U.S. Department of Labor

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

October 1, 2009

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint filed on September 18, 2008, alleging that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the Machinists District Lodge 751 ("Union") polling site elections held on May 1, 2008 (Lodge A), May 8, 2008 (Lodge C) and May 14, 2008 (Lodge F).

The Department of Labor ("Department") conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election.

The Machinists District Lodge 751 has approximately 25,000 members in seven different lodges. In four of the seven Lodges the election for District Lodge delegate was not contested, and the Department did not investigate. The Department did investigate the contested elections in Local Lodges A, C, and F. The respective smallest margin of victory for each Local Lodge was as follows: Lodge A had a margin of 57 votes; Lodge C had a margin of 659 and; Lodge F had a margin of 330 votes. There were two slates running for delegate positions, the incumbent slate, Dedicated Unionists ("DU"), and the challenger slate, Unity Coalition ("UC").

In your complaint to the Department, you alleged that the Union failed to comply with your request to distribute your slate's campaign literature by delaying the mailing for a period of two days. The Act imposes a duty on the Union to comply with all reasonable requests by candidates to distribute campaign literature to the membership at the candidate's expense. *See* 29 C.F.R. § 452.67. The Department investigated your allegation and found that the Union's equipment used to complete mailings was out of order during the period in which you made your request. The mailing equipment was

repaired two days after your request. During the period in which the machine was damaged, no campaign material was sent out. As soon as the machine was working properly, the Union complied with requests for campaign mailings in the order in which they were received. There was no delay which would violate the Act, and there was no evidence of disparate treatment. The Department found no violation of the Act.

You alleged that the Union's Secretary-Treasurer, who was also running for reelection as a candidate on the DU slate, reviewed campaign literature, in her capacity as a union officer, while your slate was not given an equal opportunity to do so. The Act does not grant candidates the opportunity to review campaign literature. Further, a union may not require that it be permitted to read the campaign literature before it is sent out nor may it censor the statements of candidates in any way. *See* 29 C.F.R. § 452.70. The Department found that the Union's requirement that campaign literature undergo review violated the Act. However, there is no evidence that the Union changed or altered any of the campaign mailings or used the review to the advantage of the DU slate. There was no effect on the outcome of the election. The LMRDA, requires that the Department prove not only the existence of a violation but also that the violation may have affected the outcome of the election, before taking legal action to overturn that election. *See* 29 U.S.C. § 482.

You alleged that the Union unreasonably and purposefully delayed in responding to an inquiry you made regarding the order in which candidates names would appear on the ballot, consequently delaying your ability to create a sample ballot for voters. The Department found that prior to giving you the information, the Secretary-Treasurer made an inquiry to the International regarding your request. She asked the International whether it was information she was allowed to pass on to you. She did not delay in responding to your request upon hearing from the International. Your slate was able to issue the sample ballots prior to the election. There was no violation of the Act.

You alleged that the DU slate had access to a union membership list in violation of the LMRDA. The LMRDA requires that candidates be treated equally with respect to use of union lists. 29 U.S.C. §481(c). The Department of Labor investigation did not find evidence to indicate that the list used by the DU for campaigning was indeed a union list. From the investigation, it appears that the list was an amalgam of names on personal lists in candidates' possession. It is clear that the list was not the current union membership list as the information was not current. The list contained only 1,690 retirees' names for Lodges A, C, E and F. The Union's retiree list contains over 9,502 names. The Department determined that the DU slate's list was in existence prior to the election and maintained by the DU. It was not a union list. Thus, no violation of the Act occurred.

You alleged that the DU slate campaigned at barbeque events hosted by the union, thereby improperly using union funds for campaign purposes in violation of section 401(g) of the Act. 29 U.S.C. §481(g). The Department interviewed multiple members, including UC slate members, confirming that candidates from both slates campaigned during the Union barbeques. As both sides engaged in the same violative activity, any effect on the outcome of the election is offset, and the violations would not provide a basis for litigation by the Department.

You alleged that the Union hired an employee, [redacted], for the purpose of creating campaign literature for the DU. The Act provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election." *See* 29 U.S.C. § 481(g). The investigation revealed that [redacted] performed duties such as research, writing and photography for *Aero Mechanic* (a union publication), assisted with contract negotiations and assisted union department leaders. The investigation did not reveal that [redacted] was hired to create campaign literature for DU or that she in fact created campaign literature for DU. There is no evidence to substantiate the allegation and no violation of the Act.

You alleged that during a Union meeting, [redacted] read a statement criticizing the UC and stated that he had "talked to the lawyers" to get permission to make the statement. You inferred from his statement that [redacted] and the DU slate had sought campaign advice from Union retained attorneys, thus improperly using union funds. The Union President provided the Department with a signed statement that contrary to your allegation "District officials did not seek substantive legal advice from the Union's attorneys regarding [redacted]'s proposed statement prior to its delivery to the District Council on April 22, 2008." The Department found no evidence that establishing that union paid attorneys gave the DU slate campaign advice. There was no violation of the Act.

You alleged that two members, who were both supporters of the DU slate, took photographs of your slate using Union cameras and equipment. While the members admit to taking photographs, the Department did not find evidence that these members had used Union equipment to do so. The photographs were not used in any publications or campaign literature. There was no use of Union equipment and thus no violation of the use of Union funds under Section 401(g) of the Act.

