



June 20, 2013

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaints you filed with the Department of Labor on August 24, 2012, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by Local 1, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, on June 2, 2012.

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 2012 election was conducted by slate balloting even though the membership had not approved any amendment to the local's constitution and bylaws permitting such balloting. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. The investigation disclosed that the local's constitution and bylaws are silent regarding the method of voting. Thus, the local was not required to amend the constitution and bylaws or obtain the membership's approval of any such amendment before implementing slate balloting. Neither the LMRDA nor the local's constitution and bylaws were violated.

██████████ and ██████████ also alleged that the local failed to notify members that slate balloting would be implemented during the 2012 election and that a slate would be required to have at least 10 candidates to declare slate status. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. Thus, a union's wide range of discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. To that end, a union may permit slate balloting so long as such balloting is consistent with the requirement of fairness and the other provisions of the LMRDA. 29 C.F.R. § 452.112.

The investigation disclosed that the 2012 election was the first election in which Local 1 permitted candidates to be listed on the ballot according to slate affiliation. A slate needed at least 10 candidates to declare slate status. The balloting was conducted by on-site, electronic voting and members could automatically vote for all the candidates on a particular slate by pushing a single slate button on the electronic voting machine.

Prior to the nominations meeting, the local did not inform its membership that slate voting would be permitted or that a slate needed at least 10 candidates to be listed on the ballot by slate affiliation. As a result, the nine unaffiliated candidates did not learn that the election would be conducted by slate balloting until the incumbent business manager read the nominations guidelines at the nominations meeting, just prior to nominations being opened. The investigation showed, however, that the incumbent business manager, who was a member of the Administration Team, the slate headed by the incumbent officers, learned several weeks prior to the nominations meeting that slate balloting would be permitted, and he was aware of the number of candidates required for slate designation on the ballot. As a result, during the nominations meeting, an Administration Team candidate was nominated for each of the 19 officer positions, including the office of president, vice president, business manager, recording secretary, secretary treasurer, 10 business agents and the executive board (4). In addition, five unaffiliated candidates, including the complainants, were nominated for officer positions, including the office for vice president (1), business agent (3), and executive board (1). ██████████ and ██████████ were nominated to the office of vice president and business agent, respectively. ██████████ and three other unaffiliated candidates were nominated to run for non-officer positions. *See* 29 U.S.C. § 402(n).

██████████ stated during the investigation that he would have formed a slate of 10 candidates if he had prior notice that the election would be conducted by slate balloting. In the interest of fairness and to ensure the integrity of the election process, the local should have provided adequate advance notice to its membership that slate balloting would be permitted and informed members of the number of candidates needed for slate designation on the ballot. The local's failure to provide such notice violated the LMRDA's mandate that a union provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c).

However, the investigation did not find that this violation may have affected the outcome of the election. Specifically, the investigation disclosed that the local provided every member a reasonable opportunity to make nominations and be nominated to office. The ballot format used during the election made provision for a voter to choose among individual candidates if the voter did not wish to vote for an entire slate. The names of the unaffiliated candidates appeared on the ballot. Thus, such ballot format was consistent with the right of eligible members to vote for and otherwise support the candidate or candidates of their choice. 29 C.F.R. § 452.112. None of the complainants provided the Department with the names of individuals who would have run on his slate. Moreover, during the nominations meeting, none of the unaffiliated candidates, including the complainants, objected to the slate requirement or requested that nominations be reopened or extended to afford them an opportunity to form slates and declare a slate affiliation. Under these circumstances, there is not probable cause to believe that a violation of the LMRDA occurred that may have affected the outcome of the election.

██████████ alleged that the local violated Section 20G of the local's constitution and bylaws when candidates were not afforded an opportunity to pick their positions on the ballot. Section 401(e) of the LMRDA requires a union to conduct its election in accordance with its constitution and bylaws. The Department recognizes that a determination as to the position of a candidate's name on the ballot may be made by the union in any manner permitted by its constitution and bylaws, consistent with the requirement of fairness and the other provisions of the LMRDA. 29 C.F.R. § 452.112. Section 20G of the local's constitution and bylaws states, "any and all candidates running for office must pick for their positions on the ballot."

