



April 13, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (the Department) on July 25, 2022, 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 Sheet Metal, Air, Rail and Transportation Workers (SMART) Local 105, in Glendora, California, on June 25, 2022.

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

First, you alleged that members were denied a reasonable opportunity to vote when Local 105 failed to conduct a mail ballot election, despite the fact that many members had to drive long distances to reach the polling sites. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that a union provide its members with a reasonable opportunity to vote. Providing members a reasonable opportunity to vote may require establishing multiple polling sites or use of a mail ballot referendum when members are widely dispersed. *See* 29 C.F.R. § 452.94; *see also* 29 C.F.R. § 452.95 (election may require use of absentee ballots or other means of voting).

In this case, the investigation revealed that Local 105's jurisdiction covers several contiguous counties located mostly in Southern California. In-person voting occurred at two different locations on two separate days. On Friday June 24, 2022, polls were open in Bakersfield, California from 3:00 to 6:00 p.m., and on Saturday, June 25, 2022, polls were open in Glendora, California from 6:00 a.m. to 2:00 p.m. Members could choose to vote at either location.

The investigation established that Local 105 counts 6,187 eligible members on its voter roster. Of these, 4,699 (76%) are active members and 1,488 (24%) are retired. The Department investigated the distance between the members' homes and the polling

places and determined that 352 eligible voters live more than 150 miles from either polling site – fifty-three in California and 299 in other states. However, of these 352 eligible voters, 342 are retired members and only ten are active members. Two of these retired members, both of whom reside in Arizona, voted. The overall voter turnout in the election was roughly 15%.

Courts have found that, where members are voluntarily outside the jurisdiction of the local – *e.g.*, because they have chosen to work outside the jurisdiction on travel card or have moved away in retirement – they have “assume[d] the risk of finding it expensive or inconvenient to come back home to vote at a union election.” See *Hodgson v. Local 582*, 350 F.Supp. 16, 20 (C.D. Cal. 1972); see also *Donovan v. Loc. 725*, 1982 WL 2046, at \*10-11 (S.D. Fla. Aug. 27, 1982) (noting that a retiree’s decision to move away from the union’s jurisdiction is voluntary, and finding that, since unions are not legally required to provide retired members the right to vote at all, it would be illogical to require them to allow retired members to vote absentee).

As described above, of the 352 eligible voters who lived more than 150 miles away from the polling sites, only ten were active, non-retired members. The investigation established that the smallest margin of victory was 321 votes. Thus, to the extent the voting procedures may have violated the LMRDA, this violation impacted ten eligible members and could not have affected the outcome of the election.

You further alleged that Local 105 denied several members in good standing the right to be a candidate and hold office when it improperly declared [REDACTED], [REDACTED], and [REDACTED] ineligible to run for office. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Section 401(e) recognizes that labor organizations may have a legal interest in prescribing standards for candidacy and office holding. Article 12 Section 3 of the SMART constitution prescribes such standards. Specifically, it provides: “No member shall be eligible to nomination, election, or appointment... unless (a) they are paying the rate that keeps them a member in good standing in such local union, (b) such dues and other obligations due the local union and this Association must be paid before the first day of the current month and are properly recorded on official receipts ...shall be verified by the Financial Secretary-Treasurer at the time of nomination or within three days thereafter and (c) they have established a record of continuous good standing in the local union in which they are a candidate for a period of not less than two consecutive years...”

The investigation revealed that [REDACTED], [REDACTED], and [REDACTED] were properly disqualified under this provision. [REDACTED] paid for his May and June 2022 dues on June 14, 2022. [REDACTED] account from which dues were automatically deducted did not

have sufficient funds to cover the dues payments for July and August 2020, and [REDACTED] was suspended from the union in 2021 for being three months late in the payment of his dues. In order to have remained in continuous good standing during the qualifying period, these members were required to pay their dues no later than the last day of each respective month. Because they failed to do so, they lost their continuous good standing status, making them ineligible for candidacy. The Act was not violated.

The Department's review of nomination records disclosed that one eligible nominee, [REDACTED], was disqualified from running in the election because he paid his May 2022 dues one day late, on June 1, 2022. Despite several attempts, the Department was unable to make contact with [REDACTED]. Further, the rules for eligibility were clearly stated, and members were made aware of them in several ways. In addition to being plainly laid out in Article 12 Section 3 of the SMART Constitution, the requirement that, in order to be eligible for nomination, members must pay dues "before the first day of the current month" was included in a combined notice of nominations and election information sent to the last known addresses of all active and retired members in mid-May 2022. (Emphasis added). Thus, the evidence is not sufficient to conclude that the Act was violated.

