



May 17, 2024

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaints you filed with the Department of Labor (Department) on February 14, 2023 and February 23, 2023. Your complaints alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the November 10, 2022 election of officers of the National Association of Letter Carriers (NALC), Branch 70 (Branch 70 or the union).

The Department conducted an investigation into your allegations. As a result of the investigation, the Department concluded, with respect to your allegations, that there were no violations of the LMRDA that may have affected the outcome of the election.

You alleged that candidates that campaigned as part of the "Guzman Team" improperly used employer and union resources. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate for office. 29 U.S.C. § 481(g). The term "union or employer funds" is broadly construed and can include the use of union or employer resources and facilities as well as union- or employer-paid time. 29 C.F.R. §§ 452.76, 452.78. Campaigning incidental to regular union business or legitimate work assignments is not a violation of Section 401(g). *Id.*

Specifically, you stated you witnessed several officers that were part of the Guzman Team campaigning in an employee parking lot. You speculated that the officers may have used union vehicles or received mileage reimbursements for their campaigning. Additionally, you complained that Guzman Team campaign magnets were displayed in work areas even after you reported the problem to post office managers.

The investigation corroborated that union officers campaigned outside various post office facilities, but the weight of the evidence did not establish that they violated election or employer rules in doing so. The post office supervisors at the facilities where the Guzman Team campaigned explained that candidates are permitted to campaign in employee parking lots to off-duty employees. Employees in the parking lots are usually arriving for a shift or leaving after their shifts and so are usually off duty. The evidence indicated that the Guzman Team candidates campaigned in employee parking lots with the aim of speaking to letter carriers before their shifts began or after their shifts ended. Vacation and

payroll records supported that union officers were on leave or off duty while campaigning. Mileage reimbursement forms did not establish that the union reimbursed the officers for expenses related to using their personal vehicles for campaigning.

The investigation corroborated that the Guzman Team magnets were visible in portions of the Encinitas, Andrew Jackson, and El Cajon post office facilities during the election period. Section 402(c)(2) of the LMRDA provides, however, that an election will only be overturned where a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2).

The investigation disclosed that, of the members who may have been exposed to these magnets at the facilities, 74 of them voted in the election. The smallest margin of victory in the election was 170 votes. The votes cast by those members who may have been exposed to the inappropriately placed magnets could not have affected the outcome of the election. There was no violation that could have affected the outcome of the election.

Additionally, you alleged that union resources were also improperly used with respect to a Team Guzman campaign mailer in that it gave the appearance of a union endorsement. You noted that there was a footer on one of the mailers that resembled the footer in the Branch 70 Reporter, the union's newsletter. You also noted that the mailer copied the layout and font type from a ballot used in the election.

The investigation corroborated that the Team Guzman mailer had a footer that read "NALC Branch 70 Reporter - March 2010" followed by a page number. Team Guzman used personal funds to pay for Bianca Pitti to provide typesetting services for their mailer. Pitti created her own newsletter template some time ago and reuses it often, including for the union's newsletter. She inadvertently included the old union newsletter footer on Team Guzman's mailer. The investigation also corroborated that the mailer included a page with a sample ballot resembling the one used in the election, except that the image of the ballot had been stretched to accommodate the layout and the names of the opposition candidates have been replaced with "Opponent." The investigation indicated, however, that the mailer clearly appeared to be campaign literature. Neither the sample ballot nor the footer with the patently incorrect date would reasonably mislead members to presume the union had endorsed the candidates. Therefore, there was no violation of the LMRDA that could have affected the outcome of the election.

Your complaint also included allegations that you were denied the opportunity to be nominated for the position of president because of various problems with the manner in which the nominations meeting was conducted. 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). Under the Department's regulations, a union may employ any method of nomination of candidates that will provide a reasonable opportunity to make nominations. 29 C.F.R. § 452.57(a).

Specifically, you alleged that members were still arriving and signing in when union President Ricardo Guzman began the nominations meeting. You alleged President Guzman did not relinquish the microphone when nominations were opened for the position of president even though it was customary for him to do so. You stated a group of about six officers were gathered around a microphone meant for nominators' use, making it difficult to access. As a result, you alleged that although your friend tried to locate the microphone in order to nominate you, she was unable to do so before President Guzman improperly closed the nominations for president. You also alleged that President Guzman's motion to reopen nominations was improper.

The investigation did not support that irregularities during the nominations meeting resulted in members being denied a reasonable opportunity to nominate candidates. A recording of the meeting indicated that the meeting commenced four minutes after the appointed time and that nominations for president began approximately 3 and a half minutes later. President Guzman's decision to preside over nominations was not clearly contrary to any NALC rule nor did it affect your ability to be nominated for office. President Guzman allowed sufficient time for members to make nominations (including self-nominations) for the position of president. The weight of the evidence indicated that your friend had a clear path to the microphone but was confused about where it was located. President Guzman then asked three times if there were further nominations, and, upon hearing no opposition, he closed the nominations. The investigation did not substantiate that the closing of nominations for president was improper, either because it was evidently premature or because protocol required those in attendance to vote on closing nominations for each position.

