U.S. Department of Labor

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

May 11, 2017

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaints you filed with the Department of Labor on November 24, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), occurred in connection with the election of union officers conducted by the American Postal Workers Union (APWU) on October 5-6, 2016.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the Act that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that, the day after the ballots were retrieved from the post office for counting, union officials went back to the post office, retrieved additional ballots, and included them in the ballot count and tally. Section 401(e) of the LMRDA provides that a union must conduct its election of officers in accordance with the union's constitution and bylaws. Article 12, section 5 of the APWU constitution prescribes the guidelines for determining the validity of ballots cast in an election. This provision provides, "to be valid, ballots shall be in the designated box not later than October 5 at 2 p.m. [Ballots] shall be taken from the designated box at or about 2 p.m. on October 5th by the ballot association [selected to conduct the election under the supervisions of the Election Committee] with at least two members of the Election Committee present."

The investigation disclosed that during the election voters were required to return their voted ballots in business reply envelopes provided in the ballot package. To be valid, ballots had to be in the designated box located at the Brentwood post office in Washington, D.C. no later than October 5, 2016, at 2 p.m. The investigation showed

that, after the business reply envelopes containing the voted ballots were received at that facility, the envelopes were directed to the business reply department, processed by department personnel, and then placed in postal carts for holding in a secured empty room located at the facility. Once a postal cart was full, it was moved from the holding room and stored in the registry cage, an area used to secure high value items. The investigation disclosed that the Election Committee retrieved the ballots from the registry cage on October 5, 2016, for counting. Later that day, a postal official contacted the Election Committee chairman and informed him that additional ballots had been located at the post office. The following day, American Arbitration Association personnel and the Election Committee chairman went to the post office, retrieved an additional 1,045 ballots, and included them in the ballot count and vote tally.

The investigation confirmed that postal personnel processed these additional ballots on October 5. However, it does not appear that the ballots were transported to the registry cage so that they could be picked up later that day by election officials for counting. There is conflicting evidence concerning the precise time that the ballots were processed. However, during the investigation the Election Committee chairman stated that the postal official who contacted him about the additional ballots stated that the ballots had arrived at the post office on October 5 before 2:00 p.m. A supervisor for the business reply department at the Brentwood postal facility stated during the investigation that the ballots arrived in that department on the morning of October 5. Therefore, it is probable that most, if not all, of the 1,045 ballots were processed on October 5 by the 2:00 p.m. deadline. Under these circumstances, the evidence does not provide an adequate basis for finding that the union violated the APWU constitution by including the additional ballots in the ballot count and tally. Further, the investigation revealed that ballots were mailed only to eligible voters. Section 401(e) of the LMRDA provides that each eligible member is entitled to one vote. The inclusion of the ballots in the ballot count and tally enfranchised the members. The LMRDA was not violated.

You alleged that observers were not permitted to watch the retrieval of the additional ballots. Section 401(c) of the LMRDA provides that a union must provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the counting of the ballots. This right encompasses observing the retrieval of the ballots from the post office for counting and every phase and level of the counting and tallying process. 29 C.F.R. § 452.110.

The investigation disclosed that the Election Committee did not inform the candidates or the observers about the additional 1,045 ballots. As a result, observers were prevented from observing the collection of these ballots from the post office in violation of the adequate safeguards provision of section 401(c) of the LMRDA. Further, the union failed to have an adequate procedure in place for determining those circumstances where voted ballots that were retrieved from the post office after the initial ballot pick-up would be included in the vote tally. The union's failure to provide

such a procedure also constituted a violation of the adequate safeguards provision of the LMRDA. However, the investigation did not disclose that the ballot of any ineligible voter was included in the vote tally. Further, the investigation revealed that American Arbitration Association personnel accompanied the Election Committee chairman to the post office to retrieve the additional ballots. The investigation did not disclose any evidence of fraud or impropriety during or after the retrieval. The violations could not have affected the outcome of the election.

You alleged that observers were prevented from observing the ballot tally when the system used to live stream the ballot tally over the Internet and on a screen located in the tally room malfunctioned. The right to have an observer encompasses observing every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of the tally sheets. 29 C.F.R. § 452.107. The investigation disclosed that, during the ballot tally, the ballots were placed into a scanner for counting. As a courtesy to the members, the union livestreamed the tally over the Internet and provided a live feed of the tally on a large screen located in the tally room. In addition, candidates and observers were permitted in the tally room to directly observe this process in person. During the tally, the Internet and the screen went down for three to four hours. During this outage, the election officials continued to conduct the ballot tally. Candidates and observers were free to directly observe the tally in person while it was being conducted by the election officials. The LMRDA was not violated.

You alleged that the union failed to count approximately 5,000 voted ballots. Section 401(e) of the LMRDA provides that each eligible member has the right to vote for or support the candidate of his choice. During the investigation you stated that you overheard candidates discussing this issue and that you had no direct knowledge of this matter. The Department's review of the election records determined that the union did not count approximately 100 voted ballots. Generally, such ballots were not counted because the voter already had voted a ballot or the returned ballot envelopes contained no voter identifying information. The LMRDA was not violated.

Finally, your complaint to the Department raised allegations that were not initially raised to the union as required by the APWU Constitution and the requirements of the LMRDA. 29 U.S.C. § 482. Therefore, the Department lacks the authority to consider these issues and they are dismissed. 29 C.F.R. § 452.135(a).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: Mark Dimondstein, President
American Postal Workers Union
1300 L Street, NW
Washington, DC 20005

Beverly Dankowitz, Associate Solicitor for Civil Rights and Labor-Management