



June 9, 2014



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor dated September 27, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the Teamsters Local 690 on December 8, 2012.

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

You alleged that the incumbent slate, named the "Re-Elect Teamsters Local 690 Slate Protecting Your Future," used union funds to create, promote, and distribute campaign paraphernalia. Specifically, you alleged that the incumbent slate presented itself as the "Teamsters Local 690 Slate" and because of the slate's name, t-shirts purchased with union funds that said "Teamsters Local 690" instantly became campaign items soliciting support for the incumbent slate.

Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote the candidacy of any person in an election of union officers. The investigation revealed that Local 690 has distributed paraphernalia, including t-shirts and "Solidarity Shirts" with the words "Teamsters" or "Local 690" printed on them in various combinations for several years. The shirts did not contain any words that solicited votes for the incumbent officers or that endorsed the incumbent slate. Further, the investigation showed that during the 2012 election your slate name also contained the words "Teamsters" and "690," and that these words were printed on your campaign paraphernalia that your slate distributed to members. In addition, all of the slates, including yours, used the Teamsters' logo on campaign materials. Neither the Teamsters' Constitution nor the Local's bylaws prohibit the use of the Teamsters' logo or name in slate names or campaign materials. The shirts and paraphernalia paid for and distributed by the union did not promote a particular candidate or slate. There was no violation of the LMRDA.

You alleged that incumbent Secretary-Treasurer Val Holstrom, and Business Agents Mike Valenzuela and Larry Kroetch received preferential treatment over other candidates when union funds and union time were used to promote the candidacy of the incumbents. Specifically, you alleged that Holstrom and Valenzuela campaigned inside the UPS facility, and Holstrom and Kroetch campaigned at the URM Warehouse.

Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote any candidate for union office. The investigation revealed that on November 4, 2012, all three slates, Re-elect Teamster Local 690, 690 Teamsters United, and A New Direction, campaigned outside the UPS Spokane Valley Hub in an area designated for campaigning. While Holstrom was campaigning outside the facility, a member approached Holstrom about filing a grievance regarding his termination from employment. After Holstrom and Valenzuela finished campaigning, they went inside the facility where they met with the member and his supervisor and then filed a grievance with UPS management. The Department's review of the grievance showed that the union filed it with UPS management on November 4, 2012.

The investigation did not substantiate your allegation that Holstrom or Valenzuela campaigned inside the facility on November 4 prior to or after they met with the supervisor or UPS management. Further, during the investigation both Holstrom and Valenzuela denied engaging in the alleged activity. You stated during the investigation, however, that an unidentified witness told you that Holstrom and Valenzuela were shaking hands and talking to members after they entered the facility. However, you acknowledged during the investigation that the witness did not hear what Holstrom and Valenzuela discussed with the members, that you did not know where in the facility this alleged incident occurred, and that you had no personal knowledge of any campaigning by Holstrom and Valenzuela. On these facts, there is not an adequate basis for concluding that Holstrom or Valenzuela engaged in prohibited campaigning while inside the UPS facility. Even if campaigning occurred while Holstrom and Valenzuela were inside the facility, it was incidental to filing the grievance. There was no violation of the LMRDA.

With respect to Holstrom and Kroetch, you also alleged that they campaigned at the URM Warehouse on November 1, 2012, by placing campaign literature in employees' work mailboxes. The investigation showed that neither Holstrom nor Kroetch placed campaign literature in employees' work mailboxes at URM. Instead, during the investigation, [REDACTED], an employee at URM and supporter of the incumbent slate, stated that he placed campaign flyers in the work mailboxes of approximately 75-85 employees. During the investigation, you stated that you did not ask a URM employee to place your campaign literature in the mailboxes because your attorney advised you

that this would constitute an unlawful use of employer funds to promote your candidacy in violation of the LMRDA.

