



November 20, 2012

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 24, 2011 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the regularly scheduled election of officers of the Amalgamated Transit Union (ATU) Local 732 conducted on December 8, 2010, and the run-off election conducted on December 15, 2010.

The Department 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 no violation occurred which may have affected the outcome of the election.

You alleged that ATU 732 member, [REDACTED] used his Facebook page to post photographs of candidates for union office and that many of these photographs included the ATU union logo, making it appear that the candidate had the union's endorsement.

Section 401(g) of the LMRDA prohibits the use of union funds to promote a candidate in a union election. First, it is unclear who created this Facebook page, but the Department determined that [REDACTED], who was not a candidate in the election, did not create the page, and that it is not the union's official Facebook page. This was a public Facebook page, open to anyone to view or post photographs.

The investigation found that [REDACTED] often photographs Local 732 events, but is not paid or employed by the union. [REDACTED] posted eleven personal photographs of candidates to this Facebook page, which he took during a Local 732 candidates' forum. He posted candidates from both slates running in the Local 732 election, but no candidate asked him to post the photographs, and [REDACTED] asserted that he had no intention of endorsing any particular candidates. Instead, [REDACTED] stated he was attempting to publicize the upcoming election and to introduce the candidates to the membership.

The Department found no evidence that this Facebook page constituted the union's official endorsement of any candidate for office. Accordingly, there was no violation of the LMRDA.

You alleged that the union failed to properly count ballots because a high number of ballots were voided during the tally, in violation of section 401(c) and section 401(e) of the LMRDA. Section 401(c) requires, in pertinent part, that a union provide adequate safeguards to insure a fair election. *See also* 29 C.F.R. § 452.66. Section 401(e) requires that all members in good standing be permitted to vote in a union election.

The investigation did not reveal that a high number of ballots were voided. To the contrary, the Department's recount found that the union did not void any ballots, but should have voided three ballots which were improperly included in the tally. During its recount, the Department found that the union should have voided three ballots: one retiree ballot had an "X" across the ballot and no votes for any office, and two others where ballot secrecy was compromised (one Bus Maintenance ballot included the member's name on the ballot, and one Transportation ballot included the member's initials). The union's failure to void these three ballots is a violation of the LMRDA; however, section 402(c)(2) provides that an election will only be overturned where a violation may have affected the outcome of the election. Because the smallest margin of victory in the general election was 19 votes, the three ballots that were improperly counted do not constitute a violation that may have affected the outcome of the election. Additionally, while conducting its recount of the ballots, the Department found that the union "scratched," *i.e.* voided, individual races on ballots that were left blank, but counted the remainder of the ballot in which the voter marked a selection. The union's decision to void individual races that were left blank but count the remainder of the ballot is consistent with the Department's regulations at 29 C.F.R. § 452.116.

You also alleged that former union officer, ██████████ broke the seal on the election records without the election committee members being present, as required by the union's bylaws, in violation of section 401(c) and section 401(e) of the LMRDA. Section 401(c) requires, in pertinent part, that a union provide adequate safeguards to insure a fair election. *See also* 29 C.F.R. § 452.66. Section 401(e) requires that unions must conduct elections in accordance with the constitution and bylaws.

Section 21(c)(8) of the Local 732 Bylaws states that after the ballots are counted and a correct tally is made, the ballots will be sealed in boxes and delivered to the Recording Secretary. During the investigation, ██████████ admitted that he broke the seal on a box of election records following the December 8, 2010 general election, without any election committee members present. ██████████ explained that the election committee counted the ballots and provided him with the results for posting in the IBEW Auditorium. At the time of posting the final results of the election, ██████████ noticed that he did not have the

final tally for the position of Executive Board Member (Rail Maintenance Department) so he opened the box with the election records and retrieved the results of this position for posting. The Department reviewed the election records and found no material discrepancies. The election committee members and election observers confirmed that the election results at the time the boxes were sealed and at the time [REDACTED] posted the results were unchanged. Accordingly, there is a technical violation for failure to follow the union's constitution; however, there is no effect on the outcome of the election.

You alleged that the election committee failed to follow the union bylaws by using blue ink pens to tally the ballots and yellow high-lighter to check-off voters during the election tally in violation of section 401(c) and section 401(e) of the LMRDA. Section 401(c) requires, in pertinent part, that a union provide adequate safeguards to insure a fair election. Section 401(e) requires that unions must conduct elections in accordance with the constitution and bylaws.

Section 21(c)(5) of the Local 732 Bylaws requires that voters' names be checked-off the membership eligibility list in red pencil. The investigation revealed that election officials used blue ink pens to tally the election results and yellow high-lighters to check-off names from the membership list. While this constitutes a technical violation for failure to follow the union bylaws, there was no evidence of ballot fraud or improper conduct on the part of the election officials during the tally such that this technical violation could have affected the outcome of the election.

You alleged that the union allowed ineligible members to vote in violation of section 401(e) of the LMRDA. Section 401(e) requires that only members in good standing shall be permitted to vote in the union election. Specifically, you protested the fact that retired members were allowed to vote for certain offices in violation of the union bylaws.

The Department reviewed the ATU Constitution and the ATU 732 Bylaws and found no limitation on retirees' voting rights. In fact Section 21.13 of the ATU Constitution provides that retired members in good standing are entitled to vote in the election of all local union officers and convention delegates. Accordingly, permitting retired members in good standing to vote in the election was not a violation of the LMRDA.

You alleged that during the run-off election the union permitted write-in candidates on the ballots in violation of the union's constitution and bylaws and improperly counted these ballots in the election tally in violation of section 401(c) and section 401(e) of the LMRDA. Section 401(c) requires, in pertinent part, that a union provide adequate safeguards to insure a fair election. Section 401(e) requires unions to conduct elections in accordance with the constitution and bylaws.

The investigation found that there were no write-in candidates permitted in this election; rather, an error occurred during the printing of the ballots resulting in the Financial Secretary position being listed twice in place of the Vice President position. The union realized this error and attempted to correct all of the ballots by crossing-out the mislabeled Financial Secretary and writing "Vice President" above the particular candidates running for the Vice President position. There were no write-in candidates in this election. The Department determined that the union failed to correct the printing error on 26 ballots, which were voted and tallied. Counting these 26 ballots constitutes a safeguards violation of section 401(c) of the LMRDA; however, because the smallest margin of victory in the run-off election was 240 votes, this violation could not affect the outcome.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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