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ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT IMPOSING FINE ON APPELLANT (JULY 11, 2022)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARY CORNER,

Plaintiff-Appellant,

v.

MARTIN J. WALSH, Secretary of Labor

Defendant-Appellee.

No. 22-1428

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 21 CV 2867 Manish S. Shah, Judge.

Before: Frank H. EASTERBROOK, Ilana DIAMOND ROVNER, Diane P. WOOD, Circuit Judges.

Corner's response to our order to show cause does not persuade us that the appeal was other than frivolous, as our order of June 24, 2022, concluded.

On the authority of Fed. R. App. P. 38, Corner is fined $2,000 for persisting in frivolous litigation in the teeth of judicial warnings that she must desist. This fine, which is undoubtedly less than the expenses

the Department of Labor incurred to defend against the suit, is payable within 14 days. If it is not paid, the court will take appropriate steps to curtail Corner's campaign of frivolous suits. *See Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995).

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT (JUNE 24, 2022)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARY CORNER,

Plaintiff-Appellant,

v.

MARTIN J. WALSH, Secretary of Labor

Defendant-Appellee.

No. 22-1428

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Manish S. Shah, Judge.

Submitted June 17, 2022*
Decided June 24, 2022

Before: Frank H. EASTERBROOK, Ilana DIAMOND ROVNER, Diane P. WOOD, Circuit Judges.

Mary Corner believes that the officers of her local union, a chapter of the American Postal Workers

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. *See* Fed. R. App. P. 34(a); Cir. R. 34(f).

Union, should not hold their positions. Year after year, she demands that the Secretary of Labor file suit to oust these officers. Year after year, the Secretary declines. Year after year, Corner files suit asking the judiciary to compel the Secretary to sue. Year after year, she loses.

Corner's complaint about the 2020 election contends that all of the local chapter's officers are ineligible because none is a member of the union in good standing, a requisite for election. 29 U.S.C. § 481(e). They aren't members in good standing, Corner contends, because they have not paid their dues. She attached to her administrative complaint one document (an LM-2 form) that in her view does not reflect payment. The Secretary concluded, however, that all four have paid—three by deductions from their salaries as officers of the local chapter and the fourth by dues checkoff from his salary with the Postal Service until his retirement, after which the local chapter deducted dues from his salary as an officer. In reaching these conclusions the Secretary relied on the Local's dues records, the Postal Service's payroll statements and dues-checkoff statements, and the national union's per-capita-tax statements.

A federal court may compel the Secretary to file suit against a union only if the Secretary's statement of reasons is arbitrary and capricious; the judiciary cannot take evidence and look behind the statement. *See Dunlop v. Bachowski*, 421 U.S. 560, 572–73 (1975). The district court granted judgment to the Secretary, observing that his explanation for not suing appears to be well researched and reasoned. 2022 U.S. Dist. LEXIS 29545 (N.D. Ill. Feb. 18, 2022). (Actually the Secretary issued more than one statement of reasons,

but we use the singular for ease of exposition.) Corner then appealed.

Corner's appellate brief does not contend that the Secretary's statement is defective. Instead she accuses the Department of Labor's lawyers of having committed a felony, 18 U.S.C. § 1001, by mentioning it at all. She wants the judiciary to ignore the statement and look only to the form that she submitted. She now contends that, because she has ignored the Secretary's statement, the Department of Labor's lawyers must do so too and committed a crime by bringing it to the district judge's attention.

As we mentioned at the outset, Corner is a frequent litigant about union-election matters. She has been told repeatedly, by district judges and this court, that the *Bachowski* standard limits judicial review. She cannot opt out of *Bachowski* by ignoring the Secretary's statement of reasons. In litigation under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), courts review the administrative record. *Bachowski* holds that the administrative record in a contest to a union election is the Secretary's statement of reasons. An agency does not violate the APA, let alone a criminal statute, by lodging the administrative record in the district court. Because the statement is the administrative record, it does not matter whether the Department's decision to provide the district court with a copy of the Secretary's statement converted its motion to one for summary judgment. Whether this case is evaluated under Fed. R. Civ. P. 12(b)(6), Rule 12(c), or Rule 56, the record is the same: the Secretary's statement. There will be no discovery, no testimony, and no judicial findings of fact or credibility assessments.

Corner ignores the district judge's analysis just as she ignores the Secretary's statement of reasons. We have twice told her that baseless attacks on elections must cease. *See Porch-Clark and Corner v. Engelhart*, No. 13-2022 (7th Cir. Dec. 10, 2013) (nonprecedential disposition); *Corner v. Acosta*, No. 18-3655 (7th Cir. June 3, 2019) (nonprecedential disposition). Our warnings—which mirror warnings she has received from district judges—do not appear to have affected her behavior; the current appeal is even weaker than its predecessors. We therefore order Corner to show cause within 14 days why she should not be subject to financial or other penalties for this frivolous appeal. *See* Fed. R. App. P. 38.

The judgment of the district court is affirmed and an order to show cause is issued.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT (MAY 25, 2022)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARY CORNER,

Plaintiff-Appellant,

v.

MARTIN J. WALSH, Secretary of Labor

Defendant-Appellee.

No. 22-1428

District Court No. 1:21 CV 2867
Northern District of Illinois, Eastern Division
Manish S. Shah, District Judge.

The following are before the court:

1. DEPARTMENT OF LABOR'S FIRST MOTION FOR EXTENSION OF TIME, filed on May 23, 2022, by counsel for the appellee.
2. OPPOSITION TO DEPARTMENT OF LABOR'S FIRST MOTION FOR EXTENSION OF TIME, filed on May 24, 2022, by counsel for the appellant.

IT IS ORDERED that the motion is GRANTED. Briefing will proceed as follows:

1. The brief of the appellee is due by June 10, 2022.

2. The reply brief of the appellant, if any, is due by July 1, 2022.

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION (FEBRUARY 18, 2022)

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MARY CORNER,

Plaintiff,

v.

MARTY WALSH, SECRETARY OF LABOR,

Defendant.

No. 21 CV 2867

Before: Manish S. SHAH, Judge.

Mary Corner is a member of a local chapter of the American Postal Workers Union. She says that four of the successful candidates in the Local's 2020 election were ineligible to run for office, and that the Secretary of Labor acted arbitrarily and capriciously, in violation of 5 U.S.C. § 706(2)(A), when he decided not to initiate an enforcement action. She asks that I order the Secretary to set aside the 2020 election results and re-do the election. But the Secretary's decision not to initiate an enforcement action was

not arbitrary or capricious, so Corner's complaint is dismissed.

I. Background

Title IV of the Labor-Management Relations and Disclosure Act is designed to ensure "free and democratic union elections." *Chao v. Local 743, International Brotherhood of Teamsters*, 467 F.3d 1014, 1016 (7th Cir. 2006) (quoting *Wirtz v. Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, 475 (1968)). It sets out the substantive requirements for elections and the procedures to challenge elections. *See* 29 U.S.C. §§ 402, 481–483. Any union member who thinks Title IV has been violated and who has exhausted the remedies available under the union's constitution and bylaws can file a complaint with the Secretary of Labor. 29 U.S.C. § 482(a). The Secretary must investigate the complaint. § 482(b). If the Secretary finds probable cause to believe that a Title IV violation affected the outcome of the election and it hasn't been remedied, he must bring a civil action against the union to set aside the election results and conduct a new election. *Id.*; *Dunlop v. Bachowski*, 421 U.S. 560, 562–63 (1975), *overruled in unrelated part by Local No. 82, Furniture and Piano Moving v. Crowley*, 467 U.S. 526, n.22 (1984).

