



June 5, 2019

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on January 3, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the October 2018 election of union officers conducted by the National Association of Letter Carriers (NALC).

The 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 LMRDA that may have affected the outcome of the election.

You raised several allegations related to restrictions on observers, which are grouped into the five sets of allegations addressed below. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). Department of Labor regulations provide that this right encompasses 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.

First, you alleged that you were not permitted to count the number of ballot envelopes returned to the Post Office box. You also alleged that members of the election committee, balloting company representative [REDACTED], and postal management refused to tell you what the postal service's count was.

You and your observers observed the collection of the voted ballots from the box section at the post office on October 4, 2018. The investigation established that no voted ballots were picked up from the post office prior to that date. The investigation

determined that at the ballot tally location, approximately twenty-eight election officials sat at multiple tables to count the return ballot envelopes, resulting in a total count of 60,709. The postal service did not provide a count of the return ballot envelopes. The investigation determined that NALC properly did not allow you or any observer to count or handle the return ballot envelopes or ballots. You were present to observe but did not have enough observers to observe the entire counting process. You and your observers were permitted to walk around the room and watch the returned ballot count. The investigation established that you did not ask the election committee chairperson how many people you would need to observe the count, and you were not prohibited from bringing additional observers. You and your observers were also present when the election committee reported the number of ballots returned. Furthermore, the Department's examination of the election records did not reveal any signs of ballot tampering or fraud. There was no violation.

Second, you alleged that you were not permitted to note the names of voters. You alleged that the election committee chairperson and a representative of the Hartfield Group, the private dispute resolution group hired to oversee the election, informed you on October 4, 2018, that you could sit at one of the tables at which ballots were being counted and one of the counters would hold up the envelope being counted so you could note the name. You alleged that if you had been notified prior to October 4 of this procedure, you would have attempted to bring thirty or more people as observers to make the proposed procedure meaningful.

During the investigation, you acknowledged that you were given the opportunity to sit at one of the tables set up for counting the unopened ballots and that the names would be read to you from the return ballot envelopes. You declined to participate in that process because that would have allowed you to observe only a fraction of the voters' names. You also acknowledged that you did not have the names of any voters whose ballots you wished to challenge.

The investigation revealed that the NALC information technology department created the eligibility list used to mail the ballots in the October 2018 officer election under Secretary-Treasurer [REDACTED] direction. The list contained only the names and addresses of members who were eligible to vote as of June 1, 2018, the cut-off date established by article 6 section 8 of the NALC constitution. [REDACTED] reviewed the list to ensure that supervisors and members who joined after the cut-off date were not on the list. There was no violation.

Third, you alleged that no observation of the tallying process was permitted. You alleged that you tried to observe the tallying process beginning on October 5, 2018, but were blocked by the election committee, the Hartfield Group, and [REDACTED] and his workers.

The investigation established that some ballots — primarily the ballots from branches with fewer than twenty-five members — were counted by hand, but most ballots were counted by scanner. The investigation determined that observers were able to see the marks on the ballots that were hand counted. However, the investigation established that observers were not able to see the votes on ballots that were fed through the scanner, and the ballots were not projected onto a screen. The union acknowledged that observers were not able to observe the marks on the ballots that were counted by the scanner. The LMRDA's adequate safeguards provision was violated when observers were denied the right to observe the votes on ballots that were fed through the scanner.

However, the observers' inability to see the marks on the scanned ballots did not affect the outcome of the election. As part of its investigation, the Department conducted a partial recount of ballots. The recount of 15,502 ballots in the president's race, which was approximately 25 percent of the total ballots cast, revealed only minor differences with the union's count. The Department's count resulted in 51 additional votes for your opponent, [REDACTED], and 3 fewer votes for you. [REDACTED] margin of victory was 37,878. Department investigators also recounted all of the ballots in the race with the smallest margin, the Region 2 national business agent (NBA) race, which resulted in 14 additional votes for [REDACTED] and 3 additional votes for [REDACTED]. [REDACTED] margin of victory, per the Department's recount, was 227. The differences in the counts appeared to be caused by the ballot scanner's failure to read the votes when a member incorrectly marked the ballot. The margins in every race were too large for these small differences to affect the outcome of the election.

With regard to the tally sheets, the investigation revealed that observers were able to see the tally sheets after they were taped to the envelopes and waiting to be entered into the master tally sheet. The investigation further established that observers were allowed to listen as the results were entered into the master tally sheet and confirm that the numbers entered were the numbers that appeared on the tally sheets. With regard to this aspect of your allegation, there was no violation.

Fourth, you alleged that the union refused your request to allow you to observe the sorting of ballots and the daily withdrawal of ballots in the box section of the post office where voted and undeliverable ballots were received. This allegation is within the scope of Title IV of the LMRDA only to the extent that it involves alleged action by the union (as opposed to the post office) to limit your right to observe.

