



October 16, 2024



Dear [REDACTED]:

This Statement of Reasons is in response to your January 29, 2024 complaint filed with the Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the Minnesota Nurses Association (“MNA” or “Union”) elections of officers, which was completed on November 15, 2023.

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.

First, you alleged unlawful campaigning at the North Memorial Hospital by Shiori Konda-Muhammad. Section 401(g) 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.

The investigation determined that Nurses Forward slate candidates for First Vice President, Konda-Muhammad, and for Director, Tammy Andersen, campaigned at North Memorial. They campaigned both together and separately, on multiple occasions, on behalf of their own candidacies and the Nurses Forward slate. Konda-Muhammad and Andersen campaigned on their own, unpaid time to members in break rooms, at nurses’ stations, and in other locations on the hospital floor, regardless of whether the nurses they campaigned to were on employer-paid time. Some nurses stated that they were on employer-paid time while Konda-Muhammad and Andersen campaigned to them. This violated the prohibition of the use of employer resources to campaign.

The effect of the violation is offset, however, as the investigation revealed that members of each slate believed that they were permitted to engage in similar activity, and candidates from all slates campaigned in this manner. Candidates from all three slates

in the election – the Education, Engage, Organize slate; Experience slate; and Nurses Forward slate – confirmed the same understanding of the election rules as permitting candidates to campaign to nurses at hospitals, provided they did not interrupt patient care. Several candidates admitted to the Department that they campaigned at multiple hospitals, regardless of whether the members they campaigned to were on the clock. While Experience slate members disputed witnesses' assertions that they, too, campaigned to members who were on employer time, they admitted that they believed this was allowed. Based on an evaluation of the credibility of the members' statements who testified that they observed such campaigning on employer time coupled with the Experience slate's understanding of the election rules to permit such campaigning, the Department concluded that the Experience slate, like the other slates, engaged in campaigning to members who were on employer time. Such widespread unlawful campaigning by every slate offsets the effect of Konda-Muhammad and Andersen's improper campaigning. Accordingly, there was no violation affecting the outcome of the election.

Next, you alleged that a candidate list was improperly accessed and distributed to candidates before nominations were made public. You stated that the candidates for each office should be secret, and that advanced knowledge of the list of candidates allowed the Nurses Forward slate to choose which offices to run for. Section 401(c) requires that unions provide adequate safeguards and refrain from disparate candidate treatment. 29 U.S.C. § 481(c).

The investigation determined that, shortly before the close of nominations (on June 15, 2023), former union staff member Isuru Herath accessed a list of candidates on his union computer and provided a screenshot of it to Nurses Forward candidate for Secretary Becky Nelson in a text message. Nelson then sent it to Educate, Engage, Organize slate candidate for President Chris Rubesch, saying that he should support the Nurses Forward candidate for vice president. Nelson stated that she did not share the list with anyone else. Rubesch thought that he should not have access to that information; he reported the message to union Policy Project Specialist Carrie Mortrud and did not share the information with anyone else. The union investigated and determined that Herath's actions violated its staff policies, including distribution of confidential information, and terminated him. The constitution and bylaws and election rules are silent about the process for disseminating lists of candidates. The union's election committee detailed its investigation of the list's distribution in a memo shared with all members on September 21, 2023.

Consistent with the election committee's investigation, the Department's found that several candidates revised their Call for Candidate forms at some point after their initial submissions. On June 15, 2023, the union emailed a reminder for interested members to submit the Call for Candidates form. Candidates from each slate submitted or revised

Call for Candidates forms after Herath first accessed the candidate list. That included three candidates on the Nurses Forward slate - Konda-Muhammad, Michelle Sorensen, and Jill Lebrun - who changed positions after submitting their initial nominations forms. Konda-Muhammad initially ran for second vice president and stated that she changed to first vice president to fill a vacancy on the ticket caused by candidate Kelley Anaas' ineligibility for office. Sorensen completed a candidate form in which she checked that she was running for the Committee on Nursing Practice and Education. Sorensen explained that her selection was accidental, and on June 15, 2023, she submitted a second candidate form indicating that she would run for director. Lebrun explained that she changed her candidacy from director to treasurer because Nurses Forward did not have a candidate for treasurer. Nurses Forward slate members explained that they wanted to have a full ticket, and they ultimately had candidates for every race except president. The Department's investigation did not disclose any evidence that candidates changed positions in response to the list accessed and circulated by Herath. It is not a violation of the LMRDA to distribute a list of nominated candidates. To the extent it is a violation of internal union rules, there is no evidence that it affected the outcome of the election.

You further alleged that the Union permitted some candidates to include in their candidate biographies ("bios") more than the maximum of two activities. Section 401(c) requires that unions provide adequate safeguards and refrain from disparate candidate treatment. 29 U.S.C. § 481(c).

The investigation revealed that the MNA 2023 Call for Candidates form directed candidates to "list up to two local or state examples" of activities and stated that additional "activities will not be added to the bio." The form had columns for "Present" and "Past," under which there were two blank spaces each for "MNA Activity/Office/Appointment" and "Other Activity/Office/Appointment." Nine candidates (from various slates) listed more than two examples of activities in their bios, and three of those candidates won their office. There was a limit of 150 words, and if a candidate exceeded that limit, the union would request that the candidate revise the statement. Union staff were instructed not to edit candidate bios in any way, even if they saw a typo. Administrative Assistant Liz Hanf created the candidate bios by copying and pasting the content of the Call for Candidate forms, which members could submit via Formstack or on paper. She said that because of the way they appeared in Formstack, it was difficult to determine which activities were "MNA" or "Other" and which were "Present" or "Past." The union did not shorten or otherwise change anyone's bio.

The investigation further determined that candidates had ample categories to include additional information, including the category for a bulleted list of "[i]nvolvement in community, state, or national healthcare concerns." Candidates could also include

responses to three open-ended questions, the third of which was “Is there any other information you wish to provide?” Review of your candidate bio showed that, while you included two activities each for your present and past positions and activities, you included four items in the “[i]nvolvement in community, state, or national healthcare concerns” category, including that you were chair of a union committee. Considering the totality of the circumstances, the Department did not find probable cause to believe that the union’s actions constitute disparate candidate treatment in violation of section 401(c).

Next, you alleged that the Nurses Forward candidate slate made and circulated false statements in the media. You alleged that the statements were slanderous and contained racial stereotyping against the union’s then executive director. The LMRDA does not, and unions may not, regulate or censor the statement of candidates in any way, even if a statement includes derogatory remarks. See 29 U.S.C. § 481(c); 29 C.F.R. § 452.70.

The investigation showed that Anaas was a candidate for first vice president on the Nurses Forward slate, until the union disciplined and temporarily suspended her. Anaas was then featured in a video called “Kelley’s Story: The Battle for Union Democracy in Minnesota,” available on the Vimeo platform, and in an October 2023 Labor Notes article “Minnesota Nurses Win Big, Then Walk Back Winning Model.” The Department reviewed the video and article and found that they did not mention Nurses Forward or advocate for voting for any particular candidate. The media statements you cited were also not circulated through a union publication. There was no violation.

For the reasons set forth above, the Department concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file regarding this matter.

Sincerely,



Molly Wagoner
Acting Chief, Division of Enforcement

cc: Elaina Hane
Interim Executive Director
Minnesota Nurses Association
345 Randolph Avenue, Suite 200
St. Paul, MN 55102