



December 9, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your September 26, 2014 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 election of officers conducted by the International Brotherhood of Electrical Workers Local Union (IBEW) Local 46 in June 2014.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation occurred that may have affected the outcome of the election. Following is an explanation of this conclusion.

In your complaint, you challenged the eligibility of six candidates for office, and alleged that, in allowing them to run for office, the Local violated section 401(e) of the LMRDA.

First, you alleged that winning candidate Sean Bagsby was not eligible to run for office, as his nomination was made by a retired member of the Local. Neither the Local's bylaws nor the IBEW Constitution address whether retired members may make nominations for local elections. Even if such nominations were prohibited, though, there was no effect on the outcome of the election in this case, as active members indicated they would have nominated Mr. Bagsby had the retired member not done so or if that nomination were deemed invalid.

Next, you alleged that three candidates were "supervisors" under the Department's regulations, and thus ineligible to run for or hold office. The investigation revealed that only two of these three candidates were serving as foremen or general foremen at the time of the election, and none of the three had hiring, termination, or promotion authority. Thus, there was no "reasonable basis for assuming that the [candidates] involved would be subject to a conflict of interest in carrying out [their] representative duties for employees and rank and file union members." 29 C.F.R. § 452.47. The candidacies of the foremen were in accord with the International's stated policy, which states that such foremen are "entitled to participate in local union affairs and elections." Accordingly, the candidacies of these individuals did not violate the LMRDA.

You also alleged that two candidates were ineligible to run for office because of their affiliations with other businesses, namely an apparel business and a fast food restaurant. Your eligibility

challenges are based on the facts that (1) both candidates are “employers” and (2) one of the businesses employs minimum wage workers.

Section 401(e) of the LMRDA requires union officer elections to be conducted in accordance with the union’s constitution and bylaws. Article XV, § 5, of the IBEW Constitution, prohibits “electrical employer[s]” from holding office. The investigation revealed that neither of these candidates employs workers in businesses that are electrical concerns, and neither employs any members of IBEW or IBEW Local 46. Thus, there is no violation of the union constitution or the LMRDA. Moreover, no provision of the LMRDA or the union’s constitution or bylaws bars employers of minimum wage workers from holding office; thus, there was no violation.

You also alleged that there was voter confusion due to the inclusion of a notice in the ballot package, informing members that one of the candidates for Business Manager had withdrawn from the race, though his name remained on the ballot. You claim that this confusion constituted a violation of section 401(c) of the LMRDA. That section requires that unions provide adequate safeguards to ensure a fair election.

The investigation revealed that the IBEW International Constitution permits candidates for office to withdraw their candidacy at any time. Here, where a candidate withdrew after ballots were printed, the union’s indicating such on a separate notice accompanying the ballot actually was a measure to ensure the fairness of the election. The Local acted reasonably and did not violate the LMRDA. There was also no evidence that voters were actually confused. Even if there had been, the candidate at issue only received 11 votes, and the winning candidate for Business Manager prevailed by over 200 votes; as such, there was no possible effect on the outcome of the election.

You alleged that ballots were not properly counted due to the arbitrary nature in which ballots were deemed to contain “distinguishing marks” and thus not counted. The investigation determined that four ballots were not counted on this basis and should have been, in violation of the statute. However, the failure to count these ballots had no effect on the outcome of the election. Had these four ballots been counted, the outcome of the election would have remained the same, as the smallest margin of victory was eight votes.

With regard to the runoff election held for the position of Vice President, you alleged that the Local improperly used union resources, the union newsletter, to promote the candidacy of one of the candidates for office. The investigation revealed that the Business Manager’s Report in the June 2014 local newsletter did compliment one of the candidates for office. It did so, though, in the context of recent, newsworthy action taken by that candidate, and did not mention her candidacy. As the tone, content, and timing of the publication do not demonstrate an effective endorsement or encouragement of her candidacy, there was no violation of the LMRDA. *See, e.g., Conery v. Niccollai*, No. CIV.A. 92-840 (JAG), 1998 WL 34076966, at *4 (D.N.J. Feb. 2, 1998).

Your complaint also included allegations relating to the potential mishandling of ballots by the postal service, and the late delivery of timely ballots by the postal service. The investigation did not corroborate these allegations or suggest any union action or inaction, and thus there was no violation.

Finally, you alleged that members who lived “outside the jurisdiction” were unfairly denied the right to vote, in violation of section 401(e) of the LMRDA, because the ballots were required to

be received by the deadline, as opposed to postmarked by that deadline. The LMRDA does not require local unions to use a postmark date as a cutoff date for ballots. Here, members received advance notice of the election in April 2014, which informed them of the receipt deadline, and ballots were mailed 18 days prior to the deadline, giving all members of the Local ample notice and time to complete and return their ballots so that they would be received by the deadline.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may 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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