



October 11, 2017



Dear [REDACTED]:

This Statement of Reasons responds to your three complaints filed on June 9 and July 6, 2017, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of American Postal Workers Union Local 7140 - Northwest Illinois Area Local (NWIAL or Union), conducted on April 24, 2017.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations that no violation occurred which may have affected the outcome of the election.

You alleged that the Union violated NWIAL's bylaws during the February 12, 2017 local membership meeting when it failed to present multiple bids from third party election firms to supervise the election. Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws. Article 11, Section 6 of the Union's Constitution states: "The Election Committee shall...solicit bids from no less than two agencies/firms whose business is the handling/conductance of union elections." The investigation disclosed that the Election Committee contacted the American Arbitration Association (AAA) in Chicago, the AAA Labor Employment Division of Arbitrators in Philadelphia, and US Arbitrations of Indiana to solicit bids. Only the AAA's Chicago office submitted a written proposal in time to be presented at the membership meeting. However, the Union fulfilled its obligation of soliciting bids from at least two agencies. There was no violation of the Act.

You next alleged that the Union violated the LMRDA when it used an outdated membership list to mail election-related materials, including ballots and the combined nominations and election notice. Section 401(e) provides that notice of an election must be mailed to each member at his last known home address and that each member in good standing shall be entitled to one vote. Section 401(c) of the Act requires unions to provide adequate safeguards to ensure a fair election. The investigation disclosed that

beginning February 22, 2017, the Election Committee manually compared the Union mailing list to the AWPNU National's mailing list. When differences were identified, the Election Committee requested the member's dues check-off form (Form 1187) from the Union Secretary for comparison. If there were still issues, the Election Committee asked the union steward to obtain the member's current address. The investigation did not reveal any evidence that the mailing list was outdated.

OLMS also reviewed the list of individuals whom you contended had failed to receive a ballot, failed to receive a requested duplicate ballot, or received a ballot too late to vote. The investigation determined that 16 of the 19 individuals from your list appeared on the eligibility list and were timely mailed ballots. The smallest vote margin was 14 votes, so any failure to timely mail ballots to the other three individuals could not have affected the outcome of the election. Additionally, no other evidence was found indicating that members were otherwise denied the opportunity to vote. There was no violation of the Act.

Next, you alleged that the Union unlawfully permitted ineligible members to vote inasmuch as members, whom the Union claimed joined after March 11, 2017, may have been fraudulent voters. Neither the APWNU national constitution nor the NWIAL bylaws prohibit new members from voting. The Department's review of Form 1187 new member forms submitted after March 11, 2017 did not reveal any evidence of ineligible or fraudulent members voting. There was no violation of the Act.

You also alleged that the Union failed to provide proper notice of nominations/elections when it used the February 2017 union newspaper, *The Local Line*, to provide notice to the membership. You alleged that the mailing of this newspaper was an improper method of providing the notice of nominations and election because the Union had not distributed the newspaper by mail in several years. Department of Labor regulations, 29 C.F.R. § 452.100, specifically provide that unions may satisfy the mailed notice requirement by publishing notice in the organization's newsletter which is mailed to the last known home address of each member at least 15 days prior to the election. The investigation determined, and you acknowledged, that the Union had distributed the nominations and election notice in the newspaper by mail for the last three election cycles. Distributing the notices in this manner did not violate the statute.

You contended that the newspaper notice was an opportunity for incumbent officers to campaign and a use of union funds to promote candidacy. You further allege that use of the newspaper resulted in disparate candidate treatment. Section 401(g) of the LMRDA prohibits the use of union and employer funds to promote the candidacy of any person in an election of union officers. 29 C.F.R. §§ 452.73, 78. In determining whether a union publication promotes a person's candidacy, courts evaluate the communication's timing, tone and content. With respect to timing, the newspaper was distributed to members about two months before the April 24, 2017 election. However, the tone of the newspaper did not promote the incumbent officers and was not critical of any potential opposition nominees. The content of the newspaper did not encourage

or endorse the reelection of the incumbent officers. Thus, the newspaper did not constitute campaign material. Consequently, the publication and mailing of the newspaper did not involve the unlawful use of a union's or employer's resources in violation of Section 401(g).

Section 401(c) of the LMRDA prohibits disparate candidate treatment. When a union or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate that requests it. 29 C.F.R. § 452.67. The investigation determined, and you confirmed, that you never asked the Union if you could submit an article in the newspaper. There is, therefore, no basis to conclude that you were treated differently than any other candidate in this respect. The LMRDA was not violated.

Finally, you alleged that the Union failed to properly apply candidate qualifications by permitting two individuals to run in the election in violation of the Union's constitution and bylaws. Specifically, you claimed that President Jackie Engelhart and Secretary Linda Retel were not eligible to run because they were not in continuous good standing for 12 months preceding nominations. Pursuant to Section 401(e) of the LMRDA, every member in good standing is eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Article 11, Section 3 of the Union's constitution states that no member shall be eligible for nomination or election unless s/he has been a member in good standing for at least one year before nominations. The investigation disclosed that the incumbents had been current on their dues and in good standing for the appropriate period. Their full union dues payments were withheld from their Union paychecks and sent directly to the APWU National during the year before nominations. The Department's review of APWU per capita tax (PCT) statements for Engelhart and Retel revealed that the Union paid their PCT quarterly to the National. The investigation did not uncover any evidence of falsification or forgery of dues records or cancelled check payments on behalf of Engelhart or Retel. There was no violation of the Act.

In sum, as a result of the investigation, the Department has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,

Sharon Hanley  
Chief, Division of Enforcement

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

Jacqueline Engelhart, President  
APWU Local 7140--Northwest Illinois Area Local  
194 W. Lake Street  
Elmhurst, IL 60126

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