Section 401(g) of the LMRDA prohibits employer-financed campaigning only to the extent that such financing advances the candidacy of a particular individual in an election of union officers. During the investigation, [REDACTED], Vice President of Operations at the URM Warehouse, stated that URM does not have any written or oral rules or policies regarding use of the employee mailboxes for campaigning, which are unlocked at all times and accessible to all URM employees. Therefore, any candidate, including you, could have had a URM employee distribute his or her campaign material in the mailboxes. The investigation showed that you never asked URM management about the employer's rules or policies concerning use of the mailboxes for campaigning. Since any candidate was permitted use of the employees' mailboxes for campaigning, this use did not promote the candidacy of any person in the election to the exclusion of any other candidate. There was no violation of the LMRDA.

You alleged that the incumbent slate posted campaign literature on two union bulletin boards located at URM and that these boards were restricted to union business. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of an individual in the election.

The investigation showed that in addition to placing the literature in employee mailboxes at URM, [REDACTED] also posted a flyer on the union bulletin boards located at the URM facility. The investigation disclosed that the bulletin boards were unsecured and accessible to all employees. The flyer posted by [REDACTED] on the bulletin boards was clearly campaign material and there was nothing in the material to suggest that it was a union endorsement of any slate. In any event, the investigation disclosed that although URM has a policy against posting campaign material on company property, Local 690 does not have a policy restricting or limiting use of its bulletin boards for personal business, including campaigning. Therefore, any candidate, including you, could have attempted to use the bulletin boards for campaign purposes. Furthermore, the investigation showed that management treated all campaign material the same by removing it upon discovery. There was no violation of the LMRDA.

You alleged that Local 690 Secretary-Treasurer Holstrom intentionally delayed distribution of your campaign mailings in an attempt to harm your campaign. Section 401(c) of the LMRDA requires a union to comply with all reasonable requests of any candidate to have campaign literature distributed by the labor organization, at the candidate's expense. *See* 29 C.F.R. §§ 452.67-.69.

The investigation disclosed that there was no delay in the distribution of your campaign literature. Specifically, the investigation showed that prior to nominations, on

November 7, 2012, you sent Holstrom an email expressing your intent to do campaign mailings. Your email was silent concerning the dates on which mailings were to be conducted. On November 13, 2012, Holstrom received your follow-up email requesting that one mailing be sent to the entire membership, which was mailed to members that same day. Your email also requested that another mailing be sent to targeted members based on jobsites and specifically asked that the labels containing the members' home addresses arrive at Paper Mill Printing by 10:00 a.m. on November 15, 2012.

The investigation showed that Holstrom contacted Gary Witlen, Teamsters International Legal Counsel, for clarification regarding your targeted mailing request. Once Holstrom received instructions from Witlen on how to proceed with your request, Susan Gemmell, Local 690's office manager, forwarded the labels to Paper Mill Printing at 8:17 a.m. on November 15, 2012, so that your campaign mailing could be conducted. The investigation further shows that Paper Mill Printing read the request that same day at 8:57 a.m. These events all occurred prior to your 10:00 a.m. deadline. Therefore, the union complied with your request that the labels containing the members' home addresses arrive at Paper Mill Printing by 10:00 a.m. on November 15, 2012. The investigation disclosed no evidence that your campaign mailings were in any way delayed. There was no violation of the LMRDA.

You alleged that Local 690 denied your November 30, 2012 request to do a targeted campaign mailing to 164 members whose ballot packages were returned to True Ballot as undeliverable. Section 401(c) of the LMRDA requires unions to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature to the membership. The interpretative regulations explain that a union also must "honor requests for distribution of literature to only a portion of the membership if such distribution is practicable." 29 C.F.R. § 452.68. Thus, a candidate's right to make a partial mailing of campaign literature is limited to distributions that are practicable.