The investigation corroborated that, after nominations for president were closed, you raised an objection. President Guzman noted that he was not supposed to allow more nominations for a position once he has closed them, but stated he was going to "leave it up to the membership" to decide. He took a voice vote followed by a headcount on the issue. The membership narrowly decided against reopening nominations. NALC's Associate General Counsel advised that a president may not make or second a motion while presiding over a meeting. Even if the motion to reopen should have been proposed by some other member in attendance, such a deviation from protocol had no negative impact on your LMRDA rights in this instance. The union had already provided you a reasonable opportunity to be nominated for the position of president and the reopening vote merely allowed the membership to decide democratically whether to present you with another opportunity. As such, the investigation did not support that you were denied a reasonable opportunity to be nominated under the circumstances.

Additionally, you complained that the union delayed the mailing of the November edition of its newsletter, which contained your campaign ad. You alleged that this delay favored the incumbent candidates by shortening the time members had to review other

candidates' campaign material before the election. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The investigation did not substantiate the allegations of delays in the distribution of the newsletter. Pitti (who provides typesetter services) usually sends an email with the materials for each edition of the monthly newsletter to DeFrance Printing (the printer) within the first two weeks of the preceding month. Pitti explained that she waited to complete the typesetting for the November edition until after the membership voted on where to hold the union's November meeting. Guzman informed Pitti of the location of the November meeting immediately after the October 13, 2022 meeting. Pitti inserted the location and sent the materials to the printer at 9:01 p.m. that night, meaning the printer still received the materials within the usual time frame. The evidence established that the printer usually prints the materials and mails the newsletter out between the 24th and 28th of each month. Where the mailing date falls in this time frame depends on when the materials are received, the difficulty of the printing job (lengthier newsletters or numerous pictures take longer to print) and when the weekends happen to fall in any given month. For the November 2022 newsletter, the printer completed the printing on time and mailed it out on October 28, 2022, which was within the usual time frame for mailing. There was no violation.

You also alleged that the union failed to provide clear voting instructions. You complained that the ballot instructed members to vote for five trustees instead of stating something like "vote for up to 5" or "vote for no more than 5." You also complained about instructions on the ballot stating they must be delivered to the election P.O. box by 4:00 p.m. on the election day. You alleged this was inconsistent with Article VI, Section 8(F) of Branch 70's bylaws, which states: "To be valid, the ballots must be postmarked no later than the day of the election." You also noted Article VI, Section 6 of the bylaws provides: "The last date on which ballots must be received, as prescribed in the notice of election, in order to be counted shall be the date of the election."

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). Additionally, 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 did not find evidence that union members were confused by the voting instructions. The instructions for voting for multiple trustees used language found on one of the NALC's sample ballots and the investigation did not corroborate voter confusion.

The ballot's instructions for returning it on time resembled that of past elections and clearly explained that, in order to be counted, ballots must be delivered to the P.O. box by 4:00 p.m. on election day. These instructions are not inconsistent with the language in Branch 70's bylaws. Additionally, the Election Committee followed the instructions on the ballot in that the ballots that arrived by 4:00 p.m. on election day were retrieved and tallied. There was no violation.

Further, you made several allegations related to the right to observe the Election Committee's mailing and pick up of the ballots. Specifically, you complained that the Election Committee did not notify candidates about when they could observe the preparation and mailing of ballots. You also complained about difficulties in observing the pickup and tally of the voted ballots. You could not be your own observer on election day because your leave request was denied. It was a mandatory workday for USPS employees due to it being the day before a holiday (Veterans Day). You could not find someone else to act as your observer. You also stated the Election Committee deviated from Article VI, Section 8 of the Branch 70 bylaws, which states: "All mailed ballots shall be picked up by the election committee, in the presence of observers, at the time designated in the notice of election, brought to a place previously designated for the tally, and tallied immediately." The voted ballots were picked up from the post office at two different times on the election day without observers present. You also noted that not all Committee members were present at the pickup.

Section 401(c)'s general mandate for a union to provide adequate safeguards to ensure a fair election includes the right to have an observer at the polls and the counting of the ballots. 29 U.S.C. § 481(c). In mail ballot elections, this includes the right to have an observer present at the preparation and mailing of the ballots and their receipt by the counting agency. 29 C.F.R. § 452.107. As noted above, Section 401(e) of the LMRDA provides that a union must comply with its constitution and bylaws when conducting officer elections. 29 U.S.C. § 481(e).

The investigation supported that candidates were given opportunities to observe the preparation, mailing, collection, and tallying of the ballots, but none took advantage of the opportunities. The nominations notice informed candidates about their right to have an observer present during the election procedures, as outlined in the NALC Regulations Governing Branch Election Procedures (NALC Regulations) and stated that candidates can serve as their own observer. It directed that "[t]he names and contact information of observers shall be provided to the Chairman of the Election Committee so they can be notified of dates and times of each procedure." The evidence indicated that no candidates wrote to the election committee with observers' names and contact information. It was inopportune that the ballot tally was scheduled on a day you were unable to take leave, but the union did not require observers to be active union members or otherwise limit your ability to find an observer to serve in your place. Under these circumstances, there was no denial of the right to an observer.

