



July 27, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor (the Department) on February 10, 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 the Employee Association Committee (EAC) 91 in Boise, Idaho on February 4, 2022.

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

As an initial matter, section 402(a) of the LMRDA provides that a member of a labor organization may file a complaint with the Secretary within one calendar month if the member has exhausted remedies available under the constitution and bylaws of such organization and of any parent body, or invoked such available remedies without obtaining a final decision within three calendar months after their invocation. 29 U.S.C. § 482(a). EAC 91 is an unaffiliated union and its bylaws do not contain election protest procedures. You alleged in your complaint filed with the Department that (1) no election notice was mailed to members, and (2) no absentee ballots were offered to members who were out due to COVID, who were hurt or sick, or were truck drivers. These issues were protested in a February 7, 2022 email to then-EAC 91 Chairman, Michael Gallagher. However, at the time of your complaint to the Department, EAC 91 had not yet responded to that protest and it had not been three months since it had been submitted to the Union. Therefore, you failed to properly exhaust your remedies with respect to these allegations, and the Department was not able to investigate them.

Turning to the allegation you properly exhausted, you alleged that EAC 91 declared the winners of the two races without either of those individuals having received a majority of

the vote, as required in the local bylaws.¹ Specifically, the “Election Procedures” Section of the Local 91 bylaws provides: “In the event of a tie, another election will be conducted. Majority vote will decide elections, 50 percent, plus one vote, of valid ballots cast.”

Section 401(e) of the LMRDA provides that, to the extent not inconsistent with the LMRDA, a union must comply with its constitution and bylaws when conducting officer elections. 29 U.S.C. § 481(e). Under the LMRDA, the interpretation consistently placed on a union’s constitution by the responsible official or governing body will be accepted unless clearly unreasonable. 29 C.F.R. § 452.3.

EAC 91 asserts that the majority vote provision applies only to runoff elections for tie votes. Specifically, pursuant to the Union’s interpretation, if there is a two-way, three-way, or other tie, another election will be held, and the individual who receives 50 percent plus one of the votes cast in that election will prevail. The Union’s interpretation is not clearly unreasonable. The majority vote provision appears directly after the sentence stating, “in the event of a tie, another election will be conducted,” and thus could plausibly be read in tandem with it. Additionally, there is no separate provision relating to how tiebreaking runoff elections will be conducted. And although not dispositive, it is notable that your asserted interpretation – that, when no majority vote is reached, a runoff between the top two candidates must be held – is also not explicitly provided for in the EAC 91 bylaws. Thus, it is not patently unreasonable to assume that the majority vote provision provides the relevant guidance. *See Exec. Bd. of Transp. Workers Union of Philadelphia, Loc. 234 v. Transp. Workers Union of Am., AFL-CIO*, 338 F.3d 166, 174 (3d Cir. 2003) (considering the interplay between different sections of union constitution, and noting that courts have “rejected an approach by which only certain provisions of a union’s Constitution are considered.”).

Further, the Department’s investigation revealed that EAC 91’s past conduct aligns with its asserted interpretation. Specifically, several Union officials testified that, in typical, non-tiebreaking elections, the candidate with the most votes has always been declared the winner, regardless of whether they received “50 percent plus one of the votes cast.” *See Int’l Longshoremen’s Ass’n, Local Union 1332 v. Int’l Longshoremen’s Ass’n*, 940 F.Supp. 779, 782 (E.D.Pa.1996) (“[a] union’s interpretation of its constitution also warrants deference if it is consistent with the union’s past practices.”).

It is well established that, “[i]f a court finds any arguable authority for [the union’s] interpretation, it cannot be patently unreasonable, and the court will defer to that interpretation.” *Exec. Bd. of Transp. Workers Union of Philadelphia, Loc. 234 v. Transp. Workers*

¹ The races in question were for the positions of Chairman and Co-Chair. Both races involved three candidates. In the Chairman race, the winning candidate received 83 out of 175 (approximately 47%) of the votes. In the Co-Chair race, the winning candidate received 77 out of 172 (approximately 44%) of the votes.

Union of Am., AFL-CIO, 236 F. Supp. 2d 480, 488–89 (E.D. Pa. 2002), *order dissolved on other grounds*, 338 F.3d 166 (3d Cir. 2003) (emphasis added); *see also Fulk v. United Transp. Union*, 160 F.3d 405, 409 (7th Cir. 1998) (“It is unnecessary to resolve which of the two readings [of the constitution] is the better one. Rather, we ask only whether the Union’s interpretation is unreasonable.”). The Department takes no position as to whether EAC 91’s asserted interpretation is the best or most reasonable. However, it finds, given the totality of the circumstances, that there is at least “arguable authority” for this interpretation.

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: Alex Henkel, Chairman
Employee Association Committee 91
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, Associate Solicitor
Civil Rights and Labor-Management Division

bcc: SFSDO, DIR

File: 530-6023282(01)

Initials	<i>BDL</i>	<i>TS</i>
Date	7/20/2023	7/27/2023
Last Name	LUCY	SHANKER
Title	DOE Inv.	DOE Chief

LM: 546-636 DOE Number: 9545