



February 18, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U.S. Department of Labor on November 21, 2013, 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 for Local 379 of the International Brotherhood of Electrical Workers (IBEW), completed on July 1, 2013.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that no violation of the LMRDA occurred or that the violation did not affect the outcome of the election.

You alleged that ineligible members were permitted to vote. Specifically, you alleged that [REDACTED] runoff ballot should not have been counted since [REDACTED] was an officer or manager of an electrical company and thus was not eligible to vote under Article 15, Section 5 of the IBEW Constitution. When interviewed, you also alleged that members [REDACTED] may also not have been eligible to vote in the runoff because they were foremen.

Section 401(e) of the LMRDA provides that every member in good standing is entitled to one vote and that those votes be counted. However, the right to vote may be qualified by reasonable rules and regulations in a union's constitution and bylaws. 29 C.F.R. § 452.85. In this case, the IBEW Constitution, Article 15, Section 5 provides that "No [local union] shall allow any member who becomes an electrical employer, a partner in an electrical employing concern, a general manager, or other managerial position, to hold office in the [local union] or attend any of its meetings, or vote in any elections of a [local union]." The IBEW interprets this as prohibiting from voting owners and any member who has the authority to hire and fire employees.

According to the IBEW, an owner is someone who forms his own electrical contracting business, makes policy and management decisions, and is involved in hiring/firing.

Foremen and general foremen are allowed to vote, while owners and contractors may not. The Department accepts “the interpretation consistently placed on a union's constitution by the responsible union official or governing body [...] unless the interpretation is clearly unreasonable.” *See* 29 C.F.R. 452.3. Here, the interpretation is not clearly unreasonable and the Department’s investigation found that none of the members you named were owners or had the authority to hire and fire employees at the companies where they worked. Thus, they were properly allowed to vote. No violation of the LMRDA occurred.

You also alleged that the Local failed to follow Article 3, Sections 8(a), 8(b) and 8(c) of its Bylaws, which set forth election-related tasks for which the executive board and president are responsible. Section 8(a) states that “the executive board shall decide the date of the mailing of ballots, the last day on which ballots for the election will be received, the date, time and place the ballots will be counted, and similar information in the event a run-off election is necessary.” Section 8(b) states that “the executive board may appoint an individual to perform certain tasks, including but not limited to procuring restricted access post office boxes, mail permits, or an outside impartial balloting company, prior to the nominations meeting”. Section 8(c) states that “in the month preceding the month in which nominations are made, the President shall appoint an Election Judge and as many tellers as are required....”

Section 401(e) of the LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. The investigation found that the president did appoint an election judge and tellers at the April 2013 membership meeting as required by Section 8(c). In addition, the language of 8(b) is permissive and not mandatory and thus the failure to appoint an individual to perform the specified tasks is not a violation of the provision. However, the investigation also found that, the election judge set the dates for the election, not the executive board as required by Section 8(a). But, in order for the Department to seek to overturn an election, section 402(c) of the LMRDA requires that there must be evidence that the violation may have affected the outcome of the election. Thus the executive board’s failure to set the election dates was a violation of the Bylaws, but it did not affect the outcome of the election and, therefore, is not a basis on which the Secretary may seek to overturn the election.

You also alleged that the Local denied a member the right to vote and collected the mailed ballots from the post office box too early. Specifically, you alleged that the Local did not count [REDACTED] runoff ballot which was retrieved from the post office box after the initial collection and that the Local collected ballots at 8:17 a.m. instead of 8:30 a.m. on July 1, 2013.

Section 401(e) of the LMRDA provides that every member in good standing is entitled to one vote and that those votes be counted. Section 401(c) of the LMRDA provides, among other things, that "adequate safeguards to insure a fair election shall be provided." Adequate safeguards, as contemplated by the LMRDA, specifically refer to the mechanical, procedural aspects of running an election.

The investigation found that the Runoff Ballot Instructions stated that "All ballots must be received by Saturday, 12:30 p.m., June 29, 2013 to be counted and must be mailed to the designated post office box." It further stated that "the ballots will be counted Monday, July 1, 2013 beginning when the judge and tellers and others picking up the ballots arrive at the Local Union office." The instructions did not set a pick-up time on July 1. The Department's investigation found that after the Election Judge emptied the post office box on the morning of July 1, you told him that you heard more mail being placed in the box. The election judge re-opened the post office box and found [REDACTED] return ballot envelope which bore a June 29, 2013 postmark from a different post office. Since [REDACTED] ballot was received by the union on July 1, rather than June 29, as required by the election rules, the Local properly determined not to count it. There was no violation of the LMRDA.

