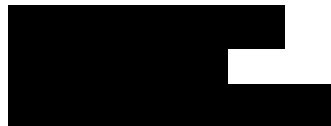




January 22, 2019



Dear 

This Statement of Reasons is in response to your complaint received by the Department of Labor on November 29, 2017, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the May 12, 2017, election of local officers of American Association of University Professors Hofstra University Chapter (the Chapter or union).

The Department of Labor 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 the Chapter improperly allowed your opponent to send a campaign email stating that she had the full endorsement of the union board. The LMRDA does not, and unions may not, regulate or censor the statements of candidates in any way, even if a statement includes derogatory remarks. *See* 29 C.F.R. § 452.70. Unions have no role in approving the content of campaign materials under the LMRDA. Thus, even if this allegation were true, there was no violation of the LMRDA.

Further, you alleged that disparate treatment occurred because the Chapter president sent an email coinciding with the distribution of your opponent's campaign email. Section 401(c) of the LMRDA prohibits disparate candidate treatment. When a union or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate that requests it. 29 C.F.R. § 452.67. The content of the e-mails at issue was of an informational, "get-out-the vote" nature, and did not promote any person's candidacy. The Chapter president had scheduled, at the beginning of the election process, the dates and times that the emails reminding members to vote would be sent out by a third party service. The content and tone of the get-out-the vote emails were not promotional. There was no violation of the LMRDA.

You next alleged that the union unreasonably delayed distributing your campaign literature to the membership, costing you 25% of the voting season. You further claimed that the Chapter President attempted to influence the election by sending out two get-out-the-vote emails so that more of the membership would vote prior to receiving your literature. Section 401(c) of the LMRDA requires unions to comply with all reasonable requests of any candidate to distribute campaign literature to the membership at the candidate's expense and to refrain from discrimination in handling such requests. *See* 29 C.F.R. § 452.67.

The investigation disclosed that the union informed you as early as April 5, 2017 that campaign literature could be distributed to Chapter members at the candidate's expense by use of Chapter resources. Once you received this information, you could have requested that the union distribute your campaign materials. You waited until the night of April 24, however, to ask the election committee chair for clarification regarding the process for distributing campaign literature to the membership. As ballots were mailed on April 10 and due back by May 11, this was midway through the voting season. The election committee chair sought guidance from the Chapter president about the campaign mailing process. It took a couple days for you to receive a response, and then a couple days for your payment and literature to reach the appropriate individuals. Your literature was sent to the membership the night of April 28. The investigation showed that your campaign literature was sent out within a reasonable amount of time.

Moreover, the investigation did not reveal any evidence of disparate treatment of candidates with respect to the distribution of campaign literature. The investigation revealed that your opponent asked to send out her campaign materials on May 1, which was even farther along in the voting season. It took the chapter several days to process her request and her materials were distributed on May 4. Additionally, as explained above, the timing of the president's get-out-the-vote emails were predetermined and any correlation with your request to distribute literature was coincidental. There was no violation of the LMRDA.

You next alleged that the Chapter president interfered in the election by trying to coerce a colleague who sent an email endorsing you to the entire faculty. Related to the rights that pertain to union officer elections, the LMRDA protects the rights of members to express any of their views, arguments, or opinions, *see, e.g.*, 29 U.S.C. § 411(a)(2) and 29 C.F.R. § 452.7, and unions generally may not censor the statements of members, even if such statements are derogatory. 29 C.F.R. § 452.70 (prohibiting union censorship of campaign literature). Additionally, Section 401(c) of the LMRDA requires unions to refrain from discrimination in favor or against any candidate.

The investigation disclosed that a colleague sent an email to the entire faculty using the university's faculty list serve that described your accomplishments and urged them to vote for you. The Chapter president sent an email to your colleague alleging that the endorsement email contained factual inaccuracies and that he was "prepared to clarify the record for the Hofstra faculty if [the colleague was] not." Your colleague stated that he ignored the Chapter president's email and did not send a follow up email to the faculty. The Chapter president also did not send an email to the faculty about the alleged inaccuracies. Accordingly, even if the Chapter president's actions were a violation, there would be no effect on the outcome of the election.

