U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

February 26, 2009

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your December 3, 2008 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA or Act"), 29 U.S.C. §§ 481 – 484, occurred in connection with the election of officers of the Office and Professional Employees International Union, Local 30 ("Local 30") completed on August 29, 2008.

The Department of Labor ("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.

You alleged that the format of the election ballot incorrectly listed your job title as "courier" instead of "distribution courier," in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), which requires unions to provide adequate safeguards to ensure a fair election. The Department's investigation revealed that the ballots did not have any titles next to the name of each candidate; however, the candidates' titles were included in the ballot instructions. [redacted], an incumbent candidate in the election for Executive Board who was reelected is a "senior courier," yet she also was listed as "courier" in the ballot instructions. You could not provide and the investigation did not reveal any evidence that members did not vote for you because you were listed as "courier" rather than "distribution courier." There was no evidence of voter confusion. Accordingly, there was no violation.

You alleged that three incumbent officers campaigned on the employer's premises to employees who were on the clock in violation of Sections 401(g) and 401(c) of the LMRDA. 29 U.S.C. §§ 481(c) and (g). You base your Section 401(g) allegation on the belief that the incumbents' discussions with employees who were being paid by the employer and present at employer facilities constituted unlawful use of employer funds

for campaign purposes. You base your Section 401(c), inadequate safeguards to ensure a fair election allegation, on the belief that your slate was treated unfairly regarding access to the employer's facilities. The Department's investigation did not support your allegations. The investigation revealed that the incumbent slate visited facilities, greeted members, and handed out campaign materials. However, there was no evidence that any employee's duties at the facilities were disrupted in a manner which would support a violation of Section 401(g) use of employer funds.

You contacted Corporate Compliance Officer [redacted] about campaigning at the employer's facilities, and she told you that campaigning would not be allowed at the facilities, as it could disrupt the employer's operations. However, when her superior was interviewed as part of the Department's investigation, it was determined that some campaigning on employer premises is permitted. Incumbent candidate [redacted] also told one of you that you could ask the supervisors at each site to campaign. With respect to the August 6 e-mail you provided about prohibited partisan political activities, this e-mail was disseminated in the context of the upcoming public elections in 2008 and did not clearly address union officer elections. The Department's investigation revealed that the employer does not have a clearly articulated policy about campaigning during union officer elections. Further, the incumbent slate followed the employer campaign rules that they believed were in place from past elections. This was demonstrated by their campaigning away from areas with patients and areas where employees might be helping patients, as well as their strategy of only handing campaign materials to individuals and not posting material throughout the facility. The Department's investigation also revealed that the Election Committee Chairperson [redacted] was aware of the incumbents' campaign activities and believed that it was permissible. Since the employer has not demonstrated that any clear prohibition on the incumbents' campaign activity was being enforced and their activities did not disrupt the employer's facilities, there was no violation.

You alleged that three incumbent officers posted campaign materials on the employer's facilities, in violation of Sections 401(c) and 401(g). The basis for your Section 401(c) allegation is that your slate ("Team New Direction/New Strength") was treated less favorably than the incumbent slate ("The Winning Team") regarding your ability to campaign at employer facilities. You base your Section 401(g) allegation on the belief that the incumbents' campaign postings constituted unlawful use of employer funds/facilities for campaign purposes. The investigation revealed campaign postings by both slates and that the employer allowed such postings in certain locations within their facilities. There was also evidence that when the incumbents' supporters posted campaign materials in areas where such postings were not permitted and the incumbents became aware that their material was posted inappropriately, the incumbents contacted the election committee to have these postings removed. Finally, the incumbents encouraged you to campaign in a similar fashion related to the rules

concerning campaigning in past union officer elections. Your slate chose not to campaign in a similar manner. There was no violation.

You alleged that the incumbent slate directly provided duplicate ballots to members who stated that they discarded or did not receive original ballots, in violation of Section 401(c) of the LMRDA. 29 U.S.C. § 481(c). The Department's investigation established that the incumbent candidates did not directly process duplicate ballots for members. Instead, the incumbent candidates obtained the union members' names and updated addresses and then submitted this information to the union for a mailing address update. The election committee was notified and duplicate ballots were processed by the election company hired to run the mechanics of the election. Accordingly, there was no violation.

You alleged that incumbent candidates [redacted] campaigned while on employer time, in violation of Section 401(g) of the LMRDA. 29 U.S.C. § 481(g). Section 401(g) prohibits the use of employer or union funds to promote the candidacy of any person running for union officer. The Department's review of the time sheets and payroll stubs for each incumbent candidate established that they all used vacation time for the days that they campaigned and were not on employer time. Therefore, there was no violation.

You also alleged that the incumbent slate's campaign literature was paid for by union funds in violation of Section 401(g). 29 U.S.C. § 481(g). The Department's investigation included a review of the incumbent slate's financial records including receipts and cancelled checks for campaign literature. The investigation revealed that the costs of printing the incumbent candidates' campaign literature were funded by the candidates' personal checks. The investigation further revealed that all printing costs attributed to Local 30 were for legitimate union business. There was no violation.

You alleged that members received the incumbent slate's campaign literature but did not receive your campaign literature, in violation of Section 401(c), which requires unions to treat candidates equally with respect to use of lists of union members. 29 U.S.C. § 481(c). The Department's investigation revealed that the incumbent slate also believed that not all members received their campaign literature. The Department examined the mailing list and established that the mailing list used to conduct campaign mailings for each slate was identical. There was no violation of the Act.

You also alleged that union-owned vehicles were used for campaign activity, in violation of Section 401(g). 29 U.S.C. § 481(g). Although the Department's investigation established that union-owned vehicles were not used for campaign purposes, this allegation was not raised during the initial appeal and appeared for the first time in the complaint filed with the Department of Labor. Accordingly, this allegation was not

properly exhausted within the union and can not provide the basis for litigation by the Department. See 29 U.S.C. § 482.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA. Accordingly, I am closing the file on this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement
Office of Labor-Management Standards

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