

U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143



August 8, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Office of Labor-Management Standards, U.S. Department of Labor (Department, or OLMS) on January 31, 2023, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the October 2022 election of officers that was 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 each of your specific allegations that no violation occurred which may have affected the outcome of the election.

You alleged that members were unlawfully denied a reasonable opportunity to nominate candidates for office because NALC required all delegates to the convention to be vaccinated for COVID-19, which caused some members who wanted to run for office not to attend the convention. Section 401(e) of the LMRDA requires that members have a reasonable opportunity to nominate candidates prior to an election. 29 U.S.C. § 481(e). The investigation found that members did not need to be vaccinated to be nominated for office. Specifically, a member could arrange for a delegate attending the convention to submit nominating paperwork on his or her behalf, or a member could provide the necessary paperwork to the secretary-treasurer prior to the convention. Furthermore, there is no evidence that any member who was interested in running was not able to be nominated because of the vaccination requirement. More specifically, you were not able to identify any member who was unable to be nominated. Accordingly, there was no violation of the LMRDA.

You also alleged NALC failed to comply with a reasonable request to distribute campaign literature when it refused to run your slate's advertisements in the union magazine, the *Postal Record*, from February through August 2022, and only permitted

an advertisement in the September/October issue. Section 401(c) of the LMRDA requires a union to comply with a candidate's reasonable request to distribute 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 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 the *Postal Record* normally does not accept advertising, but that it makes an exception during election years to allow campaign advertisements in the September/October issue. This has been NALC's long-standing practice. The investigation further revealed that you were not treated less favorably than other candidates because all candidates were limited to advertising in the September/October issue. Under such circumstances, your request to publish campaign advertisements several months earlier than other candidates was not a reasonable request. NALC's parameters for publishing campaign literature ensured that all candidates were treated equally. Moreover, an action you filed in Federal District Court regarding this matter was dismissed on the basis the facts alleged did not state a claim under the LMRDA. Accordingly, there was no violation of the LMRDA.

You also alleged that NALC did not adequately verify the eligibility of voters at the ballot tally. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c). The investigation determined NALC's information technology department generated a list of eligible members prior to mailing ballots. NALC's National Secretary-Treasurer reviewed the list for accuracy. NALC used this list to mail ballots. NALC officials also reviewed duplicate ballot requests before forwarding them to the election vendor.

Because NALC's mailing list contained only members who were eligible to vote, and because NALC adequately processed duplicate ballot requests, there was no need to check voter eligibility at the ballot tally. You did not provide evidence of ineligible members voting in the election, nor did the Department uncover such evidence during the investigation. Accordingly, there was no violation of the LMRDA.

You also alleged campaign observers were unable to properly monitor the ballot count because the ballots to be tallied were only projected onto a viewscreen for a second or two. Section 401(c) of the LMRDA includes a general mandate that a union provide adequate safeguards to ensure a fair election, including the right to have an observer at the polls and the counting of the ballots. 29 U.S.C. § 481(c). The investigation found the election vendor used optical scanners to process about 500 ballots at a time. An image of each ballot, approximately 10' by 10', was projected onto a wall for at most a second and a half. This was not enough time to allow observers to verify the accuracy of the ballot tally. This conduct violated Section 401(c) because observers could not

adequately monitor the tally. OLMS recounted a sampling of ballots and found no discrepancies. Accordingly, there was no evidence this violation affected the outcome of any race.

You also alleged the election results were not broken down by local affiliate. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation found NALC published election results without a breakdown by local in a NALC Bulletin dated October 27, 2022, and in the December 2022 edition of the *Postal Record*. However, on October 27, 2022, NALC also posted on its website a link to election results by region and branch. You stated you did not see this link and that the information contained in the link addressed your concerns. Accordingly, there was no violation of the LMRDA.

In an interview with OLMS, you complained that NALC violated its constitutional voter secrecy requirements by printing identifying numbers on each ballot. Section 401(a) of the LMRDA requires that “[e]very national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot. 29 U.S.C. § 481(a). NALC’s constitution at Article 6, Sections 10-11 also contemplates a secret ballot election. The Department found your allegation to be out of scope. The LMRDA promotes union self-governance by requiring members to raise election complaints through a union’s internal processes before filing with OLMS. 29 U.S.C. § 482(a). Consistent with the Supreme Court’s interpretation of this provision, OLMS promulgated regulations that specify complaints will 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.” 29 C.F.R. § 452.136(b-1), citing *Hodgson v. Local Union 6799, Steelworkers Union of America*, 403 U.S. 333 (1971). Accordingly, your voter secrecy allegation would only be in scope if: 1) you included it in your original December 20, 2022 complaint to NALC; or 2) you could not have discovered such violation through reasonable inquiry. The investigation found that neither of these conditions were met.

First, you did not allege a voter secrecy violation in your original December 20, 2022 complaint to NALC. Specifically, you objected that:

The election committee/SBS refused to answer numerous questions about their activities, including, but not limited to, the following:

- a. How many ballots per minute will be counted?
- b. On each ballot next to the word president is a six digit number. What are the purposes of the numbers?
- c. Has the electronic voting system ever been audited by an authorized independent party?

- d. Does the electronic voting system include hash chains on the activity logs and the ballot box?
- e. Does the electronic voting system contain mechanisms by which observers can verify, prior to an election, that the system is working properly?

After considering the totality of this allegation, and based on its overall context, the Department concluded that it related to NALC's failure to answer many of your questions, not to NALC's failure to ensure a secret ballot in violation of its constitution.

Second, you could have discovered a potential breach of voter secrecy through reasonable inquiry; therefore, the Department cannot look outside the four corners of your December 20, 2022 complaint to investigate additional violations. You allege you only became aware of a possible voter secrecy violation when NALC denied your December 20, 2022 complaint and included information that caused you to believe the six-digit numbers printed on ballots could be used to identify individual voters. However, the investigation found you obtained this information well before NALC's January 6, 2023 denial of your internal complaint. ██████████ attended the vote count on your behalf as your slate's observer. ██████████ was aware you wanted to know why a six-digit number was assigned to the ballots because you copied her on an October 22, 2022 message to the union in which you asked, "What are the purposes of the numbers?" At the ballot tally, election committee member Rob Holub spoke with ██████████ and, in response to a question from her, explained the purpose of the six-digit numbers. On October 24, 2022, ██████████ sent you a Facebook message that explained, "a number is assigned to each ballot to prevent duplicates and so that counters can retrieve ballots rejected by yhe [sic] system." You therefore had sufficient information to raise a voter secrecy violation in your December 20, 2022 complaint to NALC.

Accordingly, the voter secrecy allegation you raised in an interview with OLMS investigators is not in scope because: 1) you did not include it in your December 20, 2022 complaint or any other complaints to NALC; and 2) you could have discovered such potential violation through reasonable inquiry based on the information provided to you by your observer ██████████.

Finally, NALC's failure to answer your questions did not violate the LMRDA. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation found your observer had the opportunity to obtain information on your behalf at the ballot tally. Accordingly, there was no violation of the LMRDA.


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.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Brian L. Renfroe, President
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, Associate Solicitor
Civil Rights and Labor-Management Division