



January 27, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your September 10, 2008 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA"), 29 U.S.C. §§ 481 - 484, occurred in connection with the May 6, 2008 election of union officers held by Local 1292 of the United Auto Workers ("Local 1292").

The Department of Labor investigated each of your allegations. As a result of the investigation, the Department concluded that no violation of the LMRDA that could have affected the outcome of the election occurred during the 2008 election.

You alleged that Local 1292 failed to provide union members with adequate notice of nominations. Notice of nominations must be given in a manner reasonably calculated to reach all members in good standing. 29 C.F.R. 452.56(a). You claimed that nomination notices should have been mailed separately to members, instead of being printed in the monthly union newspaper. The newspaper is sent to the home address of all active and retired members of Local 1292 by first-class mail. Both the March and April 2008 issues of the newspaper contained a combined nomination and election notice. The notices explained that all Local 1292 members are considered nominated for the election and that members could accept nominations from April 21-25, 2008. Adequate notice of nominations may be provided through publication in union newspapers. See 29 C.F.R. 452.56(a). Thus, there was no violation of the LMRDA.

You alleged a misuse of union funds. You stated that an election committee member, [REDACTED], saw a candidate using a cell phone and a union phone list to call members to encourage them to vote. [REDACTED] did not corroborate this allegation when interviewed during the Department's investigation. The investigation found no evidence that a union list was used to make campaign calls. There was no violation of the LMRDA.

You alleged that the union did not establish adequate campaign and election rules prior to the election. The Department of Labor's investigation revealed that all candidates were provided with a "Conduct of Elections" packet, which contained detailed information about the election including election rules and guidelines. There was no violation of the LMRDA.

You alleged that the union failed to properly count the ballots. Specifically, you alleged that Local 1292 failed to provide the number of ballots printed and information about who printed them. You also alleged that the election committee improperly voided 164 ballots, failed to count challenged ballots, destroyed some ballots, did not properly tally the ballots, and failed to properly post the elections results. You did not attend the tally nor did you have an observer attend. The Department's investigation included a recount of the president, financial secretary, and shop committee chairman races. The recount confirmed the numbers of votes placed for each candidate; there were no discrepancies. The investigation revealed that the union recorded ballots in which a member failed to vote for any candidate in a particular race as "void" for purposes of that race only. The investigation also revealed that there were approximately 128 such under-voted ballots in which the voter failed to mark any candidate in a particular race. The investigation confirmed that those ballots were only partially voided for the particular race or races in which the member did not place a vote for any candidate. There was no inconsistency or impropriety in the way these ballots were partially voided.

Additionally, the investigation found that only one challenged ballot was not counted. The person who voted the challenged ballot did not show any identification; therefore, his eligibility to vote could not be verified. Thus, it was proper that the ballot was not counted. The election results were posted in the union hall and in appropriate locations at the worksites. The results were also published in the June 2008 issue of the union newspaper. You stated it was improper that the results were recorded on a blank ballot instead of a tally sheet. However, posting the election results on a blank ballot did not violate the union's constitution and bylaws or the LMRDA.

The Department's investigation did find that Local 1292's office secretary, [REDACTED], used the union copier to print the shop committee ballots, which included the shop committee chair position, the only shop committee position covered by the LMRDA. [REDACTED] did not keep track of how many ballots she printed. After the election, she shredded the unused ballots. In doing so, Local 1292 failed to preserve all records relating to its election of officers as required by LMRDA § 401(e).

The Department's investigation did not find, however, that this violation could have affected the outcome of the election. In this regard, the ballots for the general executive board positions were printed by an outside company and the Department of Labor reviewed these ballots and was able to account for 1489 of the 1500 ballots printed. This 11 ballot discrepancy would have no impact on the election outcome since the smallest vote margin for any LMRDA-covered officer position was 36 votes. Although

Local 1292 failed to maintain a copy of the voter eligibility list, the completed ballot request slips were retained, which provides a record of who voted in the election. Moreover, there was no evidence of ballot fraud in this election. Candidate observers were present at the polling sites during voting and at the tally afterward. After voting closed, the contents of the ballot boxes were sorted. Ballots were then returned to the boxes, the boxes were locked and sealed with tape, and election committee members and observers signed their names over the tape. A candidate observer accompanied the election committee chairman in his truck as he transported the sealed ballot boxes from the plant polling site to the union hall for the tally. Local 1292 provided adequate safeguards to insure a fair election and there is no indication that the failure to preserve certain records affected the outcome of the election.