The investigation disclosed that in past elections the local applied this provision in determining the position of names of individual candidates on the ballot, as candidates were not permitted to have their names listed on the ballot by slate affiliation. The 2012 election was the first election that permitted slate voting. The local's constitution and bylaws are silent regarding the procedures for determining the position of candidates' names on the ballot by slate affiliation. Therefore, the local used the procedures prescribed in its 2012 election guidelines for determining the positions of both the slate candidates' names and the unaffiliated candidates' names on the ballot. The investigation disclosed that such procedures were applied to all candidates in a uniform manner and that the names of all eligible candidates appeared on the ballot. Therefore, such procedures were not unreasonable. Neither the LMRDA nor the local's constitution and bylaws were violated.

██████████ alleged that on the day of the election he was denied the right to inspect the voting machines before the voting started and denied the right to have an observer

during the vote tally. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. This right encompasses every phase of the election process including, but not limited to, the counting and tallying of the ballots and the totaling, recording, and reporting of the tally sheets. 29 C.F.R. § 452.107.

The investigation disclosed that the election committee told ██████████ that, on the morning of the election at 7:00 a.m., prior to the polls opening, he would be permitted to inspect the voting machines. The investigation also found that ██████████ arrived at the polls at 7:00 a.m. on the day of the election to conduct such inspection, and that the election committee did not allow him to enter the polling place until 7:40 a.m. By the time ██████████ entered the polling place, the mechanism on the voting machines that recorded the votes had been set at zero. The investigation further disclosed that after voting concluded, ██████████ ██████████ observer, left the tally room after the election committee chair told ██████████ to move to the end of the room away from the voting machines while the election company took the vote tallies from the voting machines. The LMRDA's adequate safeguards provision was violated when ██████████ ██████████ was denied the right to inspect the voting machines. That provision was further violated when his observer was not permitted to observe the tally of the machine votes.

The investigation disclosed, however, that prior to the polls opening, the company that provided the voting machines opened and inspected them in the presence of the election committee. The election committee did not note any irregularities. In addition, the paper print out from the voting machines verified that all the voting machines registered zero votes prior to the polls opening. Further, the Department's review of the election records disclosed no discrepancies with regard to the vote tally results. Thus, there is not probable cause to believe that the adequate safeguards violations may have affected the outcome of the election.

██████████ alleged that the accuracy of the voting machines used for the election was questionable. This allegation is based on ██████████ contention that use of such machines is prohibited in the state of New York. ██████████ also claimed that the law firm that represents Local 1 is a lobbyist for Diebold, the company that manufactured the voting machines. The investigation, however, disclosed that ELECTronic 1242 Danaher voting machines were used for the election, not machines manufactured by Diebold. There is no evidence that the voting machines malfunctioned during the voting process or were mechanically defective. Further, the attorney for Local 1 stated during the investigation that his law firm formerly was a lobbyist for Diebold but that this arrangement was terminated in 2008. The LMRDA was not violated.

With respect to the allegations raised in the complaint that [REDACTED] filed with the Department on August 24, 2012, the union disputes that [REDACTED] election appeal to the General President concerning such allegations was timely filed. The union, therefore, is of the opinion that the complaint is not properly before the Department. The issues [REDACTED] raised in his complaint to the Department were that the local failed to notify members that slate balloting would be implemented during the 2012 election, that the local failed to notify members that a slate would be required to have at least 10 candidates to declare slate status, and that the union violated the local constitution by not allowing [REDACTED] to pick his position on the ballot. These allegations were investigated, as they also were included in the [REDACTED] and [REDACTED] complaints. The investigation found, with respect to these allegations, that there was no violation of the LMRDA or there was no violation of the LMRDA that may have affected the outcome of the election.

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, and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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