When the Secretary decides not to sue, the Secretary must issue a statement of reasons outlining "the grounds of decision and the essential facts upon which the Secretary's inferences are based." *Dunlop*, 421 U.S. at 574. The complainant can then challenge the Secretary's decision in the district court, but the court's review is "exceedingly narrow." *Id.* at 590 (Burger, C.J., concurring). Unless the statement of

reasons (the only part of the administrative record the court relies on, *see id.* at 572– 73)) makes clear that the decision not to sue is arbitrary and capricious, the court will not substitute its judgment for that of the Secretary. *See id.* at 571.

Mary Corner is a member of Northwest Illinois Area Local #7140, a chapter of the American Postal Workers Union. *See* [17-1] at 8.[1] In September 2020, the Local held an election, about which Corner filed three complaints with the Department of Labor. *Id.* at 2, 8, 14. Two of those complaints, both filed after the election took place (one in September and the other in December), are at issue here. Corner complained that certain candidates were ineligible for office. *See id.* at 8, 18. The Department said it had found no violation of the Act and that the four candidates were members in "good standing" eligible to run for election. *Id.* at 8. Corner filed suit in this court, alleging that the Secretary's decision not to initiate an enforcement action was arbitrary and capricious, and asking that I direct the Secretary to set aside the results of the 2020 election and order a new one. [11-1] at 1–3.

Defendants filed a motion to dismiss for failure to state a claim or, in the alternative, a motion for summary judgment. [21]. Usually, a court can only consider the plaintiff's complaint when ruling on a 12(b)(6) motion to dismiss. *Burke v. 401 N. Wabash Venture LLC*, 714 F.3d 501, 505 (7th Cir. 2013). If the court chooses to consider evidence outside the pleadings, it generally must convert the motion to

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[1] Bracketed numbers refer to entries on the district court docket. Page numbers are taken from the CM/ECF header placed at the top of filings.

dismiss to a motion for summary judgment. Fed. R. Civ. P. 12(d); *see Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002); *see also* Fed. R. Civ. P. 7(a)(2) (answer to complaint is a type of pleading). But there are exceptions to this rule. One exception says that a copy of a "written instrument" that's attached to the pleadings as an exhibit becomes part of the pleading, Fed. R. Civ. P. 10(c), so long as the exhibit is referred to in the complaint and central to the plaintiff's claim. *See Burke*, 714 F.3d at 505 (citing *McCready v. eBay, Inc.*, 453 F.3d 882, 891 (7th Cir. 2006)); *Wright v. Associated Ins. Cos. Inc.*, 29 F.3d 1244, 1248 (7th Cir. 1994). The document must be "concededly authentic" and must not require "discovery to authenticate or disambiguate." *Tierney*, 304 F.3d at 738–39.

The second exception allows the court to consider an exhibit attached to a defendant's pleading but not attached to the plaintiff's complaint. *Brownmark Films LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012). This is the so-called incorporation-by-reference doctrine, intended to prevent a plaintiff from "evad[ing] dismissal under Rule 12(b)(6) simply by failing to attach to [her] complaint a document that prove[s] [her] claim has no merit." *Id.* (quoting *Tierney*, 304 F.3d at 738). As before, the exhibit must be referred to in the plaintiff's complaint, central to her claim, "concededly authentic," and possible to interpret without further discovery. *Burke*, 714 F.3d at 505; *Wright*, 29 F.3d at 1248; *Tierney*, 304 F.3d at 738–39.

That's the case here. Corner didn't attach the Secretary's statements of reasons to her complaint, but the Secretary attached them to his answer to the complaint. [17-1]. Corner often refers to the statements in her complaint, [11-1] at 1–2, and they are central

to her claim: her argument is that they show the Secretary acted arbitrarily and capriciously. [26] at 5–6. Corner hasn't challenged the authenticity of the statements, and I don't need additional information (nor would I be permitted to review such information, *Dunlop*, 421 U.S. at 572) to understand them. Given all this, I can consider the Secretary's statements without converting his motion to dismiss to a motion for summary judgment.[2]

According to the Department of Labor's statement of reasons, written in response to Corner's September complaint, Corner alleged that four incumbent candidates were ineligible to run because they were not members in good standing.[3] [17-1] at 8. First, they hadn't paid dues or per capita taxes every two weeks (as opposed to every month). *Id.* at 9–10. Second, the Local must not have deducted dues because no such deductions were reported on the LM-2 form. *Id.* at 11. Third, the records the Department relied on in determining that the candidates were current in their dues may not have been authentic. *Id.* at 9. And fourth,

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[2] To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must allege facts that "raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Her complaint must contain "a short and plain statement" showing that she is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). At this stage, I draw all reasonable inferences in the plaintiff's favor, disregarding legal conclusions or "threadbare recitals" supported by only "conclusory statements." *Iqbal*, 556 U.S. at 678.

[3] With certain exceptions discussed below, Corner says that the Department misunderstood her allegations, and in its statement of reasons and motion to dismiss, discussed allegations she never made. *See* [26].

the Local doesn't qualify as an employer and therefore wasn't authorized to deduct dues. *Id.* at 10–11.

The Department responded to each allegation. It explained that members are not required to pay dues every two weeks but can instead pay them monthly if they aren't using the USPS's automatic dues check-off payroll deduction. *Id.* at 9–10. Three of the candidates were not on the dues payroll-deduction list, but instead had their dues deducted by the Local (for whom they worked as union officials). *Id.* at 10. The fourth candidate had dues deducted both from his USPS paycheck and his Local paycheck. *Id.* The Department also explained that although the LM-2 form may have suggested that the Local didn't deduct dues from the candidates' paychecks, the Department's review of other records showed the candidates were current on their dues. *Id.* at 11.

In response to Corner's calling into question the authenticity of the documents the Department reviewed, the Department simply said that the investigation didn't uncover "evidence of falsification or forgery." *Id.* at 9. Finally, the Department explained that "the employer status of the [Local] is not a consideration in determining whether the incumbents were members in good standing." *Id.* at 10.

The Department responded to Corner's December 2020 complaint with another statement of reasons. *Id.* at 14–18. Only one of those allegations from the December 2020 complaint is at issue here (the eligibility of the four incumbents), and because the Department had already addressed that allegation, it simply referred to its previous statement of reasons finding the candidates were eligible. *Id.* at 18.

This is Corner's seventh election-related complaint filed in or removed to this district.[4] Add the four appeals she's taken from some of those decisions, and this is her eleventh election-related challenge in federal court.[5] The court of appeals has twice warned Corner that her continued filing of essentially identical election-related complaints could subject her to sanctions. *See Porch-Clark & Corner v. Engelhart*, 547 Fed. App'x 782, 783 (7th Cir. 2013) ("It is time for the plaintiffs to accept the Secretary's decision, and we warn them that more litigation over the 2011 election risks sanctions."); *Corner v. Acosta*, 771 Fed. App'x 652, 654 (7th Cir. 2019) ("We end with a warning. . . . Any future filings that reprise this argument

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[4] Her others are *Corner v. Dep't of Labor*, No. 06 C 1397, 2006 WL 1877049 (N.D. Ill. July 5, 2006) (alleging inaccurate election results, ballot tampering, inaccurate voter list, inadequate number of election observers, and a "conspiracy to rig the election results"); *Alexander-Scott & Corner v. Fox*, No. 08 C 7043, 2009 WL 3380670 (N.D. Ill. Oct. 20, 2009) (alleging destruction of secret ballot envelopes, improper restrictions placed on election observers, ballots without candidates' names); *Corner v. Engelhart*, No. 11 C 5183, 2011 WL 4688723 (N.D. Ill. Oct. 4, 2011) (improperly bringing suit against the winner of the chapter's presidential election—not the Secretary of Labor—and alleging that she was ineligible to run); *Corner v. Solis*, No. 11 C 8652, 2012 WL 1969423 (N.D. Ill. June 1, 2012) (again challenging the president's eligibility, though this time by suing the Secretary of Labor); *Porch-Clark & Corner v. Engelhart*, 930 F. Supp. 2d 928 (N.D. Ill. 2013) (same); *Corner v. Acosta*, No. 17 C 8134, 2018 WL 6062464 (N.D. Ill. Nov. 19, 2018) (challenging candidate eligibility and alleging improper use of union newspaper to favor incumbent candidates).

