



January 11, 2010

[REDACTED]

[REDACTED]

[REDACTED]

Dear Messrs. [REDACTED], [REDACTED], and [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("Department") on August 5, 2009 alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("the Act"), as amended 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for the New York Metro Area Postal Union (the "Local"), an affiliate of the American Postal Workers Union ("APWU"), completed on April 24, 2009.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations occurred.

You alleged that on April 2 and 3, 2009, another local member saw a candidate for office at a post office facility holding return ballot envelopes while the candidate looked through the manual letter cases where mail, including return ballots, was sorted by hand.

Among the protections in the Act is section 401(c)'s requirement that a union provide "adequate safeguards to insure a fair election." See 29 U.S.C. § 481(c). With this requirement, "[a] labor organization's wide discretion regarding the conduct of its elections is . . . circumscribed by a general rule of fairness." See 29 C.F.R. § 452.110. Pursuant to the adequate safeguards provision, unions must conduct their elections in a manner that does not violate the fundamental precepts of fairness that are essential to the selection of leaders through a democratic electoral process. See *Donovan v. Graphic*

*Arts Int'l Union*, 11 8 LRRM 2092, 2096 (C.D. 111. 1984). Adequate safeguards, as contemplated by the Act, specifically refer to the mechanical and procedural aspects of running an election. See *Brock v. Writers Guild of America, West, Inc.*, 762 F.2d 1349, 1354 (9th Cir. 1985). Violations of the adequate safeguards provision are determined on a case-by-case basis. In addition, in order for a violation to be actionable there must be evidence that the violation may have affected the outcome of the election. See 29 U.S.C. § 482(c)(2); see also, 29 C.F.R. § 452.5.

In this case, the Department's investigation confirmed that the candidate was seen looking in the mail cases. The investigation revealed that the candidate was a local officer in April 2009 and it was common for the candidate to visit that particular work area for union business. The investigation, however, did not confirm that the candidate was seen holding or removing any return ballot envelopes. Further, the investigation did not discover any evidence that the candidate tampered with any ballots. Therefore, even if the candidate's ability to look through the mail cases can be deemed an inadequate safeguard in violation of section 401(c), there is no evidence of this affected the outcome of the election.

You also alleged that undeliverable voted ballots that had been mailed in return ballot envelopes to the American Arbitration Association ("AAA") were returned to the Local rather than to the voters that had mailed the ballots. You claimed that because the name of the Local was in the upper left hand corner of the front of the envelope, it was possible for a mail clerk who knew the Local's address to have written that address on return ballot envelopes that may have been deemed undeliverable. You offered no evidence that this actually happened. Likewise, the Department's investigation revealed no evidence of this occurring or of any ballots being returned to the Local. A review of the ballots did not reveal evidence of ballot fraud or tampering. This unsubstantiated, hypothetical scenario does not constitute a violation of the Act.

You also alleged that AAA accepted 122 ballots after the April 23, 2009, 9:00 a.m. deadline. The Department's investigation confirmed this allegation. However, the union's action did not violate the Act. The election rules stated: "All ballots must be mailed and postmarked on or before midnight April 23, 2009. On Thursday, April 23, 2009 commencing at 10 a.m. at the offices of AAA, the Election Committee will observe the verification of eligibility conducted by the AAA." The voting instructions on the ballot stated: "Your business reply envelope must be received by the American Arbitration Association by 9:00 a.m. on Thursday, April 23, 2009." The investigation revealed that morning mail had arrived at the Radio City Post Office prior to 9:00 a.m. on April 23, 2009. However, due to an unexpected delay by the post office in processing the mail, the ballots that had arrived that morning were not ready for pick-up until after 9:00 a.m. The election committee decided to count these ballots.

As stated above, a labor organization's wide discretion regarding the conduct of its elections is circumscribed by a general rule of fairness. See 29 C.F.R. § 452.110. In this case, the decision to count the 122 ballots picked up after 9:00 a.m. was consistent with the democratic purposes of the Act, which strongly favors a broad rather than a narrow interpretation of the right to vote. See *Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 471 (U.S. 1968). Not to count ballots that had arrived at the post office but had not been processed would have disenfranchised a significant number of members who returned ballots in sufficient time that they were at the post office before the 9:00 a.m. deadline. Since none of the delayed ballots is known to have arrived at the post office after 9:00 a.m., it would be unfair to deny eligible members the right to vote based on the post office's failure to process the mail in a timely manner. It was through no fault of the members that their ballots were not timely processed. Therefore, counting these ballots did not violate the Act.

