



February 10, 2012

Marie DeMasi, Raymond Laroche, Ronald Micozzi, and Twana Brown
c/o Stephen D. Hans, Esq.
45-18 Court Square, Suite 403
Long Island City, NY 11101

Dear Ms. DeMasi, et al:

This Statement of Reasons is in response to your September 30, 2011 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) occurred in connection with the election of officers of the Amalgamated Transit Union (ATU) Local 1181 conducted on June 10, 2011. Local 1181 hired the American Arbitration Association (AAA) to conduct the election.

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

You alleged that, on June 10, 2011, the morning of the ballot tally, AAA Vice President Jeffrey Zaino retrieved ballots from the post office that had no postmarks. Your allegation raised the issue of whether ballot fraud and/or tampering occurred. The LMRDA requires that unions provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c). AAA is hired to conduct many different elections.

The investigation revealed that on June 10, 2011, an AAA employee picked up ballots from the post office for several different elections that AAA was running. Local 1181's ballots were separated from the others and put into trays, with observers watching. AAA provided a receipt for *all* of the ballots that were collected. The Department of Labor examined all of the envelopes in which voted ballots had been returned. The examination confirmed that some of the ballots did lack postmarks. Department of Labor examination of the outer envelopes revealed that 458 of the 7,065 counted ballots (6.5%) lacked a postmark. The Department's experience in investigating union elections which has included interviews of postal officials has revealed that lack of a postmark is not an indication that an item was not mailed. As a matter of course, some mail processed by the United States Postal Service is simply not postmarked. Whether a ballot envelope is postmarked is outside the control of the voter, and the union should

not, without more, invalidate ballots from eligible members on that basis. There was no violation of the LMRDA.

You alleged that AAA showed partiality for the incumbent candidates throughout the election. In support of your allegation, you stated that on May 4, 2011, at the candidate's meeting, AAA President **Jeff Zaino**, when questioned about his handling of the nominations, stated, "I get paid by the union." It is not a violation of the LMRDA for the AAA representative to state that he/she is being paid by the union. That is a true statement, and members are or should be aware that the company has been hired by the union to conduct the election. As further evidence of AAA's partiality, you alleged that **Zaino** favored the incumbent slate when determining the positioning of candidates on the ballot. You stated that in the drawing held for ballot position, **Zaino** purposefully folded the incumbent slate's name smaller than the other names which allowed him to draw the incumbent slate for the first position on the ballot. The LMRDA does not prescribe the form of the ballot or any method for determining position on the ballot. The union's actions are circumscribed by the LMRDA's general rule of fairness. *See* 29 U.S.C. § 481(c); *see also* 29 C.F.R. § 452.112. There is no conclusive evidence that **Zaino** acted unfairly and manipulated the folding of the pieces of paper to secure the incumbent's first position on the ballot. The facts do not provide probable cause to believe that a violation occurred that would affect the outcome of the election.

You alleged that, over the course of the campaign, certain shop stewards told members to return ballots by handing the ballots directly to the shop stewards and that shop stewards were collecting ballots. You also allege that stewards were told by their supervisors to physically deliver the voted ballots to the union. The investigation revealed that two members returned their voted ballots, sealed in the ballot return envelopes, to one of the shop stewards to mail for them. This shop steward's collection of these two ballots from members violated the LMRDA's adequate safeguards provision, 29 U.S.C. § 481(c). However, the violation may have affected only two votes. These two votes are insufficient to have affected the outcome of the election where the smallest vote margin was 1,367.

You alleged that around 600 members did not receive ballots, despite having received campaign flyers, and, consequently, that these members had to request duplicate ballots, which are more easily manipulated. You assumed that all members had received your flyers because they had not been returned undelivered. The investigation revealed that there were 813 total undeliverable ballot packages returned to the United States Postal Service. The Postal Service applied a label with a forwarding address and AAA automatically re-mailed 161 of the undeliverable ballots. There remained 652 undeliverable ballots for which the Postal Service could not provide a forwarding address. It is possible that some of the 652 requested and received a duplicate ballot because the union mailed a total of 605 duplicate ballots. In any event, any violation of

the LMRDA attributable to the undeliverable ballots and the provision of duplicate ballots would not have affected the outcome of the election because the smallest vote margin was 1,367. Further, the investigation revealed no evidence of ballot fraud, tampering or manipulation. The Department of Labor investigation also revealed that undeliverable mail sent "pre-sorted standard," such as the campaign flyers, are not returned to sender, whereas first class undeliverable mail, such as the ballot packages, are. There was no violation of the LMRDA affecting the outcome of the election.

You alleged that duplicate ballots were not handled properly because, if both an original and duplicate ballot were received from a member, the duplicate ballot was the ballot counted. AAA Vice President Zaino stated that it is AAA's practice to count the ballot with the latest postmark when more than one ballot is received from a member. If neither of the ballots contains a postmark then AAA counts the duplicate. This procedure attempts to give effect to the voter's most recent ballot. The procedure does not violate the LMRDA.

You alleged that if members voted for individual candidates and also checked a slate box, only the slate vote would be counted. The instructions on the ballot read, "If you vote for a complete slate, do not cast any other vote on the ballot.... If you choose not to vote for a slate, you may vote for individual candidates. You are not required to vote by slate. In all cases a slate box vote will take precedence." The instructions are consistent with the Department's regulation at 29 C.F.R. § 452.112 regarding slate voting, which provides that slate voting must have a provision for the voter to choose among individual candidates if he does not wish to vote for an entire slate and that the voting instructions should specifically inform the voter that he need not vote for an entire slate, "[t]o avoid any misunderstanding in this regard." The union did not violate the LMRDA in giving precedence to the slate box marks. Moreover, the investigation revealed that there were only 61 ballots where members marked the slate box for the winning slate and also marked individual names on other slates. This number is insufficient to have affected the outcome of any election.

You questioned whether the fact that so many members voted for individual members of one slate and checked a slate box for a different slate raises the possibility of ballot fraud and tampering. You also allege that there may have been ballot fraud/tampering as many ballot markings were identical with no difference in handwriting and pen. You allege that these ballots should not have been counted, as these ballots may have been marked by the same hand. Department of Labor review of the election records showed no striking similarities in ballot markings. There was no evidence of ballot fraud or tampering. There was no violation of the LMRDA.

You alleged that there were "significant irregularities" concerning mailed ballots from members that did not live on Long Island having a Long Island postmark. The

Department's review of the election records found that only 39 ballots with Long Island postmarks came from members who did not live on Long Island. While the reason for this is unclear, this number is insufficient to have affected the outcome of the election.

For the reasons set forth above, it is concluded that any violations that took place regarding the 2011 ATU Local 1181 officer election would not have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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