[5] *See Corner v. Dep't of Labor*, 219 Fed. App'x 492, 2007 WL 528814 (7th Cir. 2007); *Corner v. Solis*, 380 Fed. App'x 532 (7th Cir. 2010); *Porch-Clark & Corner v. Engelhart*, 547 Fed. App'x 782 (7th Cir. 2013); *Corner v. Acosta*, 771 Fed. App'x 652 (7th Cir. 2019).

without distinguishing the circumstances underlying her previous dismissals will subject Corner to possible sanctions.").

II. Analysis

There seems to be some confusion between the parties about how to characterize Corner's complaints. In his motion to dismiss, the Secretary says there are three allegations at issue. First, that the four incumbent candidates were ineligible because they were not "members in good standing." [22] at 7. Second, that the candidates were required to pay their dues and per capita taxes on a biweekly schedule, which they didn't do. *Id.* And third, that the Local was required to report dues deductions for the four candidates on its LM-2 Labor Organization Annual Report but failed to do so. *Id.*

In response to Corner's LM-2 argument, the Secretary says that "[m]atters concerning inaccurate, incomplete, or inadequate LM-2 report filings with the Department are covered by the requirements of [Title II of the Act], not election provisions of Title IV [which covers candidate eligibility]." [22] at n.3. In other words, Corner can't challenge the candidates' eligibility by bringing a Title II complaint. But Corner insists she isn't bringing such a complaint because she isn't alleging that the LM-2 is "inaccurate, incomplete, or inadequate." [26] at 10. What she seems to be alleging—although she never explicitly connects the dots—is that the LM-2 *is* accurate, and because it shows no sign of dues deductions from the candidates, the four candidates must be ineligible to run.

Corner is assuming that the contents of the LM-2 can establish candidates' eligibility.[6] But eligibility to run hinges on whether a member is in good standing. 29 U.S.C. § 481(e). A member in good standing is anyone who has fulfilled the union's member requirements and has neither voluntarily withdrawn nor been expelled or suspended. 29 U.S.C. § 402(o). In interpreting a union's member requirements, the Secretary accepts the relevant union official or governing body's interpretation of those requirements, unless their interpretation is "clearly unreasonable." 29 C.F.R. § 452.3.

Again, Corner responds that she isn't making a member-in-good-standing complaint, either. [26] at 13 ("The Secretary chose to investigate the incumbent's [sic] under the rule of good standing[] when he did not have a complaint regarding members in good standing."); *id.* at 14. Her point is a distinction without a difference. By arguing that the candidates were ineligible, *id.* at 5; [11-1] at 5, Corner is necessarily arguing that they were not members in good standing—that is the sole standard for determining candidate eligibility. *See* 29 U.S.C. § 481(e).

The case boils down to whether the Secretary arbitrarily and capriciously decided that the candidates were eligible. In reaching a decision, the Secretary doesn't have to recite detailed findings of fact but must include the material facts and the grounds of

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[6] This assumption is clear from Corner's response to the Secretary's motion to dismiss: "Next, the Secretary stated my complaint regarding the LM-2 was irrelevant for determining the non-postal workers [sic] eligibility. Why not? The LM-2 is an official record of money being spent by the [Local] Treasurer." [26] at 14.

the decision. *Dunlop*, 421 U.S. at 573–74. Here, the Secretary acknowledged Corner's allegation that, because the candidates' dues deductions weren't reflected on the LM-2 form, their dues must not have been deducted. [17-1] at 11. But the Secretary said the Department's own review found otherwise. *Id.* at 9. The Department looked at the Local's dues records, the USPS payroll-and dues-checkoff statements, and the national union's per-capita-tax statements. *Id.* It found that the Local deducted full dues from the union paychecks of three of the candidates from March 2019 to March 2020 (the relevant period for being a member in good standing on election day). *Id.* For the fourth candidate, the USPS deducted dues from his paycheck from January to May 2019; following his retirement, the Local deducted dues from his union paycheck from June 2019 to March 2020. *Id.* Corner might doubt these conclusions, but the Secretary's factual findings are outside my scope of review. *Dunlop*, 421 U.S. at 573; *see also Alexander-Scott & Corner*, 2009 WL 3380670, at *5. It's clear there was a "rational and defensible basis" for the Secretary's decision not to sue, so I affirm the Secretary's decision and conclude that Corner's suit does not state a plausible claim for relief. *Dunlop*, 421 U.S. at 573.

As I noted above, this is Corner's eleventh federal court challenge (counting appeals) to the results of a union election. Many of those suits or appeals challenged the candidates' eligibility to run. *See Corner v. Engelhart*, 2011 WL 4688723; *Corner v. Solis*, 2012 WL 1969423; *Porch-Clark & Corner v. Engelhart*, 930 F. Supp. 2d 928; *Porch-Clark v. Engelhart*, 547 Fed. App'x 782; *Corner v. Acosta*, 2018 WL 6062464;

Corner v. Acosta, 771 Fed. App'x 652. This is the first time she's relied on an LM-2 form to challenge the candidates' eligibility and the first time she's challenged the 2020 election. But the result is the same: more unwarranted burden on the courts. "Every paper filed . . . no matter how repetitious or frivolous, requires some portion of the [court's] limited resources. A part of the [c]ourt's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *Montgomery v. Davis*, 362 F.3d 956, 957 (7th Cir. 2004) (quoting *In re McDonald*, 489 U.S. 180, 184 (1989). To fulfill that responsibility, district courts can enjoin frequent litigants from filing frivolous lawsuits. *Srivastava v. Daniels*, 409 Fed. App'x 953, 955 (7th Cir. 2011); *see In re Chapman*, 328 F.3d 903, 905–06 (7th Cir. 2003). Given Corner's history of filing frivolous and repetitious lawsuits—despite two warnings from the court of appeals—Corner might think that she can continue to file challenges to the 2020 election. Not so. New twists on an old theme are likely to be just as burdensome and could result in sanctions.

III. Conclusion

Plaintiff's motion for a final decision, [28], is granted. The Secretary's motion to dismiss, [21], is granted. Enter judgment and terminate civil case.

Enter:

/s/ Manish S. Shah
Judge

Date: February 18, 2022

U.S. DEPARTMENT OF LABOR
STATEMENT OF REASONS
(JANUARY 26, 2021)

U.S. DEPARTMENT OF LABOR
Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

Ms. Mary Corner
557 47th Avenue
Bellwood, IL 60104

Dear Ms. Corner:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on September 29, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the mail ballot election of union officers conducted by the American Postal Workers Union, Northwest Illinois Area Local (NWIAL), Local 7140, on September 1, 2020.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the NWIAL should not have permitted President Jackie Engelhart, Secretary Linda

Retel, Chief Trustee Ray Wience, and Maintenance Director Joseph Golden, all incumbent officers, to run for reelection because they were are not members in good standing. Section 401(e) of the LMRDA provides, "every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)." 29 U.S.C. § 481(e).

The investigation found that Jackie Engelhart, Linda Retel, Raymond Wience and Joseph Golden (or "incumbents") were members in good standing at the time of nominations and the 2020 election and, thus, were eligible for candidacy. Specifically, Article 10(a) of the APWU Constitution and Article 11, Section 3 of the NWIAL Constitution prescribe the eligibility requirements for candidacy. Article 10(a) of the APWU Constitution provides that to be eligible for nomination, the candidate must be a "member in good standing." Article 11, Section 3 of the NWIAL Constitution provides, "no member of this Local shall be eligible for nomination or election to office unless he has been a "member in good standing" of the NWIAL for the one year preceding nominations."