The investigation revealed that a targeted distribution of your campaign literature to members whose original ballot packages were returned as undeliverable was not practicable. Specifically, all undeliverable ballot packages were returned directly to True Ballot, the company that conducted the election. Each day, True Ballot scanned the barcodes on the undeliverable packages and then uploaded the membership identification data to a True Ballot database by noon. During the election period, Local 690's office manager, Susan Gemmell, accessed the True Ballot database each day to determine those members whose ballots packages had been returned as undeliverable. Next, Gemmell identified the member's employer and contacted either the employer or the member to obtain an updated mailing address. If Gemmell was able to obtain an updated address for a member, she logged onto the TITAN database, deleted or revised

the old address, and then entered the updated address into the TITAN database. Once the data was entered, True Ballot re-mailed to the new addresses.

However, the TITAN database did not flag or identify those members whose addresses had been updated. Nor did the TITAN system retain any information that would have permitted Gemmell to construct a list containing the names or addresses of such members. In addition, the True Ballot database did not track any of the updated addresses that Gemmell located for undeliverable ballot packages or the names of those members whose addresses had been updated in the TITAN database. Therefore, neither the TITAN system nor the True Ballot database was capable of sorting information by the names of members whose ballot packages were returned as undeliverable or by updated addresses. Although you stated during the investigation that Local 690 should have obtained a comprehensive list from True Ballot of all the undeliverable ballots and conducted a targeted mailing to those members for whom the union was able to obtain updated addresses, the investigation showed that this information was not accessible from the TITAN system or the True Ballot database; as a result, the union and True Ballot never created any such list.

During the investigation you admitted and Gemmell confirmed that your observer, [REDACTED] [REDACTED] witnessed Gemmell process the names and addresses of members whose ballots had been returned as undeliverable almost daily. Thus, [REDACTED] had the opportunity to keep track of and list the names and addresses of members whose ballots were returned as undeliverable and whose updated addresses were obtained by the union but he did not do so. There was no violation of the LMRDA.

You alleged that Local 690 denied at least seven members the right to vote because they did not receive the duplicate ballots they requested. Section 401(e) of the LMRDA provides that members in good standing shall have the right to vote. The investigation found that True Ballot mailed duplicate ballots to five of the seven members you named. Of the remaining two members you named, one member had moved twice during the election cycle and, as a result, the union was unable to obtain a current address for that member despite an effort to do so. The member never provided the union with an updated address. The other member never requested a duplicate ballot. There was no violation of the LMRDA.

You alleged that Local 690 made little or no attempt to obtain updated addresses regarding ballot packages that were returned as undeliverable and, as such, failed to re-mail duplicate ballot packages. Section 401(e) of the LMRDA provides that members in good standing shall have the right to vote. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair and democratic election. The investigation showed that prior to the election Local 690 took reasonable steps to obtain correct home addresses for all of its members and endeavored to keep the

addresses up-to-date. The union had a systematic procedure in place that permitted the update of members' home address on a periodic basis. The union initially obtained a member's address from a membership card that is completed when an individual joined the union. Throughout the year, when Local 690's mailings - including newsletters, announcements, and notices - were mailed to a member's last known address and it was returned to Local 690 as undeliverable, the Local 690 office staff contacted the member's employer to get an updated address and the new address was immediately updated in TITAN. If a member contacted the union office with a new address, it was also immediately updated in TITAN.

As previously discussed, all undeliverable ballot packages were returned directly to True Ballot. True Ballot entered the addresses of those members whose ballots had been returned as undeliverable into its database. Local 690's office manager, Susan Gemmell, logged onto the True Ballot database each day between 9:00 and 9:10 a.m. and accessed the undeliverable mailing addresses. Gemmell identified the member's employer and contacted either the employer or attempted to contact the member in order to obtain a correct or updated mailing address. Gemmell then entered the correct/updated address into TITAN. Once the address was updated in TITAN, Gemmell submitted information directly to the True Ballot database instructing True Ballot to mail a duplicate ballot to the member whose address she had just updated.

