U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

May 22, 2009

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on November 12, 2008. In the complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the International Brotherhood of Electrical Workers, Local 1505 (union), on June 17, 2008.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded with respect to each of your specific allegations that there was no violation of the Act affecting the outcome of the election. Following is an explanation of this finding.

You alleged that the incumbent business manager was permitted to run for office although he was on a medical leave of absence, and he did not meet the two year continuous good standing requirement for candidacy. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct an election of union officers in accordance with its constitution and bylaws. The investigation disclosed that the union constitution and bylaws required members to be in continuous good standing, *i.e.*, current in dues payment during the two years prior to the nominations meeting to be eligible to run for union office.

The investigation revealed that the two-year qualifying period for the challenged election was from May 2006 to May 2008. The investigation also disclosed that the union has consistently interpreted the good standing requirement as providing a 90-day grace period during which members may make up missed payments of the monthly dues without loss of eligibility for office. The Department's review of the union's dues payment records showed that the incumbent business manager paid his monthly dues directly to the union while he was on a medical leave of absence and that he was not

more than 90 days late in the payment of such dues during the qualifying period. Thus, he was eligible to run for office. The Act was not violated.

You alleged that the incumbent business manager distributed invitations to new members concerning a new members' orientation dinner that was sponsored by the union, and that the dinner was scheduled to be held two months prior to the election. You further alleged that union funds were used to pay for the invitations, the invitations were printed on official union letterhead, and they were delivered to members during work hours while members were in the work areas. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy of any person.

The investigation disclosed that the new members' orientation dinner was postponed until after the election. The investigation further showed that the invitations did not contain any language that was promotional or supportive of the incumbent administration. Nor did the invitations solicit the votes of the new members. In connection with the new members' orientation dinner, you alleged that the tone of the letter that the incumbent business manager distributed to new members announcing the cancellation of the dinner was intended to promote the candidacy of the incumbent business manager and his team. The investigation disclosed that the wording of the letter did not promote the incumbents' candidacy. The Act was not violated.

In addition, you alleged that the chief union steward used the employer's facsimile machine to fax a copy of a campaign slate card to the union office at the Wyman Street facility. You further alleged that the steward at the Wyman Street facility posted the fax in a locked bulletin board at that facility and that the board was accessible only to union officials and the employer. These allegations were substantiated by the investigation.

Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of employer and union funds to promote the candidacy of any person. Candidates may not use employer or union facilities to assist them in campaigning, unless such assistance is afforded to all candidates. Nor may union equipment, supplies or other things of value be used to promote a person's candidacy. Thus, the Act was violated when campaign material supportive of the incumbent slate was posted in a locked bulletin board located at an employer facility, and the board was not accessible to opposition candidates. The Act was further violated in that an employer facsimile machine was used to transmit the material. However, the investigation disclosed that 11 of the 13 members employed at the Wyman Street facility who voted in the election stated that they did not see the campaign material posted. Thus, at most, two such members were exposed to the material. The smallest vote margin for any races was 10 votes. Thus, the two votes did not affect the election outcome.

You also alleged that a member observed a chief union steward removing campaign signs supportive of the incumbent slate from the union hall while being paid by his employer. As a result, you concluded that the slate used the union hall as a campaign center. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union and employer funds to promote the candidacy of any person. Thus, candidates in union officer elections may not use union or employer facilities to assist them in campaigning, unless such assistance is afforded to all candidates. Nor may a candidate campaign while being paid by the employer.

The investigation disclosed that the campaign signs that you are referring to were supportive of a candidate in a state senate election that had occurred earlier in the year. None of the signs were supportive of the incumbent slate or any other candidates in the challenged election. The investigation further disclosed that the steward removed the signs from the basement of the union hall and placed them in the back of his pickup truck after the incumbent business manager asked the steward to dispose of the signs. The investigation did not disclose that the union hall was used as a campaign center. The Act was not violated.

You alleged that the union paid the executive board members four hours of lost time to attend a June 6, 2008 executive board meeting that lasted only one and one half hours and that the members used the remainder of that time to campaign. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits union financed campaigns. Thus, candidates may not campaign while being paid by the union.