The NWIAL and APWU constitutions do not expressly define "member in good standing." However, according to the union officials interviewed by the Department during the investigation, the union has consistently interpreted good standing to mean a member who has paid dues for the year immediately preceding nominations and is current in the payment of such dues at the time of nominations. The Department's regulations provide that "[t]he interpretation consistently placed on a union's constitution by the responsible union official or governing body

will be accepted unless the interpretation is clearly unreasonable." 29 C.F.R. § 452.3.

In this challenged election, the nominations meeting was held on March 8, 2020. The one-year qualifying period for candidacy was March 7, 2019 to March 7, 2020. To determine whether Engelhart, Retel, Wience and Golden were current in their dues payments for that period, the Department reviewed various records, including the NWIAL dues records, USPS payroll and dues checkoff statements, and the APWU per capita tax (PCT) statements covering the period of March of 2019 to March of 2020.

This review disclosed that the NWIAL deducted full dues from the NWIAL paychecks of Engelhart, Retel and Wience for the months of March of 2019 to March of 2020. The Department's review of the automatic USPS dues check off reports for Golden found that the USPS deducted full dues from his USPS paycheck bi-weekly during the months of January of 2019 to May of 2019. Following Golden's retirement from the USPS, the NWIAL deducted full dues from his NWIAL paycheck for the months of June 2019 to March 2020. Based on the Department's in-depth review of the relevant records the incumbents were current in their dues for the relevant period.

You questioned the authenticity of the records the Department reviewed. However, the investigation did not uncover any evidence of falsification or forgery of these records, documents, or cancelled check payments on behalf of Engelhart, Retel, Wience or Golden. Inasmuch as Engelhart, Retel, Wience and Golden were current in their dues during the candidacy qualifying period, they were in good standing at the

time of the 2020 election and, therefore, eligible for candidacy.

In further support of your allegation challenging the candidacy eligibility of the incumbents, you asserted that since they do not pay dues and the PCT every two weeks as you do, pursuant to the USPS dues check off, they were not in good standing at the time of the 2020 election. However, neither the NWIAL Constitution nor the APWU Constitution requires continuity of good standing based on the payment of dues or the PCT every two weeks. *See* 29 C.F.R. § 452.37(b). In fact, Article 14, Section 2 of the NWIAL Constitution expressly permits members who do not have their dues automatically withheld by a USPS check-off arrangement to pay dues on a monthly basis. This constitutional provision provides in relevant part, "[t]he dues of this Local shall be Twenty-three Dollars and Sixty-nine Cents ($23.69) per pay period [or bi-weekly], which shall include National and State per capita tax. Dues shall be payable through the automatic [USPS] dues check-off payroll deduction. In the absence of the dues check off, dues shall be payable . . . each month." (Emphasis added).

The investigation found that Engelhart, Retel, and Wience were not on an automatic USPS dues check-off arrangement during the candidacy qualifying period. Their full monthly dues were deducted from their NWIAL paychecks by the NWIAL. Therefore, the NWIAL Constitution did not require the NWIAL to deduct their dues per pay period or bi-weekly. In addition, during the relevant period the USPS deducted full dues from Golden's USPS pay checks bi-weekly and the NWIAL deducted full dues from his NWIAL pay checks on a monthly or similar basis. The NWIAL's

deduction of full dues on behalf of the incumbents during the relevant period was consistent with Article 14, Section 2 of the NWIAL Constitution and did not affect the incumbents' good standing.

With respect to the PCT payments, a member is not required to be current in the payment of the PCT to establish good standing. Pursuant to the union leadership's consistent and reasonable interpretation, a member is consider to be in good standing so long as the member has paid dues for the year immediately preceding nominations and is current in the payment of such dues at the time of nominations. Notwithstanding, the NWIAL paid the full PCT for these officers to the APWU quarterly during the appropriate period. You asserted that the NWIAL Constitution does not permit quarterly payment of the PCT and, therefore, the incumbents lost their good standing. However, the NWIAL Constitution does not contain any such proscription.

The APWU Constitution addresses the PCT. Article 16, Section 2(a) of the APWU Constitution provides, "[t]he revenues of this Union shall be derived from a per capita tax . . . , bi-weekly." Reference to "per capita tax, biweekly" concerns the PCT deducted from dues withheld "bi-weekly" from members' USPS paychecks under a USPS dues check-off arrangement. This constitutional provision does not expressly proscribe the quarterly deduction of the PCT from dues withheld by the NWIAL monthly from NWIAL paychecks. Further, the senior manager of the APWU Per Capita Department stated during the investigation that Engelhart, Retel, Wience and Golden were current in the PCT payments and in good standing at the time of the 2020 election.

You also alleged that Engelhart, Retel, Wience and Golden were not in good standing because, according to you, the NWIAL does not qualify as an employer and, thus, is not authorized to deduct dues. However, the employer status of the NWIAL is not a consideration in determining whether the incumbents were members in good standing and eligible for candidacy, for purposes of the union officer election provisions of Title IV of the LMRDA. *See* 29 U.S.C. §§ 481-483; *see also* 29 U.S.C. § 402(o). Such a determination turns on whether they had satisfied the standards for candidacy and office holding prescribed in the NWIAL and APWU constitutions at the time of the 2020 election. 29 U.S.C. § 481(e); 29 C.F.R. § 452.35. The investigation found that they had met such requirements and standards and, thus, were eligible for candidacy in that election.

Finally, you alleged that the NWIAL did not deduct dues for the incumbents because no such deductions were reported on Statement B, Lines 47 and 64 of the Form LM-2 Labor Organization Annual Report (LM-2 report) the NWIAL filed with the Department on March 4, 2020. Regardless of your allegation concerning the LM-2 report, the Department's in-depth review of the relevant records found that these incumbent officers were current in their dues payments during the relevant period and were eligible to run as candidates in the 2020 election.

On these facts, Engelhart, Retel, Wience and Golden were members in good standing and, thus, eligible for candidacy at the time of the nominations and the 2020 election. Therefore, the LMRDA was not violated when the NWIAL permitted them to run for office.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

/s/ Tracy L. Shanker
Chief Division of Enforcement

cc: Mark Dimondstein, President
American Postal Workers Union
1300 L Street, NW
Washington, DC 20005

Jackie Engelhart, President
American Postal Workers Union-NWIAL
Local 7140
194 W Lake Street
Elmhurst, IL 60126

Beverly Dankowitz
Associate Solicitor for Civil Rights and Labor-Management

bcc: CHIDO, DIS File: 310-6020097(01)
OLMS/DOE/SHANKER/FPB N-5119/202-693-0293

Initials	TS			
Date	1/22/2021			
Last Name	SHANKER			
Title	DOE Chief			

Case String: 310602009701 LM: 071479 DOE Number: 9432

U.S. DEPARMENT OF LABOR
STATEMENT OF REASONS
(MARCH 23, 2021)

U.S. DEPARTMENT OF LABOR
Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

Ms. Mary Corner
557 47th Avenue
Bellwood, IL 60104

Dear Ms. Corner:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on July 6, 2020, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 481-483, occurred in connection with the mail ballot election of union officers completed by the American Postal Workers Union, Northwest Illinois Area Local ("NWIAL"), Local 7140, on September 1, 2020. The Department conducted an investigation of the complaint. As a result of the investigation, the Department has concluded that, to the extent a violation of the LMRDA occurred, it has been remedied by the NWIAL. 29 U.S.C. § 482(b).

You alleged that the NWIAL did not conduct an election of officers within three years after its April 24, 2017 election. Section 401(b) of the LMRDA provides, "[e]very local labor organization shall elect its officers not less often than once every three years by

secret ballot among the members in good standing" 29 U.S.C. § 481(b); *see also* 29 C.F.R. § 452.23. Section 401(e) of the LMRDA requires a labor organization to conduct its election of union officers in accordance with the constitution and bylaws of such organization. 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.2. Article 11, Section 2 of the NWIAL Constitution provides, "the term of all elected officers shall be three (3) years and all officers shall be installed into office the first Sunday of May." Section 14 of that article provides, "ballots shall be counted prior to April 30 in the election year."