The investigation revealed that of the 2,843 ballot packages mailed, 210 packages were returned as undeliverable during the election period. Of those 210, 98 were successfully re-mailed and 7 others were re-mailed but were returned again as undeliverable. (Three of the 7 were resent to the same incorrect address when a new address may have been available.) Employers were not able to provide a better address for 29 members and as a result, their ballot packages were not re-mailed and ballot packages were not re-mailed to 11 members who were determined to be no longer employed.

A review of the election records found that the union took no steps to obtain addresses to the remaining members and consequently their ballot packages were not re-mailed. The investigation confirmed that the union may not have taken adequate steps to mail ballots to 3 members whose ballots were returned as undeliverable but whose new address may have been available. In addition, the union took no steps to obtain better addresses and re-mail to 65 members, 27 of whom were later determined to be ineligible. Any violation of the LMRDA that occurred did not affect the outcome of the election because the closest margin of victory was 252 votes.

You alleged that employees of Local 690 inappropriately obtained the union membership list and distributed an attack campaign mailer to Local 690 members. Section 401(c) of the LMRDA prohibits unions from discriminating in favor of or against any candidates with respect to use of lists of members. 29 C.F.R. § 452.71(b).

The investigation showed that a negative campaign flyer, of undetermined origin, had been mailed to Local 690 members with the New Direction slate's return address on the envelope. [REDACTED], a candidate for the New Direction slate, informed you that he received undeliverable copies of the mailing delivered to the New Direction's campaign post office box. [REDACTED] denied New Direction's involvement with printing or mailing the negative campaign materials which attacked your slate, Teamsters 690 United. Instead, he and [REDACTED], another candidate of New Direction, alleged that candidates from the incumbent slate attempted to send the disparaging mailing through Paper Mill Printing and that the company refused to conduct the mailing.

During the investigation, the company's office manager and a supervisor at the company did not corroborate this allegation and stated that they could not recall any details concerning who requested the campaign mailings or the contents of the mailings. In any event, the TITAN system retains a record of all requests made to the TITAN database for labels. The Department reviewed the TITAN printouts from the database that had been made between November 2011 and December 2012. This review showed that all requests for printouts were made by Local 690 and the IBT. The review further substantiated that all requests for printed labels during that period, which included the campaign and election periods, were accounted for and related solely to official Local 690 business. Accordingly, there was no evidence of election impropriety concerning use of a membership list or membership labels. Nor was there any evidence that any employee or union official of Local 690 inappropriately exported a membership list or membership labels from the TITAN system and conducted a campaign mailing. No violation of the LMRDA was found.

In addition to the allegations discussed above, during your interview with the Department, you alleged that the incumbent slate Re-Elect Teamsters Local 690 used union funds for campaigning when they obtained information from the union newsletter and used it in their campaign literature. This claim was not protested to Local 690 pursuant to the union's Constitution and Bylaws.

Section 402(a) of the LMRDA provides that in order for the Secretary to bring an action against a labor union charged with violating section 401, the complaining union member either must have "exhausted the remedies available under the constitution and bylaws of such organization and of any parent body" or must have "invoked such available remedies without obtaining a final decision within three calendar months after their invocation. . . ." To facilitate compliance with the exhaustion and invocation processes, courts have placed the burden squarely on the union to develop clear and effective internal remedies. *See, e.g., Donovan v. Communication Workers, Local 3122*, 740 F.2d 860 (11th Cir.1984); *Donovan v. Sailors*, 739 F.2d 1426 (9th Cir. 1984), *cert. denied*, 471 U.S. 1004 (1985).

Consequently, when a union member fails to pursue the internal remedies provided by the union, he is then precluded from protesting the issue before the Department. Review of your protests and complaint show that you did not properly exhaust this allegation under the union's procedure, as required by section 402(a) of the LMRDA. Accordingly, this allegation is not properly before the Department. Furthermore, the LMRDA does not, and unions may not, regulate nor censor the statements of candidates in any way, even if a statement includes derogatory remarks. 29 C.F.R. § 452.70. Thus, even if your allegation was true and properly before the Department, there was no violation of the LMRDA.

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. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: James P. Hoffa, General President
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