U.S. Department of Labor

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

June 15, 2009

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on February 9, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of union officers conducted by Local 503 of the Service Employees International Union (Local 503 or the Union) on October 14, 2008.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded regarding each allegation that no violation of the LMRDA occurred. This conclusion is explained below.

You alleged that the Union violated Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), by refusing to provide all candidates access to and copies of Local 503's membership database when the incumbent slate had access to it. Section 401(c) specifies in pertinent part that candidates are to be given equal treatment in the use of membership lists and that a union is required to provide candidates access to membership lists for inspection once during the 30-day period preceding the election. The Act requires only that members' names and last known addresses be included on the lists available for inspection; it does not require a union to give candidates copies of its membership lists or to make available all the information that is contained in its membership database.

The Department's investigation established that the Union allowed candidates to inspect a membership list and offered mailing labels for sale to all candidates. The Department's investigation uncovered no evidence that the incumbent officers ever used their access to the membership database for campaign purposes or any purpose other than their official union duties. The investigation disclosed that the incumbents and their supporters used their own personal computers to develop membership contact information using lists available to all candidates, the internet, and contact information voluntarily provided to the candidates by members. No violation occurred.

You also alleged that Local 503's failure to provide access to the database violated Article XXI, Section 2 of its Bylaws, which you claim incorporates state law, including Oregon's law requiring nonprofit corporations to allow members to inspect and copy their membership lists. You did not raise this allegation in your protest to the Union. Section 402 of the LMRDA, 29 U.S.C. § 482, requires that allegations be brought to the Union before they may be filed with the Department. As stated in the Department's interpretative regulations at 29 C.F.R. § 452.136(b-1), "the Department of Labor will accordingly be limited . . . to the matters which may fairly be deemed to be within the scope of the member's internal protest and those which investigation discloses he could not have been aware of." Because this law has been in effect since 1989, you could certainly have been aware of it and timely raised the issue through the Union's internal protest procedures along with your other allegations. Having failed to do so, however, the allegation was not within the scope of the Department's investigation.

You also challenged Local 503's expenditure of Union funds to hire an attorney to provide a legal opinion about giving candidates access to the database. Section 401(g), 29 U.S.C. § 481(g) of the Act prohibits the expenditure of a union's funds to promote a person's candidacy for union office. The Department's investigation showed that in response to the concerns about access to the database that you raised to the election committee in about August 2008, Election Committee Chair [redacted] directed [redacted] to obtain a legal opinion about this issue from an attorney. The Act does not prohibit a union from spending its funds on legitimate union business, including obtaining legal advice. Accordingly, there was no violation.

You alleged that staff members of Local 503 campaigned for candidates in violation of Local 503's Bylaws. Specifically, you asserted that their campaigning contravened Article III, Section 7(a) of the Bylaws, which provides that "no employee of the Union shall give services to aid the candidacy of any person seeking election to an office at any level of the Union." (Emphasis added.) Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires local unions, inter alia, to abide by their constitution and bylaws in conducting elections of officers. Section 401(e) also specifies that every member in good standing has the right to support the candidates of his choice. The Department's interpretative regulations at 29 C.F.R. § 452.76 state in relevant part:

> Unless restricted by constitutional provisions to the contrary, union officers and employees retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election. . . . Accordingly, officers and employees may not campaign on time that is paid for by the union nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning.

The investigation revealed no evidence that campaigning occurred on union time or using union resources. Moreover, Article III, Section 7(c) of the Bylaws provides that staff who are members of Local 503 are in compliance with Section 7(a) if their campaign activities do not occur on work time. Those employees of Local 503, who are also members of Local 503, have the same rights as other members of Local 503 under Section 401(e) of the Act to support the candidates of their choice. There was no violation.

Similarly, you alleged that the inclusion of photos and words of support from Sub-Local officers who had been part-time paid employees of the Union on the Frane slate's flyer, "4 for the Future," contravened Article III, Section 7(a) of the Bylaws. You characterized these

expressions of support as "services." As discussed above, Article III, Section 7(c) allows employees who are members to engage in campaign activities on their own personal time. The investigation found no evidence that the flyer was produced on Union time or by using Union funds. No violation occurred.

You contended that the incumbent Vice President Sonya Reichwein received unfair exposure that benefited her candidacy when she was designated by Executive Director Leslie Frane to run a bargaining conference attended by 300-400 members because you, the president, were unavailable to run it. The investigation did not reveal any evidence that campaigning occurred at this conference; rather, the investigation showed that the bargaining conference was ordinary union business. Accordingly, there was no violation.

