



August 27, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor on March 13, 2008, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Local 2511 (Local 2511 or local), Transportation Communications International Union (International), completed on December 6, 2007.

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

You alleged that the local failed to hold its election by secret ballot when Sal Rodriguez, successful candidate for Local Chairman, collected ballots from members by use of intimidation. This allegation was not substantiated by the investigation. Section 401(b) of the LMRDA, requires local unions to elect their officers by secret ballot. 29 U.S.C. § 481(b). Section 3(k) of the LMRDA defines secret ballot as the "expression by ballot, voting machine, or otherwise . . . cast in such a manner that the person expressing such a choice cannot be identified with the choice expressed." 29 U.S.C. § 402(k). Ballot secrecy may be assured in elections conducted by mail ballot by the use of a double envelope system for return of the voted ballots. 29 CFR § 452.97. The investigation disclosed that the challenged election was conducted by mail ballot. The local used a double envelope system for return of the voted ballots that consisted of outer and inner ballot envelopes. The investigation further disclosed that approximately seventy members, the majority of whom were on Rodriguez' re-election committee, voluntarily gave their sealed ballot envelopes containing their voted ballot to Rodriguez for mailing. There was no evidence of intimidation or coercion of members. In addition,

the Department examined the ballot envelopes used to mail back the voted ballots to the local and found no evidence of tampering. Thus, the investigation corroborated that the secrecy of the sealed ballots that members provided to Rodriguez for mailing was not compromised. There was no violation of the LMRDA's secret ballot provision.

However, given that voted ballots were in the unsupervised control and possession of a candidate for office who retained custody of those sealed ballots, the local violated its duty under the LMRDA to provide adequate safeguards to ensure a fair election. *See* 29 U.S.C. § 481(c); 29 C.F.R. § 452.110(a). Adequate safeguards, as contemplated in the LMRDA, specifically refer to the mechanical procedural protections that must be afforded union members in an election of officers. Such protections were lacking in that Rodriguez had unsupervised control and possession of voted ballots that were sealed in double envelopes. However, the investigation failed to disclose that this violation may have affected the outcome of the election. The Department's review of the ballot envelopes and the voted ballots disclosed no evidence of fraud or other election improprieties. Thus, there was no violation of the LMRDA that may have affected the outcome of the election

You alleged that the local failed to hold the tally in a neutral location when the tally was conducted at the real estate office of local president Jeff Brown, rather than the Holiday Inn located in downtown Riverside. Section 401(e) of the LMRDA requires, among other things, that elections be held in accordance with a union's constitution. *See* 29 U.S.C. § 481(e). The International Constitution does not prescribe the location of a local's tally. Consequently, the local was free to hold the tally at a location of its choosing. Further, the investigation disclosed no evidence that the location of the tally affected the outcome of the election in any manner. There was no violation of the International Constitution or the LMRDA.

Finally, you alleged that eighty ballots were not included in the tally because members either mailed their ballots back to the local in the wrong envelope, or members failed to write the post office address on the outer envelope. The Department's review of the ballots and other election records showed that 15 ballots were not included in the tally for reasons other than a member's failure to use the correct envelope or to write the post office address on the outer envelope. The local's reasons for not including those fifteen ballots in the tally were legitimate, and included the following: identifying marks on the ballot which compromised ballot secrecy; no return address on several ballot envelopes so that the member's eligibility could not be verified; and ballots from individuals who were no longer members. There was no violation.

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 in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

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