The investigation found that the NWIAL's regular election of officers was scheduled for April 24, 2020. In preparation of that election, the NWIAL president selected an election committee ("LEC") in January of 2020. The notice of nominations and elections was published in the March 2020 issue of the NWIAL newsletter, which was mailed to members in late February of 2020. The notice listed the tentative dates of March 16, 2020 and April 3, 2020, for the ballot mailing, March 8, 2020, for the nominations meeting, and April 24, 2020 for the ballot tally. On March 5, 2020, the American Arbitration Association ("AAA") set a date of March 20, 2020, for the preparation of the ballot packages. On March 8, 2020, the NWIAL conducted its nominations meeting as scheduled. On March 11, 2020, the AAA informed the LEC of the potential for scheduling disruptions due to the "evolving coronavirus situation." The AAA indicated, however, that it was moving forward with the election as planned.

On March 13, 2020, the AAA informed the LEC that the AAA recommended having a minimum number

of observers at the ballot preparation to protect the health of everyone. The AAA further indicated that if its offices shut down due to the COVID-19 pandemic, the plans for the ballot preparation might have to be changed. That same day the LEC provided a list of observers to the AAA. On March 16, 2020, the LEC informed you that the April 24, 2020 election had been disrupted due to the COVID-19 pandemic. As a result of the pandemic, the AAA suspended the use of its offices and canceled the preparation of the ballot packages scheduled for March 20, 2020. On March 17, 2020, the AAA notified the LEC that it had temporarily closed its Chicago office for a few weeks and presented three options for moving forward with the election scheduled for April 24, 2020 – have the printing company mail the ballots without observers, have AAA staff assemble and mail the ballots from their homes without observers, or delay the election until the U.S. Center for Disease Control and Prevention announced that it would be safe to congregate in groups of 10 or more people.

On or around March 18, 2020, the LEC prepared a notice that was mailed to members informing them that the preparation of the ballots had been delayed due to the Corona virus outbreak and stay-at-home orders issued by the city of Chicago and the state of Illinois. The notice further stated that it would notify members of any attempts to move forward with the election process. On March 31, 2020, the LEC contacted the AAA and inquired about alternatives methods for conducting the election. After not hearing from AAA, the LEC contacted the AAA on June 2, 2020, and inquired about the status of the election.

On June 4, 2020, the AAA informed the LEC that the AAA office would remain closed until October 1, 2020, due to the COVID-19 pandemic. Despite this closure, the AAA and the LEC continued to work to find a suitable venue for the ballot preparation. On June 10, 2020, the AAA informed the LEC that it had been unsuccessful in its attempt to rent a facility for the ballot preparation. On June 22, 2020, the AAA informed the LEC that the city of Chicago planned to reopen and, therefore, the LEC could proceed with setting the dates for the ballot preparation and mailing.

On June 24, 2020, the AAA informed the LEC that the union hall of the Chicago Federation of Musicians union would be available on July 24, 2020 and September 1, 2020. On June 26, 2020, the LEC confirmed the dates of the election with the AAA. By letter dated June 30, 2020, the LEC informed candidates of the tentative date for the 2020 election. On July 6, 2020, the LEC determined that the NWIAL would complete its election on September 1, 2020, and conducted the ballot mailing on July 24, 2020. The election was completed on September 1, 2020, as scheduled.

Clearly, the NWIAL's delay in completing the election by April 24, 2020, resulted from disruptions caused by the COVID-19 pandemic. Such disruptions prevented the NWIAL from timely complying with the requirement of the LMRDA that a local labor organization elect its officers "not less often than once every three years by secret ballot among the members in good standing." 29 U.S.C. § 481(b). However, Section 402(b) of the LMRDA authorizes the Secretary of Labor to bring a civil action against a

labor organization only when a violation of the union officer election provisions of the LMRDA "has not been remedied." Section 402(b) of the LMRDA provides,

> The Secretary shall investigate [a] complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election . . . under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe.

29 U.S.C. § 482(b) (emphasis added).

In this instance, the September 1, 2020 election remedied the NWIAL's delay in completing its election by April 24, 2020. Thus, to the extent that a violation of the LMRDA occurred, there was no violation of the LMRDA that "has not been remedied."

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that has not been remedied by the NWIAL during the September 1, 2020 election, and I have closed the file regarding this matter.

Sincerely,

/s/ Tracy L. Shanker
Chief, Division of Enforcement

cc: Mark Dimondstein, National President
American Postal Workers Union
1300 L Street, NW
Washington, DC 20005
Jacqueline Engelhart, President
APWU LU 7140
194 W. Lake Street
Elmhurst, IL 60126

Beverly Dankowitz, Associate Solicitor for Civil Rights and Labor-Management

bcc: CHIDO, DIS File: 310-6018344(01)
OLMS/DOE//FPB N-5119//

Initials	XAD	RS		
Date	03/19/2021	03/22/2021		
Last Name	DEMPSEY	SHANKER		
Title	DOE Inv.	DOE Chief		

Case String: 310601834401 LM: 071479 DOE Number: 9413

U.S. DEPARTMENT OF LABOR
STATEMENT OF REASONS
(APRIL 27, 2021)

U.S. DEPARTMENT OF LABOR
Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

Ms. Mary Corner
557 47th Avenue
Bellwood, IL 60104

Dear Ms. Corner:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on December 9, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act ("Act"), 29 U.S.C. §§ 481-483, occurred in connection with the mail ballot election of union officers completed by the American Postal Workers Union ("APWU"), Northwest Illinois Area Local ("NWIAL"), Local 7140, on September 1, 2020.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the post office box that the union secured in March of 2020 for the return of the voted ballots was changed to a new post office box in

July of 2020. Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. The investigation disclosed that on March 11, 2020, the American Arbitration Association ("AAA"), a third party election service hired by the union to conduct the election, rented a post office box located at the Amoco United States Postal Service (USPS) facility for the return of the voted ballots. The investigation showed that on July 1, 2020, the AAA rented a post office box at the Cardiss Collins post office after the USPS permanently closed the Amoco post office due to the COVID-19 pandemic and instructed the AAA to secure a new post office box at a different location.

You asserted during the investigation that the Amoco post office box address may have been printed on return ballot envelopes and that the AAA rented the Cardiss Collins post office box so that voted ballots could be routed to both the Amoco and the Cardiss Collins post offices. The investigation disclosed that the AAA only used the Cardiss Collins post office for the election. No voted ballots or other election-related materials were returned to the Amoco post office, which the USPS permanently closed in March of 2020.

In addition, the investigation disclosed that you observed AAA personnel assemble and prepare the ballots for mailing. While observing that process you never mentioned to AAA personnel or any other individuals that you saw the Amoco post office box address printed on return ballot envelopes. Further, during the investigation candidates/observers, including one of your witnesses, who observed AAA personnel

assemble and prepare the ballots for mailing did not corroborate your claim concerning the Amoco post office box address being printed on return ballot envelopes. The Act was not violated.

Next, you alleged that the union did not perform a full and complete ballot reconciliation in front of you at the ballot tally in that the AAA failed to count the unused ballots for each craft and all the undeliverable ballots, and did not provide you with a certified list of members who requested duplicate ballots or an affidavit from the printer stating the number of original and duplicate ballots that were printed for each craft. You further alleged that observers were prevented from verifying voter eligibility during the ballot tally because the AAA refused to call out the name of the voter printed on each of the return ballot envelopes.

Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to insure a fair election. Section 401(e) of the Act requires a union to conduct its election of officers in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of the Act. 29 U.S.C. § 481(e); 29 C.F.R. § 452.3. Article 11, Section 6 of the NWIAL Local 7120 constitution delegates to the election committee the authority to adopt rules concerning the election. The investigation revealed that the 2008 Election Committee Rules and Procedures ("election rules") were applicable to the 2020 election. The union provided a copy of the election rules to you following the March 8, 2020 nominations meeting. The investigation showed that neither the NWIAL Local 7120 constitution nor the election rules required the election committee to

reconcile the ballots at the ballot tally or provide you with written documentation regarding duplicate ballot requests or the printed ballots. In fact, the union did not provide such documentation to any candidate or observer. The investigation disclosed, however, that during the ballot mailing process election officials told you the number of ballots ordered from the printer, the number of ballots mailed, and the number of duplicate ballots requested. The Department's review of the contemporaneous notes you took during that conversation with the election officials reflect information concerning the printed, mailed, and duplicate ballots.

Concerning the ballot reconciliation, the Department's review of the invoice prepared by the company that printed the ballots indicated that 1,500 ballots were printed for the election. The investigation disclosed that the AAA ordered thirty to fifty extra ballots for each of the eight Local 7140 craft divisions to accommodate members who had changed crafts or had new home addresses and needed replacement ballots. The printer's invoice, however, did not indicate the number of ballots printed or the number of ballots received by AAA for each of the craft divisions. However, the Department's review of the election records showed that the AAA mailed 1,311 original ballots and 46 duplicate or challenged ballots to members, and that 219 unused ballots were included in the election records, for a total of 1,576 ballots. The review also showed that there were 517 opened return ballot envelopes included in the election records and that one voter had returned an empty ballot envelope that contained no ballot or secret ballot envelope. Further review disclosed that 516 ballots were counted

and included in the vote tally. The names printed on the return ballot envelopes for these 516 ballots matched the names crossed off the voter eligibility list during the ballot tally indicating that an eligible voter had returned a ballot.

Regarding the AAA's failure to call out the names of the voters printed on the return ballot envelopes during the ballot count, Section 17 of the election rules provides that the "votes" marked on each ballot must be tallied by teams of three with one member of a team calling out the votes marked on each ballot and the other two members of that team recording such votes on separate tally sheets. However, neither the NWIAL Local 7120 constitution nor the election rules prescribe procedures for counting or processing the return ballot envelopes during the ballot tally. The investigation showed, however, that AAA personnel counted the return ballot envelopes in teams of two. Before opening each return ballot envelope and removing its ballot, one member of a team called out the name of the voter printed on the return ballot envelope and the other member of that team verified the voter's eligibility by locating the voter's name on the voter eligibility list and then crossing the name off the list. The Act was not violated.

In addition, you alleged that the number of votes cast for the offices of clerk craft director 600, clerk craft director 601, and the maintenance craft director were very similar and that the same voter may have cast multiple ballots for these offices. Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to insure a fair election. The investigation showed that the races for clerk craft director 600 and clerk craft director 601 were

printed on the ballot but were unopposed and no votes were cast for those offices. The Department's recount of the votes for maintenance craft director disclosed that the incumbent and opposition candidates received 84 votes and 54 votes, respectively.

The Department's recount of the votes cast for each opposed office found that there were no discrepancies between the recount and the AAA's vote count. In addition, the Department's review of all the voted ballots found that none of them contained distinctive markings or indentations indicating that they had been marked in stacks or on top of one another. Further review showed that there was no evidence that numerous ballots had been marked with the same distinct writing instrument or by the same voter. There was no evidence of ballot tampering or fraud. The Act was not violated.

You also alleged that the union did not offer candidates the opportunity to proofread the ballots before they were printed. Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to insure a fair election. Section 401(e) of the Act requires a union to conduct its election of officers in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of the Act. 29 C.F.R. § 452.3. The NWIAL Local 7120 constitution and election rules do not require the union to extend any such offer to candidates. However, you stated during the investigation that the AAA permitted you to review the ballots for your own craft before ballots were mailed to members after you requested to do so. The Act was not violated.

You further alleged that fifteen retired members were denied the right to vote when their names were removed from the membership list in July of 2020. Section 401(e) of the Act provides that members in good standing have the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e); 29 C.F.R. §§ 452.84, 93. Article 3, Section 4(b) of the APWU constitution and bylaws provides that retirees who continue to pay full union dues and per capita taxes retain good standing and the right to vote.

During the investigation you stated that the names of retirees were removed from the membership mailing list in July of 2020 based on a July 7, 2020 email from the AAA director to the election committee chairperson. That email states in relevant part, "On Tuesday, July 7, 2020 . . . [a]ttached is the last version of the Master Mailing List from 3-16-20 that is sorted by the ballot type the member will receive. Can you let me know if any changes are needed to this list? If anyone retired, was fired, transferred to a different facility or craft, etc. Also, are any address updates needed? Just let me know what needs to be changed as soon as possible. . . . "

The investigation disclosed that, although the AAA director inquired in the July 7, 2020 email as to whether the master mailing list needed to be updated, the names of approximately 40 Local 7140 members who had retired after the March 8, 2020 voter eligibility cutoff date but before the July 24, 2020 ballot mailing remained on the master mailing list the AAA used to mail the ballots. These retired members had paid full union dues and per capita taxes during the appropriate period and, thus, retained their good stand-

ing. They were eligible to vote and were mailed ballots. The Act was not violated.

You alleged that the cost of the election increased from approximately $20,000 to $35,000. Even if this allegation were true, this would not be covered by the provisions of Title IV of the LMRDA.

Finally, you challenged the candidacy eligibility of certain candidates in the election. You raised this issue in the complaint you filed with the Department on September 29, 2020. The Department's Statement of Reasons dated February 4, 2021 resolving that complaint concluded that there was no violation of the Act that may have affected the outcome of the election.

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

Sincerely,

/s/ Tracy L. Shanker
Chief Division of Enforcement

cc: Mark Dimondstein, President
American Postal Workers Union
1300 L Street, NW
Washington, DC 20005

Jackie Engelhart, President
American Postal Workers Union
NWIAL Local 7140
194 W Lake Street
Elmhurst, IL 60126

Beverly Dankowitz
Associate Solicitor for Civil Rights and Labor-Management

bcc: CHIDO, DIS File: 310-6020488(01)
OLMS/DOE//FPB N-5119//

Initials		NS		
Date		04/27/2021		
Last Name	MELENDEZ	SHANKER		
Title	DOE Inv.	DOE Chief		

Case String: 310602048801 LM: 071049 DOE Number: 9448

AMENDED COMPLAINT
(AUGUST 10, 2021)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARY CORNER,

Plaintiff,

v.

MARTY WALSH, SECRETARY OF LABOR,

Secretary of Labor.

No. 1:21-cv-02867

Before: Manish S. SHAH, Judge.,
Sunil R. HARJANI, Magistrate Judge.

I, Mary Corner is seeking a judicial review under the Administrative Procedure Act, 5 U.S.C. § 706(2)(a). The district court has jurisdiction under 28 U.S.C. § 1337(a), arising under the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or Act), 29 U.S.C. § 481.

The following is the reason, I am requesting the district court for an administrative review:

1. The United States Department of Labor, Secretary decision not to file suit on my

administrative complaint concerning the 2020 APWU, NWIAL Local 7140 Election.

2. The Secretary fail to investigate my complaint fairly and equal.

3. My complaint to the Secretary was the NEAC dismissed my appeal because they stated there was no evidence that my July 6, 2020 Appeal to the NEAC was ever properly appealed to the Local's Election Committee (NWIAL). Exhibit A. The Secretary's Statement of Reasons never addressed the NEAC dismissal.

4. The Statement of Reasons never address the issue as whether or not my complaint to the 2020 NWIAL Election Committee was filed in a timely manner regarding the candidate's eligibility.

5. The Secretary's Statement of Reasons never address whether or not, if the Treasurer did in fact paid the candidates (none postal workers) dues, should those dues be on the LM-2 for verifications to the other candidates that these dues had been paid by the Treasurer; since these candidates are no longer postal workers and they are not on the dues check off list.