You alleged that the union refused to let you inspect the membership list. You were a candidate for District 4 committeeperson, which is not a union officer position covered by the LMRDA. Since you were a candidate for a non-covered position, the LMRDA did not guarantee you the right to inspect the union membership list. In any event, the Department's investigation revealed that you did not request to inspect the membership list. Thus, while you were not refused inspection of the list, it would not have been a violation of the LMRDA for the union to have denied such a request since you were a candidate for a position not subject to the LMRDA.

You alleged that members may have been denied the right to vote due to an insufficient election notice, that members may have voted more than once, and that voter eligibility was not verified. Section 401(e) of the LMRDA requires that an election notice be mailed to each union member at his or her last known home address at least fifteen days prior to the election. You alleged that ██████ told you that 37 members' names were missing from the union mailing list. During the Department's investigation, ██████ denied making such a statement and said she would have no idea if members were left off the mailing list. The investigation revealed that the mailing list for the union newspaper is compiled using current information in the database maintained by the employer, General Motors (GM). All active and retired members of Local 1292 are on the union's mailing list, including members on sick leave or lay-off. Every issue of the newspaper contains instructions on how members may update their mailing addresses. Additionally, the union pays for undeliverable newspapers to be returned to the union after each monthly mailing. The union then attempts to obtain the correct address of any member whose newspaper is returned to the union because of a bad mailing address. A combined nomination and election notice was published in both the March and April 2008 issues of the newspaper. The election notice met the requirements of the LMRDA.

You alleged that because there was no sign-in sheet at the polls the union may have allowed ineligible members to vote or allowed members to vote more than once. The Department's investigation revealed that members were required to sign a ballot request slip and show photo identification to an election committee member in order to obtain a ballot. The election committee member checked the voter eligibility list, pulled

the member's voter record card from a file, date stamped it, and placed it back in the file. A member would not be able to get a second ballot because his or her voter record card would have a stamp indicating the individual had already voted that day. The voter record cards for active members were kept at the GM plant polling location. Members could alternatively vote at the union hall. Generally, retired members vote at the union hall and active members vote at the GM plant. If an active member voted at the union hall, the member would be required to vote a challenged ballot, which was counted after the member's voter card was pulled from the file at the GM plant, and an election committee member verified there was no stamp indicating the member also voted at the GM plant polling place that day. These procedures prevented members from voting more than once.

The Department's investigation also examined the eligibility of members who voted in the election. Local 1292 used an employee list generated by GM the day before the election to verify voter eligibility. The list contained the names of all active and retired union members. All active and retired union members are eligible to vote because retired members do not have to pay dues, and all active members pay their dues by check-off. Because all dues, even those in arrears, are collected by check-off, all union members on this list are considered to be in good standing and eligible to vote. Additionally, the Department reviewed the dues records of the 41 candidates who ran for office and voted in the election, and found that all of them were eligible to vote and to run for office. The Department also reviewed the dues records of an additional sample of voters in the election and verified that they had all been eligible to vote. Thus, there was no violation of the LMRDA.

You also alleged that members were denied a reasonable opportunity to vote because GM did not allow employees to vote during the working hours of their shifts. Section 401(e) of the LMRDA guarantees every member in good standing the right to vote for the candidates of his choice. Implied in this right is the requirement that the union provide members with a reasonable opportunity to vote. Active members could vote at either the union hall or the GM plant anytime between the hours of 9:00 a.m. and 9:00 p.m. on the day of the election. Although GM did not allow members to vote during their working hours, members could vote before or after their shifts or during their lunch break. Thus, there was no violation of the LMRDA.

You alleged that ineligible candidates were permitted to run for the position of District 4 committeeperson. The LMRDA does not govern elections for union officials who do not perform executive functions, are not officers under the constitution and bylaws, and are not members of the executive committee or a similar governing body of the union. Even if the union's constitution and bylaws require that such positions be filled by election, Title IV procedures need not be followed since the holders of these positions are not considered officers covered by the LMRDA. The District 4 committeeperson is not a covered officer; therefore, there would have been no violation of the LMRDA, even if your allegation is correct.

For the reasons set forth above, the Department of Labor has concluded that no violation of the LMRDA occurred that could have affected the outcome of the election.

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

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

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