



May 8, 2013



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U.S. Department of Labor on March 22, 2012, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers for the Newton-Wellesley Nurses Bargaining Unit (NWNBU) of the Massachusetts Nurses Association (MNA), conducted on December 20, 2011.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA that affected the outcome of the election.

You alleged that the union failed to follow the absentee ballot provisions set forth in the union's bylaws and that this led many members to believe that they could not vote in person and thus they declined to vote. Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. *see* 29 C.F.R. § 452.2.

The investigation found that Article III, Section 3 of the union's bylaws require that absentee ballots be available upon request to the members for all elections. Here, the investigation found that the MNA, which supervised the election, sent absentee ballots to all the members rather than require members to request an absentee ballot. However, members were still able to vote in person on election day. Furthermore, the election notice clearly advised members that they could vote in person or by absentee ballot. The investigation did not identify any members who were confused by the notice. In order for the Department to seek to overturn an election, there must be evidence that a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Therefore, even if providing absentee ballot to all members without their request was inconsistent with the bylaws, it did not affect the outcome of the election.

You also alleged that the union did not provide adequate notice of nominations and mishandled the nominations forms. The LMRDA does not prescribe particular procedures for the nomination of candidates, and unions may use any method that is reasonably calculated to reach all members in good standing. 29 C.F.R. § 452.56.

The investigation found that the MNA mailed a nomination notice to all members on November 22, 2011, but the notice did not list all the offices to be filled. The notice stated, however, that nomination forms would be posted on bulletin boards throughout the hospital. Those nomination forms listed all the offices and were posted on bulletin boards around the hospital where all the members work. The combination of the mailed notice and posted forms constituted adequate notice of nominations in that it was reasonably calculated to properly inform all the members.

With regard to the handling of nomination forms, the investigation found that the union failed to collect all the nominations forms from the bulletin boards. Section 401(c) of the LMRDA provides, among other things, that “adequate safeguards to insure a fair election shall be provided.” The failure to collect all nomination forms constituted an adequate safeguards violation. However, there is no evidence that the violation may have affected the outcome of the election. No would-be nominees were left off the ballot, and four individuals won positions as write-in candidates. The violation did not affect the outcome of any race in the election.

You also alleged that the ballot process did not follow the union’s bylaws because the secretary was excluded from the ballot process and the nominations committee was dismissed after creation of the ballot. The NWNBU bylaws require that the nominating committee develop the ballot in conjunction with the union’s secretary. The bylaws also assign election duties to both the executive and nominating committees, including a requirement that the nominating committee assist in tabulating all ballots. As stated above, Section 401(e) of the LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws.

The investigation confirmed the allegation, finding that the secretary did not attend the meeting regarding the ballot and that the MNA election official in charge of the election arranged for MNA staff to conduct the tally instead of the nominating committee. However, as stated above, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Here, the investigation did not find evidence of any effect resulting from the failure to follow the bylaws.

You also alleged that the ballot layout was confusing because you and the candidate you campaigned with were not listed together on the ballot.

The investigation found that there is no bylaw provision for slate voting or listing candidates together. Candidates have no say in how the ballot is formatted and the union is not required to list particular candidates together. The investigation further found that the nominating committee determined the order of the candidates on the ballot by drawing lots. There was no violation of the LMRDA.

You also alleged that voters were not properly identified at the polling place. Section 401(c) of the LMRDA provides, among other things, that “adequate safeguards to insure a fair election shall be provided.”

The investigation confirmed that the MNA personnel who staffed the polling place did not ask voters for identification before checking them in and allowing them to vote. Further, the MNA personnel did not know the NWNBU members by sight. The union’s failure to check identification constitutes a violation of Section 401(c) of the LMRDA. However, as part of the investigation the Department reviewed the election records and found no evidence that any ineligible member or non-member voted or that any member voted more than once. Thus, the failure to provide adequate safeguards did not affect the outcome of the election.

You also alleged that that you were told you would not be allowed into the polling place. The adequate safeguards provision, cited above, provides that candidates have the right to “have an observer at the polls and at the counting of the ballots.” 29 U.S.C. § 481(c).

The investigation confirmed that the MNA official in charge of the election initially told you that you would be allowed to observe at the polling place. The investigation also determined, however, that the MNA official later reversed his decision and informed you that you would not be allowed to be present at the polling place. While you visited the polling place several times during election day, you did not stay. Although you were not told to leave the room, you were not provided a fair opportunity to observe. While the union’s conduct constitutes a violation of the LMRDA, the investigation, including the review of ballots, did not find evidence that the violation affected the outcome of the election.

You also alleged that the union counted ballots that should have been set aside as challenged, specifically two ballots which were mailed in a return envelope without a secrecy envelope. Section 401(e) of the LMRDA provides that every member in good standing is entitled to one vote and that those votes be counted.

The investigation’s records review revealed that the union set aside 67 challenged ballots during the tally. Of those 67, the investigation found that 13 were improperly set aside for lack of identifying information, although the voter was identifiable. In

addition, the investigation found that 2 eligible members' ballots were improperly not counted because they lacked a name and signature, even though they were identifiable. The Department included these 15 ballots in a recount, but the additional votes did not change the outcome of any race. Thus, the violation did not affect the outcome of any race in the election.

You also alleged that members did not have the opportunity to vote because the MNA membership list was inaccurate. As stated above, Section 401(e) of the LMRDA provides that every member in good standing is entitled to one vote.

The investigation found that the union mailed the election notice to all members in good standing and posted the notice on the union's website, but did not mail notices to ineligible members. The investigation could not establish exactly how many members were mailed ballot packages because the union did not preserve the mailing list. The investigation compared the voter eligibility list, which was printed approximately a week after the ballot mailing and was presumably nearly identical to the mailing list, with a list of bargaining unit employees obtained from the employer and concluded that 10 MNA members should have been sent an election notice but were not. The violation did not affect the outcome of any race in the election.

You also alleged that ballots were passed out at the Newton-Wellesley Hospital's children's Christmas party. Section 401(g) of the LMRDA prohibits the use of employer funds or resources to promote the candidacy of any person in an election.

The investigation did not substantiate your allegation. No witnesses corroborated your allegation and you did not witness the incident you allege. There was no violation of the LMRDA.

Finally, you alleged that some candidates used an MNA publication as part of their campaign literature. Section 401(g) of the LMRDA also prohibits the use of union funds or resources to promote the candidacy of any person in an election.

The investigation found that one candidate copied an article from the MNA quarterly publication and passed it out as part of her campaign literature. The investigation found that the publication is available to all members and that the article did not promote the candidacy of anyone and was available to any candidate to use. Further, the candidate made the copies at her own expense and on her own time. There was no violation of the LMRDA.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and we have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc:



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