



November 4, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on April 11, 2014, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the International Longshoremen's Association (ILA), Local 1526, on December 8, 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 that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that observers were not permitted into the voting area while voters cast their ballots or permitted to observe the ballot count and vote tally. Section 401(c) of the LMRDA provides that "adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots." This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording and reporting of tally sheets. 29 C.F.R. § 452.107.

The investigation disclosed that the room where the ballots were counted and tallied contained one door with a small glass window measuring 6X6 inches. Before the ballot count and tally started, a union official closed and locked the door to the tally room while observers were still outside that room. The door remained locked until after the completion of counting and tallying process. As a result, observers were prevented from effectively observing the counting and tallying process. Thus, section 401(c) of the LMRDA was violated in that the union failed to provide for effective observation of the ballot count and tally process.

However, the Department's recount of the ballots showed that the tally was accurate. Section 402(c) of the LMRDA provides that an election may only be overturned where

the violation may have affected the outcome of the election. The observer violation did not affect the outcome of the election.

You alleged that Local 1526 did not inform voters that they could vote by using a paper ballot or by using the electronic voting machine located in the polling area. You also alleged that candidates were not informed that Honest Ballot would be conducting the 2013 election of officers until the day of the election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. Thus, a union's wide range of discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The investigation disclosed that a representative of Honest Ballot, the company hired by Local 1526 to conduct the election, met with candidates on the day of the election and announced that voters could vote manually by using a paper ballot. Neither Local 1526 nor Honest Ballot informed voters of this option but two members voted paper ballots. In any event, the union constitution and bylaws do not require that voters be permitted to use a paper ballot to vote. Further, there is no evidence that any member was prevented from voting because the union failed to inform voters that they had the option of voting a paper ballot. With respect to the assertion that candidates were not informed that Honest Ballot would be conducting the election until the day of the election, neither the LMRDA nor the constitution and bylaws require that such information be provided to members. The LMRDA was not violated.

You alleged that Article XIII, section 1(f) of the ILA constitution was violated when Honest Ballot failed to provide a hard copy print out of the election tally results and the results instead were handwritten on a pre-printed ballot. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. 29 C.F.R. §§ 452.2, 452.109. Article XIII, section 1(f) of the ILA constitution provides, "the results of the election for each of the positions in the local union shall be published separately." The ILA constitution is silent concerning the timeframe within which the election results must be published, whether the results must be in a printed format or may be handwritten, and the manner in which the information must be published.

In any event, the investigation showed that a representative of Honest Ballot wrote the election results on a sample ballot and posted that ballot in the union hall hours after the election was completed. Honest Ballot delivered a certified copy of the election results to the union about two weeks after the election. The Department's review of the data from the voting machines and the paper ballots confirmed the election results. Neither the LMRDA nor the ILA constitution and bylaws were violated.

You alleged that no mail notice was sent to members 15 days prior to the election as required by Article XIII, section 1 of the ILA constitution. Article XIII, section 1(b) of the ILA constitution provides, "written notice of the election must be given to each member by mailing such notice to each member's last known home address." Section 401(e) of the LMRDA also requires a union to mail notice of the election to the last known home address of each member at least 15 days prior to the election. The investigation disclosed that the union mailed the nominations/election notice to the last known home address of each member on October 18, 2013 and that the election was conducted on December 8. Thus, the union mailed such notice to each member 20 days prior to the election. The ILA Constitution and the LMRDA were not violated.

You alleged that the names of two candidates who had withdrawn from the election remained on the ballot. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

The investigation disclosed that a candidate wishing to withdraw from the election was required to provide written notification to the union. The investigation disclosed that [REDACTED] did not provide notification to the union and, therefore, his name remained on the ballot used for the electronic voting machine and on the paper ballot. The investigation showed that [REDACTED] provided written notification to the union requesting that his name be removed from the ballot. His name did not appear on the ballot used for the electronic voting machine but appeared on the paper ballot. However, a sample paper ballot that had a line drawn through [REDACTED] name and had the word "withdrawn" written next to his name was posted at the polling site. The LMRDA was not violated.

Finally, you alleged that during a roll call on the day of the election, a union official announced that the polls would close at 7:00 p.m. but instead the polls closed at 6:00 p.m. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

During the investigation, the incumbent vice president of Local 1526 stated that he inadvertently announced during one of the early roll calls on the day of the election that the polls would close at 7:00 p.m. The investigation disclosed that the announcement was made on the day of the election during the 6:00 a.m. roll call. The investigation showed, however, that the election notice that was mailed to the last known home address of each member stated that the polls would close at 6:00 p.m. on the day of the election. In addition, the election notice informing members of the 6:00 p.m. closing time was posted throughout the union hiring hall/polling site on the day of the election. Further, in past elections the polls closed at 6:00 p.m. In any event, neither you nor the investigation discovered any member who was prevented from voting because the member heard the announcement made by the president during the

6:00 a.m. roll call, relied on the announcement, and then arrived at the polls only to find that the polls closed at 6:00 p.m. instead of 7:00 p.m. The LMRDA was not violated.

For the reasons set forth above, it is concluded that no violation of the LMRDA that may have affected the outcome of the election occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

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