The investigation disclosed that the union provided details about the ballot retrieval and tallying procedures in the ballot package mailed to voters, explaining that the election committee would withdraw the ballots from the P.O. box at both 8 a.m. and 4 p.m. on election day and would tally them at the union office. The Election Committee acted in accordance with these procedures on the election day. All nine members of the Election Committee went to the Post Office at 8 a.m. to pick up the first batch of ballots and brought them to the union hall. They conducted a tally of that first batch of ballots, which took several hours. Four of the Election Committee members went back to the post office in the afternoon to collect any additional ballots delivered by the 4 p.m. deadline. The other Election Committee members remained behind with the first batch of ballots. The Election Committee completed the tally of the second batch of ballots around 5:30 to 6 p.m. The Election Committee chair explained the union has conducted the tally in this manner for decades. The morning pickup allows the Election Committee to begin tallying ballots earlier in the day and means they are not counting ballots late into the night. The Department's regulations at 29 C.F.R. § 452.3 provide that a union's interpretation consistently placed on its constitution will be accepted unless the interpretation is clearly unreasonable. The Union's longstanding ballot pickup procedures are not a clearly unreasonable implementation of the language in the Branch 70's bylaws. There was no violation.

Additionally, you complained that members may have been confused by the following statement printed on the front of the ballot package envelope: "After 5 days return to the NALC Branch 70 Election Committee." You stated that some members thought this notation meant they must return the ballot to the union after five days, thus limiting their time to vote.

The investigation corroborated that that language was printed, in very small type, just above the return address on the ballot package mailed to voters. The union has included this instruction on the front of the ballot package envelope for decades. The instructions are directed at the post office and are designed to ensure that undeliverable ballot packages are returned to the election P.O. box. Inside the ballot package, the union included clear instructions about when the ballots must be received in the election committee P.O. box in order to be counted. The investigation did not substantiate your allegation that voters found this instruction confusing. There was no violation.

Lastly, you made several allegations related to disparate treatment of campaign mailings. You complained that the printer used by Branch 70 mailed out the ballots and campaign literature for the Guzman Team prior to mailing out the newsletter containing the election ads of their opponents. You asserted this action by the printer gave the Guzman Team an advantage. You also complained that President Guzman made a motion, which passed, that limited what could be said in campaign ads appearing in the newsletter.

The campaign literature distribution provision of Section 401(c) of the LMRDA requires a union to comply with all reasonable requests by a candidate for distribution by mail of campaign literature at the candidate's expense. 29 U.S.C. § 481(c). The investigation did not reveal any such disparate treatment in terms of the options available and timing of the distribution of campaign literature. You had the same opportunity as the Guzman Team to pay to have your campaign literature separately mailed to members. Instead, you chose to pay \$135 to have your campaign ad appear in the November 2022 newsletter. As was explained above, the November newsletter was not intentionally delayed; it was mailed to members within the usual time frame for the union's monthly newsletters.

The investigation also did not establish that disparate treatment occurred with respect to the union's rules about the content of campaign ads included in the newsletter. A union may not censor campaign mailings in any way, even though the statement may include derogatory remarks about other candidates. 29 C.F.R. § 452.70. However, in a union newsletter or other publication mailed at the union's expense, a union may impose limits on the length, format and content of campaign statements as long as all candidates have an equal opportunity to present their views or opinions. *See, e.g.,* 29 C.F.R. §§ 452.73, 452.74.

All candidates were subject to the same rules about campaign ads included in the newsletter. President Guzman explained that, for many years, Branch 70 has limited the content in the campaign ads that are included in the branch newsletter to just the candidate's name and an introduction. He explained these rules are included in the election notice and the NALC Regulations. The NALC Regulations state:

The bottom-line is that a branch is absolutely prohibited from criticizing or endorsing any candidate in a union-financed newspaper, publication, or letter. On the other hand, publication of information sheets with biographical data is permissible, providing all candidates are given an equal opportunity to submit data and the data for each candidate are given equal space and prominence. Similarly, providing newspaper space for candidates to present their views is permissible, providing all candidates are given an equal opportunity to submit their statements and are given equal space and prominence in the branch paper.

Comments, Regulation 9.4. The September newsletter set forth the following rule regarding the content of campaign ads submitted for inclusion: "All ads are for the purpose of stating qualifications for and/or the position they are running for." Branch 70's brief articulation of the rule leaves room for different interpretations about what content is acceptable. Additionally, this subjectivity may make it difficult for the union to ensure all candidates were given equal opportunity to present their views and that any limitations were enforced impartially. In these circumstances, however, the union did not censor your campaign ad and the evidence did not otherwise indicate you were treated disparately. There was no violation.

As a result of the investigation, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election in connection with your allegations. Accordingly, this file is closed.


Sincerely,



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