



February 15, 2024

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on April 25, 2023, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of American Postal Workers Union (APWU) Houston Area Local 185 (Local 185 or Union), conducted on December 1, 2022.

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

You alleged that Local 185's election committee closed business for the Thanksgiving holiday between November 23, and 28, 2022, in violation of the LMRDA and Local 185's constitution and bylaws. Section 401(e) of the Act provides that every member in good standing has the right to vote for the candidate or candidates of [REDACTED] choice and requires unions to conduct officer elections in accordance with the union's constitution and bylaws. 29 U.S.C. § 481(e). However, Local 185's constitution does not specifically address when the election committee should be available. Rule IX of the Union's "Houston Area Local Officers Election Rules" posted at members' worksites stated, in part, "You must contact an election judge to request a ballot if you have not received one by November 17, 2022." The Union's "Election Timetable" flyer also posted at worksites stated, in part:

If you have not received a ballot by November 17, 2022, you should call or email an election committee judge at the union hall on November 18, 2022, between the hours of 8:30 a.m. to 4:30 p.m. to request a replacement ballot. The phone number to the union hall is (713) 691-4818, an election judge will be at the hall to take the information necessary to have a replacement ballot sent to you."

Here, you alleged that the election committee's closure was improper because it violated the election rules and prevented members from requesting ballots. The Department's investigation disclosed that the Union Hall from which the election committee operates is consistently closed on Thanksgiving and the Friday after the holiday. A calendar with the Union Hall's dates of operation is also posted on Local 185's website. During this holiday closure, only one member of the Union requested a replacement ballot, leaving a voicemail with their request. On November 28, 2022, the member contacted the election committee again for a replacement ballot. The Union mailed the member a replacement ballot, which they received on or around December 1, 2022, the date of the election tally. Nonetheless, the election rules required members to request replacement ballots on November 18, 2022. The Department's investigation did not reveal any voting-eligible members that requested a replacement ballot on November 18, 2022, that did not receive one. There was no violation of the LMRDA.

You next alleged that the Union improperly counted ballots of members from the North Houston worksite. Section 401(c) of the LMRDA, provides, among other things, that "adequate safeguards to insure a fair election shall be provided." 29 U.S.C. § 481(c). Specifically, you alleged that the Union unfairly reversed its previous decision not to count ballots from North Houston after those members were mistakenly sent ballots intended for members of the Associate Office (AO) stations on November 10, 2022. You contended that sometime between November 10 and 17, 2022, the election committee became aware of the missent ballots and informed you that it would not count ballots from North Houston at the tally. However, the election committee members denied this contention and no evidence was submitted to substantiate it. On or about November 15, 2022, MK Election Services mailed the correct ballots to the North Houston members, these ballot packages had different bar codes than the original mailing. During the ballot tally, the committee decided to count the nineteen AO station ballots from North Houston members that only mailed in that one ballot, but only for general officer positions. If a North Houston member submitted two ballots, only the North Houston ballot was counted. The election committee adequately remedied the missent AO ballots by sending corrected ballots with sufficient time for them to be voted. Counting the AO ballots towards the general officer positions when it was the only ballot submitted by a North Houston member was also an adequate remedy in accordance with the right of every member in good standing to vote for the candidate or candidates of their choice under Section 401(e) of the Act. There was no violation of the Act.

Next, you alleged that the Union failed to provide adequate safeguards when it tallied improperly scanned ballots. Specifically, you alleged that the Union should not have counted ballots contained in return ballot envelopes that did not scan properly because the ballots may have been invalid. The investigation disclosed that the return ballot envelopes containing members' voted ballots were printed with the member's name,

the ballot type number, a bar code, and a seven-digit PIN code. After two companies printed the ballot packages, some bar codes were smaller than others and some were smudged. At the ballot tally, MK Election Services announced that some return ballot envelopes may not scan properly. While the return ballot envelopes were fed through an automatic scanner, any envelope with a bar code that did not scan properly was raised up by the MK Election Services representative who announced that the envelope did not scan. An MK Election Services representative then used a hand scanner to try to scan the envelope. If the hand scanner did not work, the PIN was manually entered into the system. All return ballot envelopes that had bar code scanning issues were able to be identified by either the PIN or member name. Thus, no invalid ballots were tallied. There was no violation of the LMRDA.

You also alleged that adequate safeguards were violated because fraudulent ballots may have been counted. Specifically, you alleged that during the tally, a screen showing members' names as their return ballot envelopes were scanned at one point displayed Alton Smith's name even though he had not voted. The Department's review of election records, including 647 returned ballot envelopes, 108 unopened undeliverable ballot packages, and seven return ballot envelopes from members who returned two ballots, did not reveal a voted ballot counted for Alton Smith. There was no violation of the Act.

Next, you alleged that that the Union failed to provide adequate safeguards when the election committee was unable to account for ballot numbers. Specifically, you alleged that during a meeting with candidates on December 2, 2022, the election committee could not provide the numbers of ballots mailed, returned, or requested as replacements. The election committee informed candidates that a total of 2,300 ballots were initially mailed but they could not provide any additional information because MK Election Services had all the records. After MK Election Services tallied votes, it prepared the certified election results containing the totals of ballots mailed, returned undeliverable, and voted as well as the number of replacement ballots sent. Copies of the results were made available and were posted at members' work sites that evening. The election committee also gave you the numbers you requested in their December 14, 2022, letter responding to your election protest. There was no evidence that these numbers were falsified. There was no violation of the LMRDA.