The investigation revealed that Local 105 failed to apply a candidate qualification uniformly when it allowed [REDACTED] and [REDACTED] to run for office, in violation of Section 401(e). [REDACTED] was allowed to run despite the fact he failed to maintain continuous good standing during the two consecutive years preceding the election, as required by the SMART Constitution. Specifically, he was suspended from membership between February 2021 and March 2021. However, the race involving [REDACTED] was a two-candidate race, and [REDACTED] lost. Thus, this violation could not have affected the outcome of the election.

[REDACTED] was likewise allowed to run despite having been suspended between May 2021 and June 2021, also within the two-year good standing period. The race involving [REDACTED] was a fourteen-candidate race, won by the top nine vote-getters. [REDACTED] finished in fourteenth place with 189 votes. Even attributing all the votes [REDACTED] received to [REDACTED], who finished in tenth place with 288 votes, [REDACTED] would remain in tenth place by thirty-three votes. As a result, this violation could not have affected the outcome of the election.

You also alleged SMART Local 105 required you to show your official dues receipt at the June 14, 2022 nomination meeting while other candidates were not required to do the same. Again, Section 401(e) of the Act requires that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed (29 U.S.C. § 481(e)), and Article 12, Section 3 of the SMART

Constitution requires the Financial Secretary-Treasurer to verify that nominees have properly paid their dues at the time of nomination or within three days thereafter.

The Department's investigation revealed that the requirement to show a dues receipt at the nomination meeting was inconsistently applied. One person interviewed by the Department reported being asked to show their dues receipt at the meeting, while several others stated they were not. However, no officer positions were affected by the Local's inconsistent enforcement. There is no evidence that any member was prevented from being nominated or running in the election because they failed to present a dues receipt at the meeting. In fact, the investigation revealed that, of the six members present who were unable to present dues receipts at the meeting, three subsequently won election to their respective offices, and you yourself were allowed to run in the race for Local Business Representative. There was no effect on the outcome of the election.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



Tracy L. Shanker  
Chief, Division of Enforcement

cc: Joseph Sellers Jr., General President  
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, Associate Solicitor  
Civil Rights and Labor-Management Division



April 13, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (the Department) on July 25, 2022, 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 Sheet Metal, Air, Rail and Transportation Workers (SMART) Local 105, in Glendora, California, on June 25, 2022.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each specific allegation, 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 Local 105 denied several members in good standing the right to be a candidate and hold office when it improperly declared [REDACTED] and [REDACTED] ineligible to run for office. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Section 401(e) recognizes that labor organizations may have a legal interest in prescribing standards for candidacy and office holding. Article 12 Section 3 of the SMART constitution prescribes such standards. Specifically, it provides: "No member shall be eligible to nomination, election, or appointment... unless (a) they are paying the rate that keeps them a member in good standing in such local union, (b) such dues and other obligations due the local union and this Association must be paid before the first day of the current month and are properly recorded on official receipts ...shall be verified by the Financial Secretary-Treasurer at the time of nomination or within three days thereafter and (c) they have established a record of continuous good standing in the local union in which they are a candidate for a period of not less than two consecutive years..."

The investigation revealed that [REDACTED] and [REDACTED] were properly disqualified under this provision. [REDACTED] paid his May and June 2022 dues on June 14, 2022,

and [REDACTED] was suspended from the union in 2021 for being three months late in the payment of his dues. In order to have remained in continuous good standing during the qualifying period, these members were required to pay their dues no later than the last day of each respective month. Because they failed to do so, they lost their continuous good standing status, making them ineligible for candidacy. The Act was not violated.

The Department's review of nomination records disclosed that one eligible nominee, [REDACTED], was disqualified from running in the election because he paid his May 2022 dues one day late, on June 1, 2022. Despite several attempts, the Department was unable to make contact with [REDACTED]. Further, the rules for eligibility were clearly stated, and members were made aware of them in several ways. In addition to being plainly laid out in Article 12 Section 3 of the SMART Constitution, the requirement that, in order to be eligible for nomination, members must pay dues "*before* the first day of the current month" was included in a combined notice of nominations and election information sent to the last known addresses of all active and retired members in mid-May 2022. (Emphasis added). Thus, the evidence is not sufficient to conclude that the Act was violated.

The investigation revealed that Local 105 failed to apply a candidate qualification uniformly when it allowed [REDACTED] and [REDACTED] to run for office, in violation of Section 401(e). McAleer was allowed to run despite the fact he failed to maintain continuous good standing during the two consecutive years preceding the election, as required by the SMART Constitution. Specifically, he was suspended from membership between February 2021 and March 2021. However, the race involving [REDACTED] was a two-candidate race, and [REDACTED] lost. Thus, this violation could not have affected the outcome of the election.

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For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



Tracy L. Shanker  
Chief, Division of Enforcement

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