



August 24, 2012

Dear [REDACTED]:

This Statement of Reasons is in response to your two complaints filed November 28, 2011 and May 22, 2012 with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Brotherhood of Teamsters Local 2727 on November 5, 2010.

The Department conducted an investigation of the allegations contained in both complaints. As a result of the investigation, the Department has concluded that only one allegation was properly exhausted pursuant to section 402 of the LMRDA. *See* 29 U.S.C. § 482.¹ The remaining allegations were not properly raised pursuant to the union's mandatory pre-election protest procedures, and therefore, could not be asserted after the election. *See* Teamsters International Constitution, Article XXII, Section 5(a) and Article VI, Section 2(a). Because you were aware of these issues prior to the election, but failed to protest the issues until after the election, these allegations were not properly exhausted under the union's election protest procedures. Accordingly, the Department found these allegations outside the scope of its investigation. *See* 29 U.S.C. § 402(b); 29 C.F.R. §§ 452.135(a), 452.136(a).

In the properly exhausted allegation, you alleged that the union failed to account for all of the ballots cast in the election. You stated that at the time of the November 5, 2010 tally, the union had 666 ballots, which was far below the expected voter turnout. There are approximately 1,200 Local 2727 members, and historically, Local 2727 receives a large voter turnout at its officer elections. Further, you alleged that your ballot, as well as a fellow candidate's ballot, were timely mailed but not included in the tally. Section 401(c) of the LMRDA requires that the union provide adequate safeguards to insure a

¹ Section 402(a) of the LMRDA requires a union member to exhaust "remedies available under the constitution and bylaws of [the labor] organization" before filing a complaint with the Secretary. 29 U.S.C. § 482(a). Section 402(b) requires that the Secretary investigate a complaint, but only if the member has properly exhausted the union's internal protest procedures. *See* 29 U.S.C. § 482(b).

fair election. *See also* 29 C.F.R. § 452.110. Section 401(e) requires that all members in good standing have the right to vote, or otherwise support the candidate of his or her choice, in a Title IV election.

The investigation determined that a large number of ballots were received by the Okolona Post Office by the November 5, 2010 deadline, but were not turned over to the union and Electronic Services Solutions (ESS) – the company with which the union contracted to conduct the local election. In fact, 283 ballots remained in a bin at the post office after ESS collected the returned ballots on November 5, 2010.

Based on its investigation, the Department determined that there were numerous factors which contributed to the mishandling of the ballots. First, the Department found that by mid-October 2010, the ESS business reply postage account had reached a zero balance, and at this point the post office stopped processing ballots and began placing returned voted ballots in a large bin. According to USPS business reply mail clerk [REDACTED], she contacted ESS on at least two occasions requesting additional funds so that the returned ballots could be processed. [REDACTED] stated that ESS assured her that they would deposit additional funds; however, they failed to do so until the ballot pick-up on November 5th. Second, [REDACTED], who was in charge of the business reply mail and familiar with this situation, went on vacation from October 30, 2010 through November 8, 2010. While [REDACTED] was on leave, a substitute mail clerk [REDACTED] handled the reply business mail duties. [REDACTED] was the postal employee who turned over the ballots to ESS on November 5, 2010. Apparently, [REDACTED] had her own separate bin of returned ballots that she kept while [REDACTED] was on leave. At the time ESS appeared at the Okolona Post Office and requested to pick-up the ballots, [REDACTED] received additional funds for the business reply postage account and processed approximately 20 ballots that she had set aside. ESS asked [REDACTED] if there were any additional ballots that should be processed and turned over. [REDACTED] confirmed that there were no additional ballots.

On November 9, 2010, [REDACTED] returned from vacation and noticed that the large bin of ballots had not been processed. [REDACTED] processed a group of 73 ballots, which again depleted the business postage account to zero. Next, [REDACTED] processed the remaining 210 ballots within the large bin free of charge. [REDACTED] sent all 283 ballots to ESS in two packages – one containing 73 ballots and one containing 210 ballots. The ballots in these two sealed packages were not included in the November 5, 2010 ballot tally. These ballots were secured by ESS and remained in its possession until May 10, 2012, when ESS delivered the ballots to the Department's Office of Labor-Management Standards (OLMS) New York District Office in connection with the investigation of the instant complaint.

These ballots remained unopened and secure and were shipped to the OLMS Cincinnati District Office. OLMS decided to count ballots returned by members who were eligible to vote and whose ballot would have been received by the November 5 tally in order to provide them with the right to participate in the election. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 452.94 (the statutory right to vote implies that there must be a reasonable opportunity to vote). OLMS conducted its ballot tally on June 11, 2012. Local 2727 candidates [REDACTED], [REDACTED], and [REDACTED] observed the OLMS June 2012 tally.

Of the 283 ballots, OLMS included 243 in the ballot count because these ballots were voted by eligible members and had postmark dates in October 2010– the deadline for ballots to be counted in the election was November 5, 2010. Adding the votes from these additional 243 ballots to the original ballot tally conducted on November 5, 2010, did not change the election results. Regarding the 40 ballots that OLMS did not count:

- **Six (6)** ballots had November postmark dates (3 ballots had November 3rd postmark dates and 3 had November 5th postmark dates). The Department determined that these ballots would not have arrived at the post office by the November 5th deadline, and therefore, should not be counted. Further, USPS mail clerk [REDACTED] stated that a handful of ballots arrived after the November 5th deadline. These November postmarked ballots would account for [REDACTED] statement.
- **Four (4)** ballots were duplicates. That is, the eligible member returned two ballots, and one ballot had already been counted. Accordingly, these duplicate ballots were not included in the tally.
- **Nine (9)** ballots were voted by ineligible members.
- **Twenty-one (21)** ballots did not contain a postmark or contained an illegible postmark.

As previously stated, the OLMS tally of these additional 243 ballots did not change the outcome of any officer positions. In an effort to alleviate concern regarding the possible effect of the mishandled ballots, OLMS also opened the 21 ballots that either had no postmark or an illegible postmark. OLMS opened these 21 ballots because they were included in the large package of 210 ballots, and all other ballots in the group of 210 contained October 2010 postmarks. Accordingly, the Department determined that it was most likely that all 21 ballots were received in October 2010, prior to the November 5th deadline. Examining the votes contained in these remaining 21 ballots still did not change the outcome of any officer positions.

The union's mishandling of properly voted ballots is a violation of sections 401(c) and 401(e) of the LMRDA. Section 402(c)(2) of the LMRDA, however, provides that an election will only be overturned where a violation may have affected the outcome of the election. Because OLMS was able to include the mishandled - but secured - ballots in its tally and the results of the OLMS tally did not change the outcome of any officer positions, there is no actionable violation of Title IV of the LMRDA.

Accordingly, the Department has closed the file on this matter

Sincerely,

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Division of Enforcement

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