



August 5, 2020



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on January 6, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), as made applicable to elections of federal sector unions by 29 C.F.R. § 458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. § 7120, occurred in connection with the regularly scheduled election of union officers conducted by the National Treasury Employees Union (NTEU), Chapter 224 on September 20, 2019.

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 LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that a member, who resigned from the election committee after serving a couple of days on that committee, endorsed the candidacies of two incumbent officers on Facebook, giving the appearance of an official campaign endorsement by the election committee.

Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. 29 C.F.R. § 452.73. Accordingly, no such funds may be used for issuing statements criticizing or praising candidates in such an election. 29 C.F.R. § 452.75. The Department's investigation disclosed that a member who had been appointed to the election committee resigned from that position on August 8, 2019, to accept a nomination for a regional vice president. On August 30, 2019, more than three weeks after that resignation, the former election committee member emailed an endorsement letter to the incumbent candidate for president and emailed a similar letter to the incumbent candidate for secretary. The signature block of the endorsement letters listed the former election committee member's name and

identified him as a “NTEU Representative.” The incumbent slate posted the endorsements on its personal Facebook page.

Although the former election committee member identified himself in the signature block of the endorsement letters as a “NTEU Representative,” he had resigned from the election committee about three weeks before the endorsements were posted on the incumbent slate’s personal Facebook page. In addition, his name was listed as an unopposed candidate on the August 28, 2019 voting instructions that were mailed to members. Therefore, voters should have known that he no longer was a member of the election committee, that he was an unopposed candidate in the election, and that the endorsements represented his personal views of the incumbent candidates, not the views or support of the election committee from which he had resigned weeks earlier. Further, candidates retain their right as union members to support any faction in an election of officers so long as such support does not involve the use of union or employer funds, in violation of section 401(g) of the LMRDA. The use of the phrase “NTEU Representative” in the signature block of a political endorsement, in and of itself, did not involve the use of any such funds. The LMRDA was not violated.

In addition, you took issue with the election committee’s failure to formally notify members that the former election committee member had resigned from the election committee. Section 401(c) of the LMRDA provides a general mandate that adequate safeguards to insure a fair election be provided. Thus, a union’s conduct of its election of officers must be circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. As you alleged, the investigation showed that the union did not formally notify members that the former election committee member had resigned from the committee to accept a nomination for office. However, the union’s failure to provide such notice did not compromise the fairness of the election. Further, neither the union’s governing documents nor the LMRDA require such notice. The LMRDA was not violated.

Finally, you alleged that members who voluntarily withdrew from membership, effective September 1, 2019, were improperly disqualified from voting in the September 20, 2019 election. You also alleged that some members did not receive a ballot in time to vote in the election. Section 401(e) of the LMRDA provides that every “member” in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. 29 C.F.R. § 452.94. Section 3(o) of the LMRDA defines “member” to include any person who “has not” voluntarily withdrawn from membership. 29 U.S.C. § 402(o).

The investigation showed that prior to September 1, 2019, a total of 30 members voluntarily withdrew from membership by submitting a Form 1188 to the union. As a result, these individuals were not members of the union at the time of the 2019 election for purposes of the LMRDA. Thus, they were ineligible to vote in the election. Further,

the membership revocation provisions prescribed in Chapter 19 of the NTEU Chapter Manual provide that members who voluntarily submit a Form 1188 to the union are considered to have withdrawn immediately from membership in the NTEU and forfeit their right to vote in chapter elections. The LMRDA was not violated.

The investigation also showed that two individuals who had voluntarily withdrawn from membership by submitting a Form 1188 to the union prior to September 1, 2019, received a ballot package in the mail but did not attempt to vote because they received the package too late to vote or they did not believe they were eligible to vote. However, at the time of the 2019 election these individuals were no longer members of the union because they had voluntarily withdrawn from membership prior to September 1, 2019. Therefore, they were ineligible to vote in the election.

The investigation further showed that four other individuals, who had submitted a Form 1188 to the union prior to September 2019 and were ineligible to vote, voted in the election in violation of section 401(e)'s mandate that only eligible members be permitted to vote and section 401(e)'s requirement that a union conduct its election in accordance with its constitution and bylaws. 29 C.F.R. § 452.109. These four votes were included in the vote tally. However, the smallest vote margin for any contested race was five votes. Thus, these violations did not affect the outcome of the election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its file in this matter. You may obtain a review of this dismissal by filing a request for review with the Director within 15 days of service of this notice of dismissal. A copy of your request must be served on the Chief, Division of Enforcement (DOE), and the union, and a statement of service must be filed with the Director. The request for review must contain a complete statement of facts and the reasons upon which your request is based. See 29 C.F.R. § 458.64(c), *see also* 29 C.F.R. § 458.59.

Sincerely,

A large black rectangular redaction box covering the signature of Brian A. Pifer.

Brian A. Pifer
Acting Chief, Division of Enforcement

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