The investigation established that only undeliverable ballot packages, not voted ballots, were retrieved from the post office prior to the day of the tally. The investigation revealed that, once you requested to observe the pickup, the election committee chairperson informed you of the time the representative from the Hartfield Group

regularly picked up the undeliverable ballot packages from the post office. There was conflicting evidence as to how you and the Hartfield Group representative missed each other on September 21, 2018. You claimed that you were there at the time recommended by the local election committee chairperson, but the union advised that you left the post office prior to the stated time. There is no evidence that you attempted to go to the post office to observe the pickup of undeliverable ballot packages on any other day. You were not denied the opportunity to observe the returned undeliverable ballot pickup. Furthermore, there was no evidence of ballot tampering or ballot fraud. There was no evidence that anyone removed voted ballots prior to the day of the election or attempted to use extra ballots to vote. There was no violation.

Fifth, you alleged that the election committee chairperson refused your request to observe the ballots from 10 p.m. to 8 a.m. every day. You also alleged that the safeguards used to protect the ballots at night were inadequate. You further alleged that the election committee arrived at implausible totals. You argued that it was implausible that you got only 11,000 votes, several thousand votes fewer than your opponent, based on your blog following and on the number of votes that other members of your opponent's slate and your slate received.

The investigation established that the union employed adequate safeguards to secure the ballots overnight. The Hartfield Group, the election committee, and election vendor Mosaic set up motion-activated cameras in the tally room overnight. They locked the doors each evening, and a Hartfield Group representative kept the key. The election committee also taped across the door frames and members signed the tape. No one stayed with the ballots in the room overnight. Any observer, including you, was allowed to keep watch on the tally room overnight from the hotel parking lot. There was no evidence that anyone entered the room overnight. In addition, safeguards were used in the printing process — including non-standard-size paper, tic marks along the side of each ballot, and red ink that could not be copied exactly using a color copier — that would have made it very difficult to create fraudulent ballots. Department investigators examined 25 percent of the voted ballots and found no evidence of fraud, tampering, or other irregularities. There was no violation.

Next, you alleged that essentially no verification of ballots was performed by those conducting the election. You stated that on October 4, 2018, the election committee chairperson told you that only ballots from which the voter had removed all identifying information would be verified. During the investigation, you alleged that there was no process in place to ensure that someone did not vote the original ballot and a duplicate ballot. As noted above, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). In addition, section 401(e) provides that each member in good standing is entitled to one vote. 29 U.S.C. § 481(e).

As explained above, the eligibility list used to mail the ballots in the October 2018 officer election contained only the names and addresses of members who were eligible to vote. Therefore, the union was not required to check voter eligibility at the ballot tally. There was no violation with regard to this aspect of your allegation.

With regard to duplicate ballots, the investigation established that the election committee had a process in place to ensure that members did not vote twice. Duplicate ballots were identified by purple return ballot envelopes that were returned to a separate post office box. The election committee compared the purple envelopes to the other ballots from that branch. If a member returned both ballots, only the duplicate ballot was counted. The Department's review of election records showed that 88 duplicate ballots were returned. Department investigators conducted a review of 20 purple return ballot envelopes from five large branches. The review found that one member returned a duplicate ballot and an original ballot and both were counted. This was a violation of the LMRDA. The other 19 members who returned duplicate ballots that the Department reviewed did not return their original ballots. The maximum number of votes that could have been affected if both the original and the duplicate were returned and counted (in both that instance and the other instances that Department investigators did not review) was 69. As noted above, the smallest margin in this election was 227. Therefore, this violation could not have affected the outcome of any race.

Next, you alleged that the union unfairly delayed your requests to distribute campaign material by email. You alleged that you requested distribution of your campaign emails beginning in August 2017. You stated that you wanted to send campaign emails once a month from then until the election to give you better exposure and contact with the members about the issues you were running on. You acknowledged that you were able to send emails beginning in June or July 2018 and that you ultimately sent three campaign emails.

Section 401(c) of the LMRDA requires the union to comply with a candidate's reasonable request for the distribution of his or her campaign material. 29 U.S.C. § 481(c). The Department's interpretive regulations state that unions must provide candidates and their supporters a reasonable period of time to campaign prior to the election. What is a reasonable campaign period depends on the circumstances, including the method of nominations and the union's size, in terms of both membership and geographic area. 29 C.F.R. § 452.79.

The investigation revealed that, prior to requesting distribution of your campaign emails beginning in August 2017, you had filed a lawsuit against NALC in federal district court seeking relief related to a collective bargaining agreement (CBA)

ratification vote, including permission to use NALC's list of members' email addresses to contact the membership. You advised the court in that case that the literature you wanted to send was not directly related to your candidacy for NALC president but was intended to influence the ratification vote. In denying your request for a preliminary injunction on July 28, 2017, the court ruled that it was "manifestly unreasonable" to request to distribute such literature, aimed not at any candidacy but at the contents of the proposed CBA, more than a year prior to the election.

