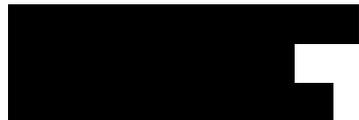




June 8, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on December 10, 2009, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. § 481-484, occurred in connection with the election of officers conducted by the United Steelworkers (Steelworkers), Local 1187 (Local 1187 or union), on April 22, 2009.

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

First, you alleged that the election committee failed to properly count the ballots by tallying votes in favor of your opponent in those instances when the voter's choice was not clear. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires that adequate safeguards to insure a fair election must be provided. *See also* 29 C.F.R. § 452.110. Failure to properly tally the ballots would violate the LMRDA's adequate safeguards provision. You stated that one of the election committee members (tellers) who participated in the ballot count and tallying process informed you that the election committee tallied votes in favor of your opponent when ballots were marked in such a manner that the intent of the voter was not clear. However, you refused to disclose the identity of your witness. You did, however, state that the name of your witness was on a list containing 11 of the 13 members of the election committee that you provided to the Department. In an attempt to obtain details regarding potential vote tallying irregularities, the Department interviewed 9 of the 11 election committee members on that list, including the election committee chairman. The Department was unsuccessful in its attempt to contact one teller and the other teller refused to be interviewed by the Department. Several of the election officials who were interviewed by the Department, including the election committee chairman, had been appointed to the election committee by you. During such interviews, the election officials stated that the union

did not receive any voted ballots where the voter had marked the ballot in such a way that the votes were not clear and that no such ballots were included in the vote tally or tallied in favor of your opponent. The election officials further stated that all of the votes were marked in a manner to indicate the intent of the voter. No election official supported your claim that he informed you that irregularities had occurred during the vote tallying process. Under these circumstances, the evidence does not provide an adequate basis for finding probable cause to believe that the Act was violated.

You also alleged that the union failed to follow the absentee ballot requirements outlined in the Steelworkers Local Union Elections Manual (Manual). The Manual is incorporated by reference into the constitution. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires a union to conduct an election of union officers in accordance with its constitution and bylaws. The Manual provides that absentee ballots are not permitted in local or international union elections, unless a member meets at least one of three exceptions: a member is in the military, on vacation, or works 50 miles from the polling site. Despite explicit restrictions in the Manual outlining the criteria for members who are entitled to vote by absentee ballot, the election committee liberalized the requirements and sent an absentee ballot to any member in good standing who requested one, regardless of whether such member was eligible to vote by absentee ballot. In addition, the election committee further deviated from the Manual's requirement that requests for absentee ballots be in writing by permitting members to orally request absentee ballots. Local 1187's failure to adhere to the absentee ballot requirements, as set forth in the Manual, is a violation of the LMRDA's mandate in section 401(e) of the statute that a union conduct its election of officers in accordance with such union's constitution and bylaws.

However, the evidence does not provide an adequate basis for finding that the violation may have affected the election outcome. In particular, you received 110 votes and your opponent received 137 votes in the race for president, for a vote margin of 27 votes. The investigation disclosed that the election committee mailed no more than 15 absentee ballots to those members who requested them. The election committee chairman estimated that only 9 such voted ballots were returned. The union failed to preserve most of its election records, including the names of those 9 members who voted by absentee ballot. (*See* 29 C.F.R. § 452.106 (the ballots and all other records pertaining to the election must be preserved for one year)). As a result of the union's failure to preserve these records, the Department was unable to determine how many, if any, of the 9 members were ineligible to vote by absentee ballot. The investigation, therefore, is inconclusive regarding the validity of these 9 votes. In any event, 9 votes would not have been enough to have affected the outcome of the election as the smallest margin of victory in any race was 27. Thus, no violation occurred that may have affected the election outcome.

Finally, you alleged that, as a result of the union's failure to inform members that it had waived the requirements for voting by absentee ballot, approximately 40 members did not vote because they were not aware that they did not have to meet the expressed criteria in order to vote by absentee ballot. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to insure a fair election. The investigation disclosed that the election notice that was mailed to each member for the 2009 election states, "[a]bsentee ballots are available for the following reasons: (1) working more than 50 miles from polling place, (2) service in the armed forces, and (3) vacation." The investigation confirmed that the union did not inform members that the criteria for receiving absentee ballots would not be applied to the challenged election or that requests for absentee ballots did not have to be in writing. The union's failure to provide voters with adequate instructions for absentee voting in the election violated the adequate safeguards provision of the Act. However, the investigation did not substantiate that 40 members did not vote in the election. Instead, the investigation disclosed that there were 272 members on the date of the election. Of these members, 247 voted. Based on these facts, only 25 members did not vote in the election. (272 - 247 = 25). As previously stated, the union did not preserve election records that would have allowed a determination of which 25 members did not vote. Also, the Department was not able to determine whether the members' failure to vote was attributable to the union's lack of notice to members regarding the availability of absentee ballots or whether they did not vote for some reason unrelated to the union's failure to provide them with such notice. Further, it is unknown whether any of these 25 members were eligible to vote in the election. You did not provide and the investigation did not reveal any eligible voter who would have voted by absentee if aware of the liberalized absentee voting requirements. Under these circumstances, the evidence does not provide an adequate basis for finding probable cause to believe that a violation occurred that may have affected the election outcome of the election with respect to these 25 members.

For the reasons set forth above, it is concluded either that there was no violation of the LMRDA or that no violation of the Act occurred that may have affected the outcome of the election.

Sincerely,

Cynthia M. Downing
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