



April 22, 2014



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on November 18, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the rerun election of union officers conducted by the International Association of Machinist and Aerospace Workers, Local Lodge 2005 on July 21, 2013.

The Department of Labor 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. Following is an explanation of this conclusion.

You alleged that the Lodge 2005 failed to apply its membership meeting requirement and permitted candidates who failed to meet the requirement to run for office. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The investigation disclosed that Article B, section 3, of the International constitution provides that the bylaws of a local lodge *may* require members to attend up to fifty percent of the regular lodge meetings to qualify for candidacy. However, the bylaws of Lodge 2005 do not contain a meeting attendance requirement for candidacy. Thus, the local was not required to impose that requirement during the election. Neither the LMRDA nor the constitution and bylaws were violated.

You alleged that union officers and business representatives campaigned at the Foster Farms worksite while being paid by the union. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. 29 C.F.R. §§ 452.73, 76. Accordingly, officers and employees of a union may not campaign on time that is paid for by the union and officers and employees may not use union funds to assist them in campaigning.

The investigation disclosed that the officers of the local serve on a volunteer basis; they receive no stipend or salary. The investigation also disclosed that the local president took time off from work and campaigned in the lunchroom at the Foster Farms facility. During the investigation, all of your witnesses stated that they saw the local's president campaigning only in the lunchroom. The investigation showed that you also campaigned in the lunchroom. The investigation further disclosed that on one occasion the vice president campaigned at the facility before the start of his work shift, passed out campaign fliers in the break room, and campaigned on the day of the election while standing across the street from the local office. None of this campaigning involved union resources. The investigation did not disclose any instance where business representatives or any other union officials campaigned while on paid union time. The LMRDA was not violated.

You alleged that the local president campaigned to members while in an employer conference room. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any person in an election of union officers. 29 C.F.R. § 452.78. This prohibition against the use of employer funds includes any costs incurred by an employer or any employer resource, including use of an employer facility to assist a candidate in campaigning.

During the investigation, you stated that on July 20, 2013, around 8:00 a.m., you saw the local president and employees go into a conference room located at a Foster Farms plant facility and that he campaigned to the employees while in the room. You were unable to identify any members or employees who accompanied the president into the conference room during this alleged incident. You admitted during the investigation that you never entered the conference room while the alleged incident was taking place. The member who you identified as a witness to the alleged campaigning advised that she never entered the conference room and that she did not know what the president discussed while in the room.

The investigation determined that the president did not meet with employees in a conference room located at the facility on July 20, 2013. Nor did it disclose that he campaigned for office in a conference room located at the facility. The investigation instead disclosed that, on July 17, 2013, at 8:00 a.m., the union officers, including the president, and the union representatives met with the employer's human resources staff in a conference room located at the facility and discussed contract issues. No employees or rank and file members attended that meeting. The employer's vice president of labor relations attended the July 17 meeting and confirmed during the investigation that no campaigning occurred at the meeting. The LMRDA was not violated.

You alleged that [REDACTED] was nominated for recording secretary but was placed on the ballot as a candidate for secretary treasurer and that [REDACTED] was nominated for secretary treasurer but was placed on the ballot as a candidate for recording secretary. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. 29 C.F.R. § 452.110.

The investigation disclosed conflicting evidence concerning the offices for which [REDACTED] and [REDACTED] were nominated at the nominations meeting. Specifically, you, Licea, and several members who attended the meeting stated that you nominated [REDACTED] for recording secretary and that [REDACTED] was nominated for secretary treasurer but that their names were placed on the ballot for other offices. However, the union office secretary, the vice president and a business representative advised that they attended the nominations meeting and that during the meeting each of them created a list containing the names of the candidates and the office for which each candidate was nominated. The Department's review of these lists showed that the lists were consistent with the ballot.

Another business representative who attended the nominations meeting stated during the investigation that he specially remembered [REDACTED] and [REDACTED] being nominated for the offices reflected on the ballot. The business representative also stated that the nominations meeting was contentious and that after nominations closed you attempted to change the offices for which [REDACTED] and [REDACTED] were initially nominated but that these changes were not accepted by the election committee because nominations had already closed. Thus, there is conflicting testimony concerning the offices for which [REDACTED] and [REDACTED] were nominated at the nominations meeting.

In any event, the challenged election was a rerun election that was ordered by the International. The International assigned Grand Lodge Representative Ray Rivera to supervise the election; District Lodge 190 business representative James Beno assisted Mr. Rivera in supervising the election. Mr. Beno approved the ballot for printing. Mr. Rivera and Mr. Beno are not members of Local 2005 and were neutral parties. Under these circumstances, the evidence does not provide an adequate basis for finding probable cause to believe that the LMRDA was violated.

You alleged that the president used a copy of the ballot as a campaign flier and that you were not afforded that same opportunity. The Department's review of the ballot and the flier showed that the flier was not a copy of the ballot. Investigation disclosed that an opposing slate member produced it by using information that appeared in the nominations notice. The LMRDA was not violated.

Finally, you alleged that ineligible members or employees may have voted because the union office secretary did not use the voter eligibility list correctly. Section 401(e) of the LMRDA provides that every eligible member has the right to vote. 29 C.F.R. § 452.84. During the investigation, several voters stated that they were permitted to vote without showing their identification and that the union secretary did not check to see if their names were on the voter eligibility list.

The investigation disclosed that the union secretary was responsible for verifying voter eligibility at the polling site. During the investigation the union secretary stated that, before she gave an individual a ballot to vote, she verified the voter's eligibility but did not require the voter to show identification if she recognized the voter. If the union secretary did not recognize the voter, she looked at the individual's employee identification badge, required the individual to enter his or her signature and employee badge number on the voter roster, and then verified the voter's eligibility. The union secretary used four sources to verify voter eligibility; a virtual lodge maintenance members list (VLM), which she printed two days prior to the election, the employer check-off list, new membership applications, and the VLM program computer database. The union secretary further stated that the VLM list only contained the names of members who had paid their dues. If a voter's name appeared on the VLM list, she highlighted the name before giving the voter a ballot. If the voter's name did not appear on the VLM list, the union secretary used the other sources to check voter eligibility. In those cases where the union secretary was unable to determine a voter's eligibility, the voter was given a challenged ballot to vote.

A review of the election records showed that there were seven sealed ballot envelopes marked "challenged" among the election records. The investigation showed that new members who had not paid dues or whose dues had not been deducted from their earnings were eligible to vote so long as they had a signed new membership application/ dues deduction form on file with the union. The investigation did not disclose that the ballot of any ineligible voter was included in the vote tally. The LMRDA was not violated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

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Christopher Wilkinson, Associate Solicitor for Civil Rights and Labor-Management