The investigation established that you subsequently requested that NALC distribute emails specifically in aid of your candidacy but that the union continued to deny your requests based on the court's ruling in July 2017. In August 2017, the union informed you that it would not comply with requests until "sometime in 2018." The investigation established that NALC did not have a campaign email vendor in place for candidates to use until April 2018. After you learned the prices that the selected vendor would charge, you amended your federal district court complaint against NALC to object to the high cost of sending emails through that vendor. NALC ultimately arranged to use a different vendor with a lower cost. The lower-cost option was made available to candidates beginning on June 15, 2018. Nominations took place at the NALC national convention on July 18, 2018; ballots were mailed September 11-14, 2018; and ballots were due on October 4, 2018.

The investigation established that NALC initially denied your reasonable requests to distribute your campaign literature by email. Under the circumstances, including that NALC is a national union with approximately 291,000 members, NALC should have been responsive to your request to distribute campaign literature beginning in August 2017, when you requested that NALC distribute emails in aid of your candidacy, instead of putting off any preparations until 2018. Your reasonable request should have been the catalyst for NALC to secure an email vendor and establish procedures for you and other bona fide candidates to distribute campaign literature by email. It was not until April 2018 that NALC announced a vendor for candidates to contact for distribution of their campaign literature by email. This initial denial of your reasonable requests for campaign email distribution violated the LMRDA.

However, the investigation established that you were able to send campaign emails to members on July 30, August 21, and September 13, 2018. Therefore, at least two of your campaign emails were distributed before the ballots were mailed. Under these circumstances, the effect of the violation was mitigated, and therefore this violation did not affect the outcome of the election.

You also alleged that NALC President [REDACTED] unfairly delayed your request to place campaign advertisements in the union's monthly magazine, the *Postal Record*. You stated that you requested to buy advertising space in the magazine several months

before the mailing of the ballots. You alleged that NALC did not allow a *Postal Record* campaign advertisement until the September 2018 issue, which came out only days before the ballots were mailed. You alleged that this was unfair because [REDACTED] and the other incumbents are in continuous contact with the entire membership through the *Postal Record* and other publications.

Section 401(c) of the LMRDA prohibits disparate candidate treatment. 29 U.S.C. § 481(c). 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 who requests it. 29 C.F.R. § 452.67.

The investigation revealed that the *Postal Record* normally does not accept advertising but that it makes an exception, during election years, to allow campaign advertisements in the August-September issue. This has been the union's long-standing practice. In addition, NALC provided notice to all candidates of this practice in the May 2018 issue of the *Postal Record*. All candidates were treated equally with respect to the terms and expenses associated with distribution of the campaign advertisements in the *Postal Record*. You and the incumbent slate both placed advertisements in the August-September issue, and no candidate was allowed to place an advertisement in any other issue. There was no violation.

Next, you alleged that [REDACTED] unfairly refused to recognize you at the NALC national convention held in Detroit in July 2018, where you were a delegate. You alleged that Rolando recognized members [REDACTED], both of whom made campaign-like speeches against you. You alleged that [REDACTED] did not call on you at the microphone and therefore you were denied the opportunity to reply to [REDACTED] and [REDACTED] remarks.

As noted above, section 401(c) of the LMRDA prohibits disparate candidate treatment. 29 U.S.C. § 481(c). In addition, section 401(g) prohibits the use of union resources to promote any candidate for union office. 29 U.S.C. § 481(g).

The investigation established that [REDACTED] comments did not constitute campaigning. The investigation revealed that [REDACTED] spoke on July 19, 2018, concerning an appeals court decision issued two days prior in a lawsuit you had filed against the former NALC leadership. They spoke during a break in business when delegates had the opportunity to address the convention about any topic they wished. [REDACTED] spoke first and talked about the lawsuit for less than two minutes. [REDACTED] did not mention your name or identify you in any way as connected to the lawsuit. More than half an hour later, [REDACTED] spoke and thanked [REDACTED] for bringing up the news about the lawsuit. [REDACTED] mentioned your name as one of the parties to the lawsuit. [REDACTED] spoke for approximately three minutes. Neither delegate personally attacked you or

disparaged your candidacy. They discussed timely news regarding the union. The investigation did not establish whether [REDACTED] would not allow you the opportunity to respond to [REDACTED]. However, [REDACTED] was permitted to choose which delegates were allotted time to address the convention, and he was not required by the LMRDA to allow you to respond to [REDACTED] comments because their statements were not campaigning. There was no violation.

Finally, you raised other allegations that, even if true, would not constitute violations of Title IV of the LMRDA.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,

[REDACTED]

Brian A. Pifer
Chief, Division of Enforcement

cc: Fredric V. Rolando, President
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