

To: Heather Conroy, Executive Director
From: Marc A. Stefan, Supervising Attorney
Subject: Analysis of Proposed 2014 SEIU Local 503, OPEU
General Council Resolutions
Date: May 30, 2014

Per your request, the Legal Department has reviewed each of the proposed 2014 SEIU Local 503, OPEU General Council resolutions along with the Union's current Bylaws and other applicable authorities. As set forth below, a number of the Resolutions present legal implications that would prevent passage in their current form or unnecessarily duplicate existing governing documents provisions.

**Communication between Region Directors and
Members – MA # 3**

BE IT RESOLVED by the General Council of SEIU Local 503, OPEU: *That the union provide to the Regional Directors home email addresses of members belonging to their specific Region so they can have dialog with the members and the members can contact the directors about any issue they wish to discuss.*

BE IT FURTHER RESOLVED, *that the Assistant Director can assist the Director with this Communication if the Director wishes.*

This resolution, without a modification, could present legal problems relating to elections of union officers (in Local 503 and the sub-locals). Thus, any "union list" created and provided to a Director (or any member) constitutes "union assets" within the meaning of the Labor Management Reporting and Disclosure Act (LMRDA), and Sections 401(c) and 401(g) of the LMRDA prohibit use of any union list (or other assets) to campaign for or against any candidate for union office. See, *Donovan v. Local Union 70, Int'l Bhd. of Teamsters*, 661 F.2d 1199, 1202 (9th Cir. 1981) (discussing the scope of sections 401(c) and 401(g)). Because the resolution authorizes use of the lists "for any issue they wish to discuss", [it] may be unlawful/objectionable because campaign communications in that framework are prohibited under the LMRDA.

Informing Members about Their Union's Decision-Making Bodies – MA #4

BE IT RESOLVED by the General Council of SEIU Local 503, OPEU: That full minutes from the Executive Board, Board of Directors, General Council, and CAPE Council shall be electronically distributed to all sublocal officers and stewards in a timely manner, clearly visible on the SEIU Local 503, OPEU website, and available upon request by all members.

CAPE is a separate entity from SEIU Local 503, OPEU. It also engages in deliberations that may be confidential in nature to the general public. Because this Resolution's would requires CAPE to publish its meeting minutes on the internet and distribute them to potentially non-CAPE members, it interferes with CAPE's autonomy and potentially compromises the confidentiality of its deliberations without any authority permitting SEIU Local 503, OPEU to compel such actions.

Electronic Voting – UO # 1

BE IT RESOLVED by the General Council of SEIU Local 503, OPEU: That SEIU Local 503, OPEU support the exploration of electronic ballots with the option for members to opt into paper ballots; and

BE IT FURTHER RESOLVED, that certain sublocals be permitted to run their local elections via electronic ballot. These sublocals should represent a variety of types of work areas and industries. Sublocal 471 has opted to be a pilot local for worksites that are near computers in their daily work. Other sub-locals will be determined; and

BE IT FURTHER RESOLVED, that data be collected on an increase or decrease in voter turnout before any consideration of statewide implementation with the opinion for members to opt into a paper ballot measure.

Because of the state of the law and an ongoing lack of guidance from the Department of Labor (DOL), committing the Union to conducting electronic elections in the next election cycle could unnecessarily subject the Union to substantial legal and financial risks and effectively make Local 503 a "legal guinea pig" in an area of the law that is very unsettled. Authorizing a meaningful exploration of a potentially viable mechanism for electronic voting that could pass

the strict scrutiny of DOL and the courts, however, appears to pose no legal obstacles or risk.

The LMRDA, enacted more than half a century ago, obviously does not address issues like electronic voting. In 2004, a Union (Air Line Pilots Association) ran a Union officers election using an elaborately constructed electronic voting system. The election results were challenged. The challenges were considered by both DOL and a Federal District Court. (See, *Chau v. Allied Pilots Assn.*, 181 L.R.R.M. (BNA) 2578.) After more than three years of litigation both DOL and the Court found the election needed to be rerun – not because there was definitive proof that the Union had done anything wrong in setting up the election process, but only because it was theoretically possible under electronic system used that “someone” “could have” discovered the identity of a voter (which is a breach of the LMRDA requirement of secret ballots), or someone else “could have” found out the PIN of a voter and “could have” voted for them and any other number of theoretical violations of the 1950s language of the LMRDA.

Not long after the decisions noted above, the DOL asked for comments about whether it should promulgate regulations concerning electronic/internet voting in union officer elections. To date, the DOL has not issued any regulations (or other advisory materials) that would assist a Union in determining whether its electronic/internet voting system would pass muster. In fact, when contacted on the issue, DOL officials said that any Union that used an electronic/internet voting system would risk having to rerun any election conducted under that system if a challenger could show even a theoretical compromise of ballot secrecy, a person voting for someone else or any other number of “problems” with the election. Research has found no other case where electronic/internet voting has been approved by DOL or a Court.

In these circumstances, initiating a pilot program that utilizes electronic/internet voting would almost certainly subject the Union to challenges that the DOL would then seek to litigate for years through the Federal court processes as a test case – all at substantial cost, inconvenience and turmoil to the Union and its members.