The investigation disclosed that the executive board members were placed on eight hours of unpaid leave from the employer to attend the June 6 executive board meeting. The investigation also disclosed that the lost time payment referred to is actually a union stipend that is provided to the executive board members for attending executive board meetings. The stipend is unrelated to the length of time such meetings are conducted. Any executive board member who attends a meeting is entitled to receive the stipend. The investigation further showed that the payment of the stipend is a longstanding union policy. Consistent with that policy, the investigation revealed that the executive board members who attended the June 6 meeting received the stipend for their attendance at that meeting. After the meeting was adjourned, the incumbent business manager took personal time off and campaigned at an employer facility. The other executive board members either remained on unpaid leave or used paid leave from the employer, and some of them also campaigned at that facility. The Act was not violated.

You alleged that a manager told a member to go to the company cafeteria at lunch time for a meet and greet with the incumbent business manager. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits use of union and employer funds to promote the candidacy of

any person. Thus, members may not campaign while they are being paid by the employer or by the union.

The investigation disclosed that the manager informed six to eight people that the incumbent business manager would be in the cafeteria at lunch time to meet and greet members. The investigation showed, however, that the manager did not instruct anyone to attend the campaign event and that he did not excuse anyone from work to attend it. Several members of that department who were not on break did have incidental contact with the incumbent, who was en route to the cafeteria shortly before noon, but this incidental contact did not constitute campaigning. In any event, the investigation showed that the employer afforded both the incumbent business manager and his opponent an opportunity to campaign in the break rooms, the cafeteria, and outside the facilities. There was no promotion of one candidate over another. The Act was not violated.

You alleged that the election notice indicated that the polling areas at the Andover plant would be in the main cafeteria, at the main gate and at post number 1, but that on the morning of the election, the polling areas were moved to different locations within the plant without prior notice to the members. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires unions to provide adequate procedural safeguards to ensure a fair election.

The investigation disclosed that the polling areas at the Andover plant were moved from outside the plant to areas located inside the facility because of inclement weather. The investigation disclosed that signs that instructed voters of the location of the new polling areas were posted at the plant within minutes of the polls being moved inside. Further, election officials were present in the polling areas to assist any member who was unsure of the location of a voting area. In any event, the investigation did not disclose the name of any member who did not vote because the member was unaware of the new location of a polling area at the Andover plant. The Act was not violated.

You alleged that the election rules prohibited campaigning within 50 feet of the voting areas but that the incumbent slate campaigned in the satellite cafeteria polling place within 25 feet of the voting area. Pursuant to Department regulations, unions may forbid campaigning within a specified distance of a polling place. 29 C.F.R. §452.111. However, unions must apply the rule equally to all candidates. Disparate candidate treatment would violate section 401(c) of the Act, 29 U.S.C. § 481(c), which requires unions to provide adequate procedural safeguards to ensure a fair election.

The investigation showed that all of the candidates in the election were affiliated with one of the two slates and that the members of both slates campaigned within the restricted area. Specifically, the investigation disclosed that the polling area at the satellite cafeteria was approximately 45 feet long. Members of both slates on occasion

sat in the rear of the satellite cafeteria at the main entrance, which was approximately 30 feet from the voting area. However, members of both slates violated the 50 feet rule by campaigning in the hallway just outside the entrance to the satellite cafeteria. . Thus, the Act's adequate safeguards provision was violated in that the union permitted campaigning within the restricted area, in violation of the election rules. However, both slates campaigned in that area and, thus, no slate gained a political advantage over the other slate. No violation of the Act occurred that may have affected the election outcome.

You alleged that the election rules required that observers refrain from roaming in the voting area but that at 7:30 a.m. a member saw an observer for the incumbent slate roaming throughout the voting area in the main cafeteria, removing materials from the voting stations and standing within three feet of voters while they marked their ballots. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that unions provide adequate procedural safeguards to ensure a fair election.