You alleged that the candidates running on the "4 for the Future" slate received advantageous treatment during a union meeting attended by 25 members at which all candidates for the executive director position were given equal time to campaign. In particular, you objected that all candidates for all positions were not allowed equal participation in the meeting because Frane made statements in support of her slate during her presentation, in effect giving exposure to her slate's candidates for other offices.

The investigation revealed that Frane's slate was the only slate running in the election; all other candidates were running independently. Article VI, Section 4(e) of the Bylaws requires that "All duly nominated candidates . . . be given equal access to all Union meetings and conferences, provided that the opportunity to make campaign presentations shall be consistent with the agenda and protocols for such meetings and conferences." The Department's interpretative regulations at 29 C.F.R. § 452.70 make clear that a union may not censor candidates' statements in any way. The Department's interpretative regulations at 29 C.F.R. § 452.3 provide that a union's interpretation of its constitution and bylaws will be accepted unless it is clearly unreasonable. The investigation did not show that the Union has ever interpreted this provision of its Bylaws to require equal time be given to all candidates for all offices if a candidate for a particular office mentions his or her slate, nor did the investigation reveal that the Union has ever required anything other than that all candidates for a particular office have equal time to campaign at a campaign event. Because the Union's consistent interpretation of this provision of its Bylaws is reasonable, no violation occurred.

You alleged that the Union supported the campaign of Secretary-Treasurer candidate [redacted], a member of Frane's slate, by mailing to all Union members a Citizen Action for Political Education (CAPE) flyer that featured a photo of and quote from [redacted]. As stated above, Section 401(g) of the LMRDA, prohibits the expenditure of union funds to promote any candidate in a Title IV election. The investigation showed that the flyer was not campaign material; rather it was ordinary union business. Consistent with past practice, the flyer contained a photo of the CAPE Chair, who happened to be [redacted]. No violation occurred.

You alleged that Sub-Local 085's announcement of a forthcoming meeting at which Frane would be the guest speaker constituted unlawful support for her candidacy because the flyer included praiseworthy language about Frane such as "her amazing leadership," "integrity," and "courage during difficult times." The investigation established that the flyer was sent out before the

March 5, 2008 meeting at which Frane was scheduled to speak in her capacity as Executive Director. This was at least seven months before the October 14, 2008 election.

The investigation also showed that the flyer's laudatory language about Frane was intended to generate enough interest among the membership in this visit by a high-ranking Union official to ensure good turnout for the guest speaker. Rather than electioneering, the tone of this flyer was similar to those typical union speeches designed to motivate and inspire union members for their union activities that do not violate the Act. See, e.g., Herman v. Bricklayers and Allied Craftsmen, 160 LRRM 2999, 3009 (D.D.C. 1998). There was no violation.

You alleged that Frane and her staff controlled the election, thus giving a benefit to her slate. In particular, you asserted that the staff's access to the database and the use of union funds to obtain a legal opinion about that issue was unlawful. As discussed above, however, the investigation revealed no evidence to support this allegation. The investigation showed that the Board of Directors assigned [redacted], a member of Frane's staff, to serve as the staff advisor to the election committee, as he had done for the previous 7-8 years. The investigation also showed that any of [redacted]' decisions could have been appealed to the election committee. Accordingly, no violation occurred.

You alleged that Frane was not eligible to serve as an officer because she never worked in a Local 503 bargaining unit. You contended that Article VI, Section 8 of the Union's Constitution requires that she be an "active" member. The investigation disclosed, however, that the Constitution at Article II, Section 5, provides that staff members, such as Frane, have the right to run for the position of executive director. Here, because the Union's Constitution allows staff members to run for the executive director position, the Union's interpretation of its Constitution is reasonable. The Department's interpretative regulations at 29 C.F.R. § 452.3 provide that a union's interpretation of its constitution and bylaws will be accepted unless it is clearly unreasonable. Thus, there was no violation.

Finally, you asserted that Frane was ineligible because she was an employer and a supervisor under the National Labor Relations Act (NLRA). The investigation established that, with respect to [redacted] and other employees of the Executive Director's staff, Frane was not an employer as defined in Section 2(2) of the NLRA, 29 U.S.C. § 152(2); rather, the Union itself was their employer. Moreover, to the extent that Frane may have been a supervisor within the meaning of Section 2(11) of the NLRA, 29 U.S.C. § 152(11), she supervised Local 503 employees who were not represented for collective-bargaining purposes by Local 503. Therefore, she faced no conflict of interest in carrying out her representative duties with respect to employees and rank and file members. See 29 C.F.R. § 452.47. No violation occurred.

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

Sincerely,

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Acting Chief, Division of Enforcement

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