You made multiple allegations of Section 401(g) violations asserting that candidates on the DU slate campaigned to members who were on employer time. As previously stated, the Act prohibits the use of employer funds to promote the candidacy of any

person in an election subject to Title IV. *See* 29 U.S.C. § 481(g). The Department interviewed multiple witnesses and employers to confirm that in accordance with past practice, the employer did not prevent either slate from campaigning. The investigation revealed that for the multiple instances of DU slate campaigning there was an equal amount of campaigning by the UC candidates on employer time. There was no use of employer funds to promote one slate of candidates. There was no violation of the Act.

You also asserted that Union President Wroblewski campaigned on union time on April 24, 2008, and that [redacted] and Business Representative Hamilton campaigned in the employer's buildings on April 29, 2008 while on union time. Union officers and employees retain their rights as members to participate in the affairs of the union, including campaigning activities as long as that does not involve the expenditure of union funds. *See* 29 C.F.R. § 452.76. The Department investigated these allegations and found that the vacation and leave records revealed that President Wroblewski had taken two hours of vacation time on April 24, 2008. There was no campaigning on union time and, thus, no violation of the Act occurred. Further, [redacted] and Hamilton were both in the 17-07 and 17-45 buildings on April 29, 2008 but the investigation revealed that they were not campaigning. Both individuals met with non-members and management to discuss issues unrelated to the campaign. Therefore, there was no violation of the Act.

You alleged that the Business Representatives Holden, Barstow and Jackson campaigned on union time at the Auburn plant by handing out DU campaign literature on April 23, 2008. The Department interviewed Holden, Barstow and Jackson who claimed to have taken leave in order to campaign. Additionally, the Department reviewed the vacation and sick leave records for the alleged campaigners. The review revealed that all of those campaigning were in fact on vacation and thus not on union time. No violation of the Act occurred.

You also alleged that other DU business representatives were campaigning in areas they were not assigned and it was unclear whether these individuals were on leave during their campaigning. You did not provide specific dates or locations concerning this allegation. The business representatives named in your complaint told the Department that they either did not campaign on union time or if they campaigned during union time they were on leave. The Department's review of vacation and sick leave records for these individuals revealed that with two exceptions, all business representatives accounted for their leave. While these two representatives did not take vacation leave during the campaign, both stated they did not campaign on union time. The Department's investigation found insufficient evidence concerning the two business representatives in question to prove a violation of the Act and that such possible violation affected the outcome of the election.

You alleged that Program Managers supporting the DU slate drove voters to the polls during the elections while on the employer's time. The Department reviewed the vacation and sick leave records concerning these allegations and verified that leave was properly taken during the election to cover the time spent driving. There was no violation of the Act.

You alleged disparate treatment occurred because some voters were not allowed to bring UC's white sample ballots into the polls while DU's blue sample ballots were allowed. As a practice, sample ballots are permitted in the polling area. While there is nothing in the Act that guarantees voters the ability to bring in sample ballots, it could be a violation of the Act, considered disparate candidate treatment, if the union allowed only one slate's sample ballots inside the polling area. *See* 29 C.F.R. § 452.110. However, the Department's interviews of election tellers and witnesses revealed that there was no evidence to substantiate this allegation. The Union took no action with respect to voters bringing sample ballots into the polling area. There was no violation.

You alleged that the ballots were confusing to voters because ballot instructions stated "vote for" the specific number of candidates for each position rather than "you must vote for" the specific number of candidates for each position. The Department found that the instructions at the top of each ballot specifically provided, "you must vote for the correct number of candidates or that portion of the ballot will be voided." In addition, there were signs at the polls which said "Remember! Vote for the correct number of candidates." There was no violation.

You also alleged that there was an inaccurate count of ballots in Lodge F by Election Trust, the company hired to conduct the election. You inferred that because Election Trust had made other errors, such as confusing the date of the Lodge F election, it may have incorrectly tallied the ballots as well. You also alleged that a 401(e) violation occurred in connection with the Lodge F election because the election chair told you that 1,300 ballots were cast when actually 1,400 ballots were in fact cast. You assumed that because the election chair did not give you the accurate accounting during that conversation, there must have been a failure to count ballots. The Department conducted a recount and found minor differences in the count for all but one candidate. The differences in the count would not have affected the outcome of the election. There was no violation affecting the outcome of the election.

You alleged that over 400 ballots were not counted in the Lodge A election, that the tally was time consuming, and that ballots should not have been voided in their entirety if a voter failed to properly fill in the ballot, *i.e.*, if a voter did not select the correct number of candidates for a position, the position should have been voided, not the

ballot in its entirety. First, the Department found the Union did not void a ballot in its entirety because of mistakes made with respect to the vote for one office. Rather, where the voter intent was clear, the vote was counted. If, however, the voter improperly voted for too few or too many in a particular race, their vote for that particular race was voided. Second, the Department found that there was a delay in tallying the ballots in Lodge A, but it was caused by the need to reprogram software after an earlier version of the ballot was printed for on-site voting. The Department found that this delay did not result in any problems with the actual tally, nor was it a reflection of a tally problem. Finally, the Department conducted a ballot recount for Lodges A, C & F and found that out of a possible 5,154 ballots, there were 57 voided ballots. Thus, there was no violation of the Act.

The investigation failed to disclose any violation of the LMRDA which may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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