the initial list, prepared in February 2016, contained a number of outdated addresses and did not contain names and addresses of certain new members. The investigation also revealed, though that the Local took steps to re-mail election materials to updated addresses for the vast majority of affected members. These steps were adequate to meet the Local's obligation as to those members who were re-mailed ballots. However, there were eight members who joined the union between November 2015 and March 2016 who were not sent notices or ballots for the election at all. These eight members were wrongfully denied the right to vote, and deprived of the statutorily-required election notice, as required by section 401(e) of the Act. In addition, the Local received three ballots returned by the United States Postal Service, with new forwarding addresses affixed, but did not re-mail ballots to those new addresses. This constituted a wrongful denial of the opportunity to vote in violation of section 401(e). These violations, however, did not affect the outcome of the election, as only 11 votes were impacted, and the smallest margin in any race of the election was 114 votes.

You also alleged multiple violations of section 401(g) of the Act, which prohibits the use of employer or union resources to promote the candidacy of any individual. First, you alleged that the incumbent president wrongfully used his IRS email address rather than the union or a campaign email address for election-related correspondence. The Department's investigation did not substantiate the allegation that any campaign materials were sent from that IRS email account. Rather, the incumbent president only used his IRS email account for union-related business that did not constitute campaign activity; thus, there was no violation of section 401(g).

Second, you alleged that both union and employer funds were wrongfully used for "lunch and learn" events that addressed various topics related to employee benefits and welfare. You alleged that the frequency of these events increased during the campaign season and that candidates may have attended on union time. The Department's investigation did not find that any campaign activity occurred during these "lunch and learns," or that the lunch and learns were improperly utilized to promote the candidacy of any candidates. As such, there was no violation of section 401(g).

Third, you alleged that certain candidates used "inside" information to schedule a campaign coffee and donut event in proximity to and at the same time as an employee recognition event. The Department's investigation did not substantiate this claim, and reflected that the scheduling was coincidental. Moreover, all candidates would have been able to schedule an event at the same time, and thus there was no disparate treatment. No violation of section 401(g) occurred.

You also alleged that the number of events hosted and emails sent by the Local increased over the election cycle. You acknowledged, though, that these events were not campaign related and did not mention the upcoming election. As such, even if there was an increase in Local activity, it would not have constituted a violation of the Act.

Your complaint asserted numerous allegations regarding the Andover location where replacement ballots were made available for pick up. The Department's investigation did not substantiate your assertions of voter intimidation at the ballot pickup site. Moreover, even if true, the allegations that candidates and supporters "intimidated" members into picking up replacement ballots would not have had any impact on the outcome of the election, as there was no allegation that members were wrongfully pressured to vote or to vote in a certain way.

Two aspects of the Andover replacement ballot pickup, though, did violate the Act's section 401(c) requirement that a union provide "Adequate safeguards to insure a fair election." The Department's investigation confirmed that members who picked up

replacement ballots were allowed to vote those ballots onsite, and no provisions for voting in secret were made. The Department's investigation revealed that, at most, 15 members voted their replacement ballots at the Andover pickup site. This violation, even in combination with the other violations identified herein, did not impact a sufficient number of votes to have had an effect on the outcome of the election.

In addition, the Department's investigation confirmed that union stewards and/or supporters of particular candidates took custody of up to five ballots and placed these voted ballots in the mail. This is a further violation of the Local's obligation to ensure adequate safeguards, as it posed a risk that these ballots would be tampered with, and/or that the secrecy of these ballots could be compromised. These ballots are included in the 15 ballots above, though, so there is no further effect.

You also alleged a failure to provide adequate safeguards at the Lowell replacement ballot pickup site, because supporters of one group of candidates had a table in the same large room where replacement ballots were issued. The investigation revealed no evidence that anyone voted in that room, that there was any interference with replacement ballot distribution, or that any other candidate was denied the opportunity to have a table in the same room. Accordingly, there was no violation.

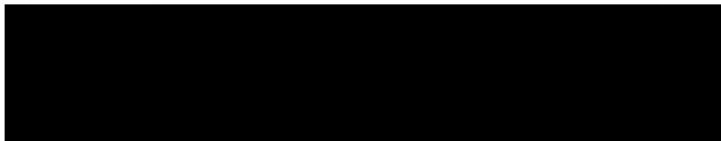
Your complaint included multiple allegations alleging a failure to provide a reasonable opportunity to nominate candidates for office, in violation of section 401(e). To the extent that you allege that the Local was required to provide each nominee with a list of all others who were nominated for office, the Act does not impose such a requirement. The Act does not prohibit a local from notifying potential candidates of their nominations, and seeking acceptance of those nominations, on a rolling basis, as long as all nominees were treated the same. In this regard, however, the Local did violate section 401(e) by failing to inform one candidate of all of the positions he had been nominated for. The investigation established that the Local remedied that violation by ordering a re-run of the race from which that candidate was excluded, and that candidate now occupies the position at issue.

You also alleged that the time frame for returning and accepting nominations was too short. The first notice of election was mailed on March 26th, and a second notice sent on April 2nd, with a deadline for nominations of April 22nd. Potential candidates were notified of their nominations on a rolling basis by both post and email, and required to accept their nominations by April 27th. There is no evidence that any candidate had insufficient time to decide whether to accept a nomination, and candidates were allowed to nominate themselves, in which case no acceptance would have been required. Accordingly, there was no denial of a reasonable opportunity to nominate.

Finally, you alleged that the Local violated candidates' observer rights, as set out in section 401(c) of the Act. Specifically, you alleged that candidates were unaware of the dates of the second ballot mailing, which occurred on May 11. The Department's investigation found that candidates were informed of the dates for mailing and pick up throughout the election process, and no one requested further information about, or the opportunity to observe, the second ballot mailing. At least one observer was present at both the April 30 ballot mailing and the May 31 ballot pick up. In discussions with Department investigators, you acknowledged that you never asked to observe other activities. Accordingly, we conclude there was no violation of candidate observation rights.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

A large black rectangular redaction box covering the signature of the sender.

, Chief
Division of Enforcement
Office of Labor-Management Standards

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