You also alleged that the Local violated Bylaw Article 3, Section 8(m) during the runoff when the election judge failed to review and count eligible challenged ballots within five days after the election. Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. Section 8(m) states that if challenged ballots remain after the ballot tally that may be determinative of the election, the election judge shall investigate and rule on the challenges no later than five days after the tally.

The Department's investigation found that only one ballot was challenged during the runoff and that the challenge was resolved, as per Bylaw Section 8(l), and counted during the tally. There were no unresolved challenged ballots at the July 1 runoff election tally. Therefore, there were no unresolved ballots to which Section 8(m) applied, and there was no violation of the LMRDA.

You also alleged that the Local did not use a post office box for the return of undeliverable ballot packages as required by Bylaws, Article 3, Section 7(g). Section 7(g) states that "...the election judge shall select a depository to which the envelopes containing the ballots shall be mailed." The local bylaws are silent with regard to the address to use for returned undeliverable ballots.

As stated above, Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. The investigation found that the Local used a post office box in Harrisburg for the ballot returns and, in

accordance with its past practice, used the Local office address for the return of undeliverable ballot packages. While the IBEW Local Union Election Guide suggests locals use a second post office box for ballot packages returned as undeliverable, it is not required. There was no violation of the LMRDA.

You also alleged that candidates used union funds to campaign. Specifically, you alleged that ██████████ used union equipment and supplies to make campaign literature that was distributed on the night of nominations and ██████████ used the Local's Twitter account to post a campaign-related statement supporting ██████████ in the runoff at 3:30 p.m. on June 12, 2013.

Section 401(g) of the LMRDA prohibits the use of union or employer funds or resources to promote the candidacy of any person in an election. With regard to the use of office equipment and supplies, the investigation did not substantiate this allegation. You stated that you suspected the campaign flyer was made at the Local office because it did not contain a union bug.

██████████ denied using union resources to campaign and produced receipts for the copying of campaign literature from Office Depot and Consolidated Printing. There was no violation of the LMRDA with regard to this allegation. With regard to the campaign related use of the Local's Twitter account, the investigation confirmed that the following tweet was sent at 3:30 p.m. on June 12, 2013: "Please spread the word, there's a run off for BM and your support for ██████████ is needed again. Please vote." This usage of the Local's Twitter account violated the LMRDA. However, as stated above, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. In this case, the Department reviewed the Local's Twitter followers and found that only three Local members follow the Local on Twitter and only two of them voted in the election. The votes of the two members are not sufficient to have affected the outcome of election. Thus, this violation may not serve as a basis for the Secretary to seek to overturn the election.

You also alleged that candidates used employer funds to campaign. Specifically, you alleged that ██████████ could have accessed Vector Electric's mail system and used it in his campaign.

As stated above, Section 401(g) of the LMRDA prohibits the use of union or employer funds or resources to promote the candidacy of any person in an election. The investigation found that ██████████ is a part owner of ██████████, ██████████ that rents space to Vector Electric. The president of Vector Electric confirmed that ██████████ has no access to Vector information and that Vector has no mailing system for ██████████ to access. There was no violation of the LMRDA.

You also alleged that [REDACTED] did not take vacation time to campaign on the day of the tally. As stated above, Section 401(g) of the LMRDA prohibits the use of union or employer funds or resources to promote the candidacy of any person in an election. The investigation found that neither [REDACTED] campaigned on the day of the tally since members had already voted their mail ballots. There was no violation of the LMRDA.

You also complained of issues that even if true would not constitute violations of the LMRDA. You alleged that an apprentice was permitted to be an election teller and that it was unfair of the election judge not to recount the president race in the general election. The Local's Bylaws only prohibit apprentices from holding office, not from being election tellers. Further, the LMRDA does not require that close races be recounted. Nevertheless, as part of its investigation the Department conducted a recount of the election and confirmed the Local's tally.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred that affected the outcome of the election, and we have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Edwin D. Hill, International President
International Brotherhood of Electrical Workers
900 Seventh Street, NW
Washington, DC 20001

Tommy Hill, Business Manager
IBEW Local 379
1900 Cross Beam Drive
Charlotte, North Carolina 28217

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