6. The Secretary's Statement of Reasons failed to properly quote the NWIAL Constitution regarding members not on the Dues Check-Off Lists. The Constitution states "In the absence of dues check-off, dues shall be payable on the first day of the month. It

shall be the responsibility of each member to pay his dues promptly.

7. On page 5 of 5, 2nd paragraph regarding candidacy eligibility, the Secretary made reference to the Statement of Reasons dated February 4, 2021 in which he stated no violation of the Act was committed that may have affected the outcome of the election. The issue was eligibility of the candidates. Ineligible candidates on the ballot would have an effect on the outcome of the election.

I am requesting the court to have the Secretary to file suit to have the NWIAL, Local 7140 to re-run a supervised election.

Respectfully Submitted,

/s/ Mary Corner
Pro Se
557 47th Ave
Bellwood, IL 60104
630-268-4897
Mcorner75@yahoo.com

EX. A TO COMPLAINT
LETTER FROM MARY CORNER TO
ELECTION COMMITTEE CHAIRPERSON
(MARCH 17, 2020)

To: Arlene Thomas-Benford
Election Committee Chairperson
P.O. Box 2017
Elmhurst, IL 60126

From: Mary Corner
Member in Good Standing
557 47th Ave
Bellwood, IL 60104

Dear Arlene or Election Committee (persons):

I am challenging the number of eligible members for the following reasons:

1. Accordingly to the LM-2, dated Mar 4, 2020, we have career 1286 members, including 86 non dues paying members. Non career members 127 including 12 non dues paying members. I questioned 86 new members at the February meeting. Eighty-six new members were verified by the Treasurer Bhupendra S. Patel at the March meeting.

2. Where on the LM-2 that Treasurer Bhupendra S. Patel paid the union dues of Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden? Unless this can be shown, their names should be removed from the ballot.

I need your answer today, all Nominee's eligibility should have been verified since one candidate has already been removed.

In the Name of Jesus,

/s/ Mary Corner
Presidential Candidate

Received By: Arlene Thomas-Benford
Date: 3/17/2020

LETTER FROM MARY CORNER TO U.S. DOL INVESTIGATOR (SEPTEMBER 28, 2020)

To: Ms. Claudia Guerra-Mazur, Investigator
U.S. DOL, OLMS, Chicago District Office
230 S. Dearborn, Suite 774
Chicago, IL 60604
Guerra.claudia@dol.gov

From: Mary Corner 557
47th Ave
Bellwood, IL 60104

I am appealing my dismissal of my complaint of ineligible candidates in the NWIAL 2020 Election from the National Election Appeals Committee (NEAC) dated September 14, 2020. This dismissal stated "the NEAC dismisses your appeal as there is no evidence that the July 6 appeal to the NEAC was ever properly and timely appealed to the Local Election Committee", I am appealing this dismissal for the following reasons:

1. Properly appealed: With this answer, in my opinion the NEAC has failed to act in the best interest of the membership as a whole. They are using their power in the interest of the incumbents. The NEAC has also relinquished their fiduciary responsibility by making this decision at the end of the election. Now I cannot make any clarification, adjustments or challenges to the NEAC decision because now it falls under Title IV and must be sent to the DOL.

The NWIAL Constitution states, "any member who feel aggrieved in connection with the conduct of a local election, including the nomination procedures, shall filed his/her grievance with the election committee

within seventy-two (72) hours after the grievance arises". There are two (2) ways of communication, verbally and written. I did both (see attachments), (a) An appointment was made to meet with the NWIAL 2020 Election Committee on March 17, 2020 to review the mailing list and/or challenge the eligibility of any candidate. On March 17, 2020, I requested verification in person that Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden had paid their dues in accordance to the NWIAL Constitution, (b) On March 17, 2020, I placed in writing questioning the eligibility of Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden. Erika Williams had showed me some invoices from the National APWU; I told Erika Williams that I did not accept those invoices from the National APWU as being paid by the Treasurer and the invoices showed that the dues were not paid according to our constitution. I told Ms. Williams according to our LM-2; the Treasurer did not pay the incumbents dues in 2019, Ms. Williams stated, If I wanted anything else, I will need to put it in writing. Then she walked out of the room. I handed Ms. Vivian Henderson a letter, who was watching us reviewing the mailing lists. I had written a letter dated March 17, 2020 and had her to signed it as receiver of the letter dated March 17, 2020. She had Erika Williams to make a copy for me (see attached). Janice Alexander-Scott was witness to what happened on March 17, 2020.

2. Timely Appealed: In my appeal to the NEAC, I made it clear that I had not received a respond from the NWIAL 2020 Election Committee as of July 6, 2020 regarding the eligibility of the incumbents. Our Constitution does not state how long a candidate

or member has to wait on an answer from the Local Election Committee before appealing to the NEAC. The NWIAL Constitution states, "any member who feel aggrieved in connection with the conduct of a local election, including the nomination procedures, shall filed his/her grievance with the election committee within seventy-two (72) hours after the grievance arises". My grievance dealing with the eligibility of Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden was filed on March 17, 2020 within 72 hrs. Due to the impact of the Coronavirus Pandemic, this caused an interruption for the Local Election Committee to respond because the Governor of Illinois shut down all non-essential's businesses.

My appeal was based on communications of the Local Election Committee not responding to my protest beginning March 17, 2020 and was interrupted due to the Coronavirus Pandemic. On June 25, 2020, the Election Committee and I began to discuss and having written communication regarding the eligibility of Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden that this election committee had never answer or given a resolution on the eligibility of the full time Officer and the retirees.

On July 6, 2020 I sent my eligibility complaint of Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden to the NEAC because I had not received a respond from the NWIAL 2020 Election Committee and the stuffing of the ballots was schedule for July 24, 2020. The election committee failed to answer my complaint in a timely manner. The NWIAL 2020 Election Committee in March, 2020 verified that Ms. Isabel Estrada was ineligible to be a candidate,

therefore, why is it taken so long to verify whether or not the incumbents were eligible?

I received a letter from the NEAC dated July 7, 2020 and so did the Election committee, requesting additional information on or before July 24, 2020. Meanwhile, the election committee sent me a letter dated July 10, 2020; but I did not receive it until July 18, 2020 and they began again to discuss in emails these incumbent's eligibility, until I told them that the eligibility complaint had been appeal to the NEAC and they should have received the letter from the NEAC dated July 7, 2020. And these comments should be sent to the NEAC.

In conclusion, There is not any legitimate reason why the NWIAL Constitution was not followed. All of the NWIAL Election Committee Members are experience union stewards with (many, many years) with knowledge of the Constitution, except for the alternate. All of the election committee persons has been on an election committee in 2014, 2017, and 2020, except for the alternate. All were from our Carol Stream Facility, except for one, Arlene Thomas-Benford, who was the Chairperson. She was also the Chairperson for the 2017 NWIAL Election Committee. No member was chosen from our Palatine Facility. We are all equal and equality for all union members. There should not have been any disparity treatment to union members or candidates. This is a violation of our constitutional rights. It was the responsibility of the election committee to treat all candidates fair and follow the guidelines requirements for eligibility for all the candidates. This election committee exercised disparity treatment for the candidate's eligibility. An expedient verification of Ms. Estrada eligibility

was done, the same should have been done for Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden. If, the Treasurer did in fact pay the incumbent's dues, this should be reflected on the NWIAL LM-2 dated March 4,2020; but it is not.

As I stated to the NEAC in my appeal to them dated July 6, 2021 had not received a respond or decision from the local election committee regarding my challenge to the eligibility of the incumbents Jackie Engelhart, Linda Duncan-Retel, Ray Wience, and Joe Golden. As of today, September 28, 2020 by appeal to the DOL, I still have not received a respond or decision from the local election committee regarding my challenge to the eligibility of the incumbents.

I am respectfully, requesting the DOL to re-run the NWIAL 2020 election within the guidelines of the NWIAL Constitution. Thanking you in advance, Your effort and time will be greatly appreciated.