You also alleged that the Local did not make an adequate effort to check and correct the addresses on 71 ballots returned as undeliverable. The investigation revealed that of the 6,305 ballots mailed, only 101 were returned as undeliverable. The Local checked the addresses of the undeliverable ballots against its membership database and found no discrepancies. The Local also attempted to contact some of the addressees but was unsuccessful. In addition, the Local had a duplicate ballot procedure, which was noted in the Local's February and March 2009 newsletters, whereby any member who did not receive a ballot could request a duplicate. The investigation revealed that 124 duplicate ballots were requested and mailed to members, including 13 persons whose original ballots were among the undeliverables. Moreover, there is no evidence of eligible members being denied the right to vote. There was no violation of the Act.

You further alleged that the Local possibly mailed the incorrect number of ballots to the membership because the membership number was much higher than the number of ballots mailed. Specifically, you claimed that between November 2008 and June 2009, the Local, at meetings, in its newsletter, and on its website, variously reported that the membership was from 6,503 to 7,453. The investigation revealed that 6,305 ballots were mailed to members and 124 duplicate ballots were mailed to members upon request. In accordance with Article 12, Section 10, of its constitution, the Local used the certified eligibility list supplied by the secretary-treasurer to mail ballots. The Local's Secretary-Treasurer obtained this list from APWU National in February 2009. APWU National uses information received from the employer to continually update the membership list for the Local. There is no evidence that the widely varying membership numbers put forth by the Local were accurate or more accurate than the list obtained from APWU National. Further, there is no evidence that any eligible members were omitted from the ballot mailing, and any member who did not receive a ballot could request a duplicate. There was no violation of the Act.

You also alleged that the election results were only shown to Election Committee Chairman [REDACTED]; Larry Cary, the union's attorney; and AAA Vice President Jeffrey Zaino. The Act requires that in any secret ballot election, the votes be counted and published. *See* 29 C.F.R. § 452.108. In this case, the investigation revealed that the election results were announced to those present at the tally on April 24, 2009. The AAA certified the results on Monday, April 27, 2009. The Election Committee forwarded the election results to the shop stewards to post on union bulletin boards at the various worksites. The results were also published in the Local's June 2009 newsletter. There was no violation of the Act.

You also alleged that the union should have counted only the ballots returned in the union-provided business reply envelopes containing the member's signature. The investigation revealed that members were instructed to sign the front upper left hand corner of the business reply envelope containing their ballot. The reverse side of the envelope had a label with the member's name and address. If a ballot return envelope did not have the member's signature, the ballot was still counted as long as the name and address label was affixed to the back of the envelope and AAA could verify that the ballot was from an eligible voter. The decision to count ballots sent in unsigned envelopes was also consistent with the democratic purposes of the Act. Section 401(e) of the Act provides that every eligible member shall have the right to vote. The union's failure to count ballots contained in unsigned envelopes, where the eligibility of the member could otherwise be determined would have violated the Act. There was no violation of the Act.

Similarly, you alleged that ballots mailed in business reply envelopes without postmarks were improperly counted. The investigation revealed that the election rules stated: "All ballots must be mailed and postmarked on or before midnight April 23, 2009." The ballot instructions, however, did not contain that rule. The investigation also revealed that not all envelopes processed by the automated machines get postmarked, and the post office does not rely on the postmarks to keep track of the business reply envelopes. As explained above, the decision to count ballots from business reply envelopes that were timely received, but not postmarked, is consistent with the section 401(e) of the Act. There was no violation of the Act.

Finally, you alleged that some members voted for more than one slate and/or voted for a slate and then also voted for individual candidates running for the same positions and that this resulted in an incorrect ballot tally. The investigation did not substantiate this allegation. Rather, it revealed that the electronic ballot scanner was programmed to count only the slate vote if a slate box was checked. Further, the election rules and ballot instructions clearly informed members that if a member voted by marking a slate box, then the votes for all members of the slate would be counted, and any votes for individuals in positions which were covered by the selected slate would be ignored. A

member could mark a partial slate and then vote for individual candidates for positions not included in the partial slate. Moreover, sample tallies conducted during the investigation confirmed that the Local followed these rules. There was no violation of the Act.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA, and I have closed the file on this matter.


Sincerely,

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Chief, Division of Enforcement

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