



August 7, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor (Department) on March 20, 2023. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the Hawaii Nurses and Healthcare Professionals (HNHP or Union) election of officers, completed on November 25, 2022.

The Department conducted an investigation of the complaint. As a result of the investigation, the Department has concluded, with respect to the allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the union did not adequately notify members of nominations and the election because they were not publicized appropriately and members were not afforded enough time to decide who to nominate and vote for. Under Section 401(e) of the LMRDA, a reasonable opportunity shall be given for the nomination of candidates. 29 U.S.C. § 481(e). Notice of nominations may be given in any manner reasonably calculated to reach all members in good standing. Mailing such notice to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy this requirement. 29 C.F.R. § 452.56. Additionally, Section 401(e) states that an election notice is required to be mailed to each union member at his or her last known home address at least 15 days prior to the election. 29 U.S.C. § 481(e).

Article VI, Section 2 of the HNHP Constitution (Constitution) states that notice of nominations must be mailed to each member and/or posted on the HNHP website at least 45 days prior to the end of the term for Officers and Directors. Article VI, Section 5(c) of the Constitution states that the balloting date shall be 21 days after the sending of ballots to the membership.

The investigation disclosed that the union mailed the combined nomination and election notice to 1,063 members on October 7, 2022, two weeks prior to nominations and seven weeks before the election. Consistent with Article VI, Section 2 of the Constitution, the October 7 notice was sent at least 45 days prior to end of the officers' terms (or the date of the election). The combined notice was also posted to the union's website. The nominations meeting was held on October 21, 2022, and 1,122 ballots were mailed to HNHP members on November 4, 2022, 21 days before the November 25, 2022 tally. Accordingly, there was no violation.

You alleged that the union failed to provide adequate safeguards to ensure a fair election because the ballot and slate voting instructions were confusing and may have caused many ballots to be invalidated. Section 401(c) of the LMRDA requires that the union provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. A union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards. 29 C.F.R. § 452.110(b). A union may employ slate ballot voting so long as slate balloting is permissible under the union's constitution and bylaws. 29 C.F.R. § 452.122. However, there must be a provision for the voter to choose among individual candidates if they do not wish to vote for an entire slate. *Id.* The voting instructions should specifically inform the voter that they need not vote for an entire slate. *Id.*

The investigation disclosed that, although several members testified that they were confused by the ballot instructions, no ballots were voided due to issues related to complying with the slate balloting instructions. The union's voting instructions provided adequate instruction for properly casting ballots in the election. Specifically, the instructions read, in bold, "YOU MAY VOTE FOR INDIVIDUAL CANDIDATES OR YOU MAY VOTE FOR A SLATE OF CANDIDATES." Additionally, the instructions included the following:

USE THIS SIDE OF THE BALLOT IF YOU WANT TO VOTE FOR A SLATE OF CANDIDATES. If you vote for a "slate" of candidates, you should not vote for individual candidates, unless the slate does not have candidates running for every office. In that case, you should vote for an individual candidate only for the office where there is no candidate running on the slate. If you vote for individual candidates, you should not vote for a "slate" of candidates.

The only ballot that contained votes both for the slate and individuals on the opposite side was counted because the slate did not have candidates running for those offices where the voter selected individual candidates. Thus, voters were provided adequate

instructions for filling out their ballots and adequate notice that failure to comply with the voting instructions would result in their ballot being voided. Accordingly, there was no violation.

As a related matter, you alleged that the union failed to provide adequate safeguards, 29 U.S.C. § 481(c), and denied members' right to vote in the election, 29 U.S.C. § 481(e), because you believed that "more than one-third of the ballots were not counted." The Department thoroughly reviewed the election records and found that a total of 57 returned ballots were not counted in the election. Of these 57 returned envelopes, 29 envelopes did not include the member's name, or the name was signed rather than printed in an illegible manner. Not being able to determine who cast these ballots, the union properly decided not to open and count these 29 returned ballots. The Department's review of the election records also found that a group of 28 returned ballot envelopes contained the member's printed name but were not counted because the union determined that these 28 members were not eligible to vote in the election. The Department reviewed each of these 28 returned envelopes and found that six of these 28 individuals were current in their dues payments and eligible to vote in the election. The union's failure to count these six ballots violated the LMRDA; however, this violation could not have affected the outcome of the election as the smallest margin of victory was 49 votes.

You alleged that the Election Committee unilaterally decided to allow slate voting on the ballot without approval from the Board of Directors, in violation of the HNHP Constitution, and despite a majority of the Board of Directors allegedly opposing slate voting. Additionally, you alleged that an invalid version of the HNHP Constitution, which allowed for slate voting, was posted on the union's website during the election. Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. 29 U.S.C. § 481(e).

The investigation disclosed that the HNHP Constitution is silent on the issue of slate balloting, and that Article VII, Section 6.A of the Constitution states the following:

The Election Committee (EC) shall oversee all facets of all elections and balloting in accordance with the HNHP Constitution and Federal Law. The duties of the EC shall include but not be limited to: (1) supervising election and balloting procedures; (2) determining eligibility of nominees; (3) overseeing the preparation of ballots; (4) determining ballot validity; and (5) certifying results of the election to the Secretary, with the

exception of the contract ratification procedures provided in Article VIII Section 1 of this Constitution.

Although records indicate that some Executive Board members desired to hold a meeting in order to vote against slate voting and may have drafted an amendment to the Constitution that would have expressly prohibited slate voting, the HNHP Constitution explicitly leaves “all facets of all elections and balloting” within the oversight of the Election Committee. Additionally, the HNHP Constitution is silent on the issue of slate voting, leaving its implementation at the discretion of the Election Committee. Therefore, the Election Committee did not violate the HNHP Constitution by implementing slate voting in the 2022 HNHP election. Accordingly, there was no violation.


For the reasons set forth above, the Department has concluded that no violation of the Act occurred that may have affected the outcome of the election in connection with your allegations. Accordingly, I have closed the file on this matter.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Terilyn Carvalho-Luke, President
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