You further alleged that the Union failed to conduct its election in accordance with its constitution, as required by section 401(e), when it incorrectly posted election results for the delegates. *See* 29 U.S.C. § 481(e). Specifically, you alleged that the Union elected fewer delegates than required under its constitution because the number was lower than previous elections. Article IV, Section 2 of the *Houston Area Local Constitution* states: "Delegates will be comprised of one (1) delegate per 100 members, per craft, with a fraction of 50 or more being rounded off to 100. Any craft with less than 100 members

total will be granted one (1) delegate.” The Department’s review of the dues check-off list used to mail ballots found the following numbers for each craft:

I. <u>Craft</u>	II. <u>Number of Members</u>	III. <u>Delegate Entitlement</u>
IV. Mailhandlers	V. 9	VI. 1
VII. Clerk AO Stations	VIII. 945	IX. 9
X. NH Clerks	XI. 671	XII. 7
XIII. Maintenance AO Stations	XIV. 91	XV. 1
XVI. NH Maintenance	XVII. 222	XVIII. 2
XIX. Motor Vehicles	XX. 280	XXI. 3

With a total membership of 2,218, the Union was entitled to 23 delegates. Twenty-three delegates were elected. Election officials attested that the number of delegates has declined as membership numbers have declined over the years. There was no violation of the Act.

Finally, you alleged that the Union disparately treated candidates and violated its constitution in providing candidates access to the membership list. Section 401(c) of the LMRDA requires that unions “refrain from discrimination in favor of or against any candidate with respect to the use of lists of members.” 29 U.S.C. § 481(c). Further, section 401(c) provides that every candidate shall have the right, once within 30 days prior to an election, to inspect the union’s membership list. *Id.* Section 401(e) of the Act requires unions to conduct officer elections in accordance with the union’s constitution and bylaws. 29 U.S.C. § 481(e). Specially, you alleged that the Union violated its constitution by allowing only candidate Bernadette Baker to receive a copy of the membership list. The election rules stated:

EACH CANDIDATE MAY INSPECT (NOT COPY) THE LOCAL MEMBERSHIP LIST ONLY ONCE WITHIN 30 DAYS PRIOR TO THE ELECTION. NO CANDIDATE IS ENTITLED TO RECEIVE A COPY OF THE LIST. CANDIDATES SHOULD GIVE AT LEAST ONE (1) WORKING DAY NOTICE UPON SCHEDULING AN APPOINTMENT TO VIEW THE LIST.

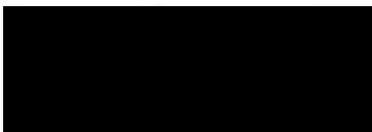
THE MEMBERSHIP LIST WILL BE AVAILABE FOR INSPECTION AT THE UNION HALL BETWEEN 8:30AM AND 4:30 PM, MONDAY THRU FRIDAY, FROM OCTOBER 17, 2022 TO NOVEMBER 17, 2022. ANY CANDIDATES WHO WISH TO INSPECT THE LIST SHOULD CONTACT AN ELECTION JUDGE AT THE UNION HALL.

The investigation did not reveal any instances when a candidate was given a copy of the membership list. Rather, the APWU National provides updated membership lists to every local union on a bi-weekly basis; local union officers may view (not copy) membership lists regardless of their candidate status. Thus, Bernadette Baker was entitled as the incumbent Secretary-Treasurer to access the membership list by virtue of her office and her official duties in maintaining and updating members' addresses. There was no violation.

With regard to the right to inspect the membership list, the Department's investigation determined that the Union implemented a reasonable procedure for all candidates to inspect the membership list, which is set forth above and was included in the election rules. The investigation disclosed that on or about November 17, 2022, candidate [REDACTED] asked to view the membership list. The Election Committee denied this request because [REDACTED] did not provide notice of at least one working day as required by the election rules. The Department was unable to assess the reasonableness of [REDACTED] request because, during the investigation, [REDACTED] was unable to recall details of a conversation with the Election Committee about the membership list. Neither you nor [REDACTED] made a subsequent attempt to inspect the list in accordance with the election rules before the election on December 1, 2022. There was no evidence that any candidate was denied access to the membership list after following reasonable procedures set forth and publicized in the election rules. There was no violation of the LMRDA.

In sum, as a result of the investigation, the Department has concluded that there was no violation of the Act that may have affected the outcome of the election in connection with your allegations that were properly filed. Section 402 of the LMRDA requires a union member to exhaust available internal union remedies prior to filing a complaint with the Secretary of Labor. *See* 29 U.S.C. § 482(a). Accordingly, allegations in your complaint to the Department not addressed in this Statement of Reasons were not investigated because these allegations were not properly exhausted. I have therefore closed the file on this matter.

Sincerely,

A large black rectangular redaction box covering the signature area.

Tracy Shanker  
Chief, Division of Enforcement

cc: Al Davison, President  
American Postal Workers Union Local 185  
102 West Tidwell  
Houston, TX 77022

Mark Dimondstein, President  
American Postal Workers Union, AFL-CIO  
1300 L Street NW  
Washington, DC 20005

, Associate Solicitor  
Civil Rights and Labor-Management Division