The investigation disclosed that an election teller instructed an observer to remove any campaign slate cards that voters had left in the voting booths. As a result, the observer occasionally canvassed the voting area to ascertain whether voters had left campaign materials in the voting booths. This action would explain the observer's behavior, which you interpreted as the observer roaming throughout the voting area. However, the investigation did not disclose that any such roaming occurred. The investigation also disclosed that the observer removed campaign materials from the booths only when there were no voters in the voting area or in the booths. The investigation did not disclose that the observer stood near voters as they marked their ballots in the voting booths or that he observed how members marked their ballots while they were in the booths. The Act was not violated.

You alleged that ballot secrecy was compromised when a chief union steward stood directly beside the ballot box located at the main cafeteria polling site while voters placed their ballots in the ballot box. Section 401(e) of the Act, 29 U.S.C. 481(e), requires that an election of union officers be conducted by secret ballot. *See* 29 C.F.R. § 452.97.

The investigation disclosed that the observer sat down at a table that was three or four feet from the ballot box for several minutes while there was a lull in the voting. The investigation showed that one person voted while the observer was sitting at the table. The investigation did not disclose that the observer's position allowed him to see how the member voted when the member placed the ballot in the ballot box. Voters had been instructed to place their ballots face-down while placing their ballots in the ballot box. The ballot was placed in the ballot box and commingled with other ballots. In any event, the observer later moved to the observer table after the head election teller instructed him to do so, where he remained for 15 or 20 minutes before leaving the

polling site. The voting procedures allowed for secret ballot voting. Secrecy was preserved. The Act was not violated.

You alleged that the chief union steward stood within three to five feet from the ballot box located at the satellite cafeteria polling site. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that unions provide adequate safeguards to ensure a fair election.

The investigation disclosed that the steward served as an observer during the election. A member stated during the investigation that he saw the steward standing five to six feet away from the ballot box at the satellite cafeteria polling site while voters were placing their ballots in the box. An observer at the satellite cafeteria polling site stated during the investigation that he never saw the steward standing near the ballot box and that the steward was in a location where he could not have seen how members voted. The steward stated during the investigation that he stood between the regular cafeteria tables and the barricade of tables that had been arranged to divide the voting area from the rest of the cafeteria while he was at the polling site. He denied standing near the ballot box. In any event, voters had been instructed to place their ballots face-down while placing their ballots in the ballot box. The investigation did not disclose that the steward or any other observer saw how voters had marked their ballots as the voters placed their ballots in the ballot box. The Act was not violated.

You also alleged that the manner in which the voting area at the satellite cafeteria polling site was set up reduced the secrecy of the voting process in that members entering the voting area to vote could see how members who were already in voting booths were marking their ballots. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that union officer elections be conducted by secret ballot. The investigation disclosed that a barricade of tables was set up in the satellite cafeteria to separate the voting area from the rest of the cafeteria. The voting booths consisted of tables with a partition attached to the top of each table on three sides.

The investigation also disclosed that the voting booths with the partitions were approximately six feet high from the floor. In addition, the investigation disclosed that a member was permitted into the voting area to vote only when a voting booth became available. As the member proceeded to the next available booth, the voting booths were set up in a manner that placed the member some distance from those members who were already in booths and voting such that those entering the voting area could not see how those already in the area were casting their ballots. Further, members were required to immediately vacate the voting area after they finished voting. Under these circumstances, there is no basis for concluding that the manner in which the voting area at the satellite cafeteria polling site was set up compromised ballot secrecy. The Act was not violated.

You alleged that the break room that served as a polling area was small, the voting booths were set up next to the vending machines and employees were permitted to use the vending machines while members were voting. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that unions provide adequate procedural safeguards to ensure a fair election.

The investigation disclosed that three voting booths were set up in the break room that served as a polling site and that such booths were set up next to the vending machines. The investigation disclosed, however, that members waiting to vote were not permitted to congregate in the break room but that they were required to remain outside the break room until a voting booth became available. The investigation further disclosed that employees were allowed to use the vending machines in the break room only when there were no voters in the booths voting or no members were waiting to vote. The Act was not violated.

For the reasons set forth above, it is concluded that no violation of the Act occurred that may have affected the election outcome. Therefore, I have closed the file on this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

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