In Jesus Name,

/s/ Mary Corner
Presidential Candidate

Encl:

1. Ltr. Dated 3/17/2020 To NWIAL Elec. Comm.
2. NEAC Dismissal Dated 9/14/2020
3. NEAC Ltr. Dated 7/7/2020
4. Email to NEAC Dated 7/6/2020
5. 6/25/2020 Email between Arlene and
6. 7/18/2020 Additional Info to NEAC
7. Arlene Ltr. Dated 7/10/2020

LM2 STATEMENT B-RECEIPTS AND DISBURSEMENT

File Number: 071-479

Cash Receipts	**SCH**	**Amount**
47. From Members for Disbursement on Their Behalf		$0

Cash Disbursement	**SCH**	**Amount**
64. On Behalf of Individual Members		$0

RESPOND FROM MARY CORNER TO THE CIRCUIT TO SHOW CAUSE ORDER (JULY 7, 2022)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARY CORNER,

Plaintiff-Appellant,

v.

MARTIN J. WALSH, Secretary of Labor

Defendant-Appellee.

No. 22-1428

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:21-cv-02867 Manish S. Shah, District Judge.

I want to know why I was denied filing a Reply Brief. My Reply Brief was due July 1, 2022.

The NWIAL, APWU, Local 7140 election is held every three years. Each election we have had the same persons which is union stewards on the election committee. Same election administrator Matthew Lacey of AAA conducting our election and the same DOL investigator, Michelle Forsythe. Therefore, it has been deemed that all of my filings would receive an unfavorable decision.

I do not think this filing is frivolous nor is it weaker than its predecessors. This one is stronger than any of my filings. This is the reason the Secretary refused to investigate my complaint. 402(b) requires the secretary to investigate a complaint. I did not file a complaint regarding all of the officers in Local 7140; only the none postal workers whose dues should be on the LM-2. This complaint was filed March 17, 2020 with the NWIAL 2020 Election Committee, requesting proof of payment of union dues according to the NWIAL LM-2 and requesting removal of these candidates [26] at 41. Same complaint appealed to the NEAC, July 6, 2020 [26] at 30-31, (the NEAC opt out). Same complaint appealed to the DOL, dated September 28, 2020 received September 29, 2020 [26] at 26-28 by the DOL.

Regarding verification of the incumbents, (which are none postal workers), payments of dues, the LM-2 is an official record of all money disbursed by the NWIAL Treasurer.

For these incumbents, LM-2 is an official record of 100% payment of dues for them. Per capita tax statements are a small percentage of the dues. The Postal Service's payroll statements and dues-check off statements is for 6 months for one incumbent and the balance of his dues should be on the LM-2, dated March 4, 2020. All the other incumbent (None Postal Workers) 100% payment of dues belongs on the NWIAL LM-2, dated March 4, 2020. The Local dues records; where were they March 17, 2020, when I challenged the none Postal Workers payment of dues? The Local Dues record should be noted on the LM-2, dated March 4, 2020, but it was not . . . No, the LM-2 is not just any form. It is the form. This form is equivalent to a business/private citizens tax returned.

In this order it stated, "the secretary relied on the Local's dues records, the Postal Service payroll statement', dues check off statements, and per capita statements. None of these items had exhausted the statutory requirements. In *Wirtz v. Local unions No. 406, 406-A, 406-B and 406-C*, 254 F.Supp. 962 (E.D. La. 1966), this court stated "He (referring to the Secretary) states that it is wholly unrealistic to restrict the litigation to the particular matters protested by the individual complainant". However, none of the matters which the Secretary alleges in this suit was complained of by the member or members in the internal protest to the union. Therefore, the express statutory requirement of exhaustion of remedies by the member of the labor organization has not been complied with . . . Though we are in agreement with the Secretary that these restrictions are unreasonable, arbitrary and in violations of the Act, it is clear to us that it was the intention of Congress in passing the Act to require exhaustion of internal union remedies as Section 402 (a) expressly provides . . . " *See Wirtz v. Local Union No. 125, Internat'l Hod Carriers', Etc.*, N.D. Ohio, 1964, 231 F.Supp. 590; *Wirtz v. Local Union No. 9, International Union of Operating Engineers*, 51 L.C. ¶ 19,579 (D.C. Colo., 1965). . . . "

No, I do not want anyone to commit a crime for me. I expect for my complaint to be investigated as it was written. Nothing added and nothing taken away. I am standing by what is written in my brief regarding 18 U.S. C. § 1001.

This Order stated "She wants the judiciary to ignore the statement and look at the form she submitted". No, I want the judiciary to review my complaint as well as the SOR. My complaint contained

more than just a form. I am not asking for any discovery, no testimony, and no judicial findings of fact or credibility assessments. *Bachowski* states that the SOR must have information concerning a members' complaint; which the SOR failed to have . . . "If the allegations of a complaint are contradicted by documents made a part thereof, the documents control and the court need not accept as true allegation of the complaint". *Feick v. Fleener*, 653 F.2d 69, 75, n.4 (2d Cir. 1981) and *United States ex. Rel. Sommers v. Dixion*, 524 F.Supp. 83,85 (ND. N. Y. 1981) *aff'd per curiam*, 709 F.2d. 173 (2d Cir. 1983). This rule also applies to the written instrument supplied by the defendant in their support of their rule 12(b)(6) motion to dismiss. *Yak v. Bank Brussels Lambert*, 252 F.3d 127 (2001).

Dunlop v. Bachowski, (1975) No. 74-466, June 2, 1975, United States Supreme Court, in the absence of express prohibition in the LMRDA . . . " The question is phrased in terms of prohibition rather than authorization because a survey of "our" Cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is a persuasive reasons to believe that such was the purpose of Congress". *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967). [O]nly upon a showing of clear and convincing evidence of a contrary legislative intent should the courts restrict access to judicial review". *Id* at 141. *See, Rusk v. Cort*, 369 U.S. 367, 379-380 (1962), *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 410 (1971).

For all the reasons listed above and this is not a frivolous appeal. As an aggrieved union member, there is no other means to defend my rights. I should not be subject to financial or other penalties impose by this court.

Respectfully Submitted in
Jesus Name

/s/ Mary Corner
Pro Se
557 47th Ave
Bellwood, IL 60104
630-268-4897

U.S. DEPARTMENT OF LABOR
REPORT OF INVESTIGATION
(OCTOBER 29, 2020)

U.S. DEPARTMENT OF LABOR
Office of Labor-Management Standards

Subjects(s)

Postal Workers, American, AFL-CIO
Northwest Illinois Area Local (NWIAL)
Local 7140
194 W. Lake Street
Elmhurst, IL 60126

LM: 071-479

Program:

☑ Election Investigation

Case Number

310-6020097

Office

CHIDO

Status

Closed

Date Complaint Received by DOL:

Filed under Section 402(a)(1) on September 29, 2020

Date and Type of Election:

Mail ballot originally scheduled for April 23, 2020 was rescheduled for September 1, 2020 due to the Covid-19 pandemic

Complaint:

Marry Corner
557 47th Ave.
Bellwood, IL 60104
Telephone: (630) 263-4897 (cell)

Constitution/Bylaws:

Constitution and Bylaws, American Postal Workers Union, August 23, 2018

Constitution, Northwest Illinois Area Local, American Postal Workers Union, November 2019

Parent Body Position on Invocation/Exhaustion:

The APWU does not consider Corner's September 29, 2020 complaint to be timely or properly before the Secretary of Labor because her allegation were not properly protested and/or appealed to the NEAC.

Subpoenas Issued: None

Settlement Agreement: None

Summary of Violations Letter: None

Time Waiver(s): A Single time waiver signed October 28, 2020

Filing Date: November 28, 2020 (Saturday) Original Filing date

December 14, 2020 – Filing date extended by waiver

Prepared By: (b)(7)(C)

Approved By:

/s/ Michael J. Purcell
District Director
Date: 10-29-2020