You further alleged that several members did not receive ballots and that other members may have been denied the opportunity to vote because the membership list was not verified. Section 401(e) of the LMRDA provides that notice of an election must be mailed to each member at his last known home address and that each member in good standing shall be entitled to one vote. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. You provided the names of two members who purportedly did not receive ballots. The investigation revealed that the union did have the correct address on file for one of these members and that his voted ballot was returned. The other person did not appear to be a member eligible to vote in the election and there was no indication that she contacted the union to request a ballot. A witness offered the names of two other individuals who may not have received ballots, but those individuals' names appeared on the mailing list and the investigation uncovered no evidence that they did not receive a ballot.

The evidence did not otherwise indicate that the membership list was outdated or problematic. The investigation disclosed that the union periodically advises members at meetings to provide their updated mailing addresses and that members' eligibility to vote was verified just prior to the mailing of the ballots. Ballots were mailed to all members at their last known home address on April 10, with a return date of May 11. All ballot packages were returned directly to the American Arbitration Association (AAA), the company the Chapter hired to conduct the election. Of the 740 ballot packages mailed, 38 were returned as undeliverable.

The Chapter mitigated inaccuracies in the list by individually contacting many of those whose ballot packages were returned as undeliverable. During the voting season, AAA informed the Chapter about 23 of the 38 undeliverable ballot packages by scanning and emailing copies of the envelopes to the Chapter. The Chapter made reasonable efforts to contact all 23 of those individuals and get updated addresses. AAA did not inform the Chapter about 15 undeliverable ballots and so the union took no steps to re-mail ballots to these members.

The investigation established that there was a replacement ballot request system in place for members who did not receive a ballot in the mail, further mitigating inaccuracies with the membership list. Duplicate ballots were handled through AAA and the Chapter informed members of the procedure in multiple emails. AAA sent out 35 duplicate ballots, indicating members were aware of how to obtain a new ballot if they did not receive one. Of the 15 members whose ballots were returned as undeliverable but who were not contacted by the union individually, one independently requested a duplicate ballot from AAA. Thus there were only 14 members who did not receive a ballot and were not individually contacted by the Chapter about providing an updated address.

It therefore appears that reasonable efforts were made to re-mail ballots returned as undeliverable, and even if a violation occurred with respect to 14 members, there would be no effect on the outcome of the election. This 14 ballot discrepancy would have no impact on the election outcome since the smallest vote margin was 18 votes in the race for Second Vice President for Collective Bargaining.

The investigation did uncover a related violation. Section 401(e) of the LMRDA requires unions to preserve the ballots and all other records pertaining to the election for one year. As previously mentioned, AAA scanned and emailed to the Chapter copies of the ballot packages that were returned undeliverable. The investigation revealed that eleven of the ballot packages that were scanned and emailed were not contained in the election records. The Chapter's failure to preserve all of the undeliverable ballot packages was a violation of the LMRDA.

Additionally, there was a discrepancy in the election records with respect to two ballots. AAA's record of the ballot tally indicated that there were 252 returned ballots, of which 249 included a vote for the position of First Vice President of Grievances and three were blank. The investigation disclosed, however, that there were only 250 ballots in the election records. A recount indicated that the election records did not contain two of the blank ballots recorded by AAA. Counsel for the Chapter stated that there were 250 voted ballots and one blank ballot returned, and that one envelope was returned without any ballot inside, indicating that one blank ballot was missing from the records and that the AAA tally incorrectly recorded an extra blank ballot. The failure to preserve the blank ballot(s) and to record that one envelope was returned without a ballot was a violation of Section 401(e) of the LMRDA.

The investigation did not find, however, that these Section 401(e) violations could have affected the outcome of the election. Candidate observers were present at the tally and there was no evidence that the union failed to properly count the voted ballots. Moreover, there was no evidence of ballot fraud in this election.

You also alleged that, although it was agreed at an Executive Council meeting that he would do so, the Chapter president never scheduled a meeting at which candidates could present themselves and their positions before the membership. You alleged that the Executive Council meeting minutes initially failed to include the discussion of the proposed candidates meeting. Even if true, these allegations would not violate requirements of Title IV and thus were not included in the investigation.

In addition to the allegations discussed above, you raised a new issue that was not included in your initial protest: that the Chapter failed to hold the election on May 10, 2017 in accordance with the Chapter's Bylaws. Section 402 of the Act requires that the complaining union member must have "exhausted the remedies available under the constitution and bylaws" of their union in order to file a complaint with the Secretary of Labor. In your May 18, 2017 letter to the Chapter's election committee chair, you failed to include this additional allegation. Accordingly, this allegation is not properly within the scope of your complaint to the Department and was not investigated.

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

Sincerely,



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Acting Chief, Division of Enforcement

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