



October 16, 2014

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to complaints filed by [REDACTED] on February 18, 2014, February 19, 2014, February 27, 2014 and March 4, 2014, respectively, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the International Association of Machinists (IAM) Local Lodge S6 on October 23, 2013.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation that may have affected the outcome of the election.

Complainants [REDACTED] alleged that the local lodge failed to apply the election rules regarding absentee ballot request forms consistently or fairly. Section 401(e) of the LMRDA provides that every member shall have the right to vote for or otherwise support the candidate of his choice. Section 401(e) also provides that unions must conduct officer elections in accordance with the union's constitution and bylaws.

Article II, Section 3, of the IAM Constitution provides that members who reside more than 25 miles from the polling place, or who are confined because of verified illness, or on leave qualifying the member under U.S. family leave laws, or on vacation, or on official IAM Business approved by the Local Lodge or Grand Lodge, or on employment travel assignment, or reserve military leave, as the case may be, shall be furnished, upon timely request, an absentee ballot, as outlined in the IAM Constitution.

Article B, Section 4 of the IAM Constitution further provides that, "Absentee ballots shall be issued and voted in accordance with the provisions set forth in Article II, Section 3, in compliance with the following provisions: (1) the written request for an absentee ballot must be received by the Recording Secretary not later than 30 days before the election; (2) the request must contain the member's full, current address; (3) if the records of the Local Lodge indicate that the applicant is eligible to vote in the election, the Recording Secretary and Secretary Treasurer shall, within 5 days of the close of nominations, mail the absentee ballot; (4) if, in the judgment of the Recording Secretary and Secretary Treasurer, the member is not entitled to vote by absentee ballot, the member will be so notified, in writing within 10 days of the receipt of the request for an absentee ballot."

The Department's investigation revealed that the local lodge received a total of 175 absentee ballot requests and mailed 125 absentee ballots. However, the local lodge did not mail an absentee ballot to 50 members who requested one because the member did not individually submit the request, but had the steward request the ballot on the member's behalf. The union constitution does not explicitly require the individual member to request the absentee ballot. Moreover, the investigation revealed that the local lodge's past practice was to accept absentee ballot request forms returned to the local lodge on behalf of members. The investigation also revealed that the union failed to notify members that it would not follow that past practice prior to the election. Inasmuch as these 50 requestors were eligible to vote, requested absentee ballots in accordance with the union's past practice, and were not timely informed of a change in that practice, the union violated the LMRDA in refusing to allow these members to vote by absentee ballot. However, the investigation revealed that the union's action with respect to absentee ballots did not affect the outcome of the election.

The investigation established that 37 of the 50 members not mailed an absentee ballot actually voted. Of the 13 requestors who did not vote, eight were at work on the day of the election and could have gone to the polling site and voted. The remaining five requestors should have been sent and allowed to vote an absentee ballot: three had out-of-town work assignments and two were on leave. However, these five votes would not have affected the outcome of the election. The smallest margin of victory was 10

votes for the office of vice-president. There was no violation affecting the outcome of the election.

Complainants [REDACTED] alleged that the local lodge election officials did not have a complete membership/eligibility list when the polls opened, causing some members to leave the polls without voting. The LMRDA requires that eligible members be provided the right to vote, 29 U.S.C. § 482 (e), and that adequate safeguards be taken to ensure a fair election. 29 U.S.C. § 482(c).

The investigation confirmed that the local lodge did not have a voter eligibility list available for third shift members when those members arrived after the end of their shift (after 7:00 a.m.) to vote. The investigation found that an eligibility list for the third shift was not brought to the polls until approximately 9:30 a.m. However, the investigation further revealed that union provided those third shift members three options; 1) to vote a challenged ballot, 2) to wait until the election chair obtained the eligibility list or 3) to return to the polling site later that day. Any violation of the LMRDA's right to vote or adequate safeguards provisions caused by the union's failure to have the eligibility list available at the opening of the polls was remedied by the options the union made available to third shift members.

Complainants [REDACTED] alleged that the local lodge gave incomplete voting instructions to the third shift members seeking to vote challenged ballots, and later would not count certain of these challenged ballots. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for the candidate or candidates of his choice.

The investigation confirmed that some third shift members received incomplete instructions about how to vote a challenged ballot and that some were not given the required number of envelopes necessary to separate the ballot stub identifying the voter from the voted ballot. The investigation confirmed that the local lodge later set aside and did not include in the tally some of the challenged ballots that were voted by third shift members.

The Department's review of the election records determined that seven challenged ballots were cast but set aside by the union and not included in the ballot tally. The investigation revealed that the seven ballots were cast by members who were on the eligibility list and that these ballots should have been included in the tally. The local lodge's failure to include these seven challenged ballots in the tally violated section 401(e) of the LMRDA. In the course of the investigation, the Department counted and included these ballots in the ballot tally. The inclusion of the challenged ballots in the tally did not affect the outcome of the election for any office. There was no violation affecting the outcome of the election.

Complainant [REDACTED] alleged that “cheat sheets,” small pieces of paper listing the incumbent candidates, were found in the voting booths. Campaigning within the polling place is not permitted by the LMRDA. 29 C.F.R. § 452.111. The investigation did not find any evidence that any candidate or candidate supporter attempted to distribute or distributed campaign material to voters in the voting area. Rather, it would appear that the materials that the complainant described represent isolated occurrences where members left behind personal voting guides. There was no violation.

Complainants [REDACTED] alleged that incumbent officers campaigned on union time in violation of section 401(g) of the LMRDA. Section 401(g) provides that union funds may not be contributed or applied to promote the candidacy of any person in an election subject to Title IV of the LMRDA. Accordingly, officers and employees may not campaign on time that is paid for by the union. 29 C.F.R. § 452.73.

The investigation did not find sufficient evidence to establish that vice-president Jay Wadleigh and Secretary-Treasurer Ryan Jones campaigned on union time. The investigation revealed that Wadleigh and Jones created a flyer on Jones’s home computer on the morning of October 22, 2013. They printed and distributed approximately 400 of the flyers that same morning. Both officers admitted that they conducted campaign business that morning, but deny that they were on union time.

A review of the employer’s time and leave records show that on October 22, 2013, Wadleigh took 5 hours of vacation time from 7:15 a.m. to 1:15 p.m. and was on union time for the remaining hours he worked that day. Local Lodge S6 officers are paid by Bath Iron Works (BIW) for their union time and that time is noted in the BIW records. The BIW records confirmed Wadleigh’s leave. Jones time and leave records reflect that he was on union time for 8 hours that day. However, the investigation confirmed that Jones works a flexible schedule and that his time sheets reflect only the total number of hours worked on a given day, not the exact hours worked. Jones is allowed to work a split shift. On the day in question, Jones was not on union time when the flyers were created and distributed. He accounted for 8 hours of union time that afternoon and evening, following the creation and distribution of the flyer, when he worked setting up the polls for the election the next day. Others attested to Jones working at the polls the afternoon and evening of October 22. There was no violation.

Complainants [REDACTED] alleged that Secretary-Treasurer Ryan Jones and local lodge committee person [REDACTED] campaigned at the BIW facility while on union time in the early afternoon around 1:30 p.m., on September 26, 2013. Section 401(g) provides that union funds may not be contributed or applied to promote the candidacy of any person in an election subject to Title IV. However, unless

restricted by constitutional provisions to the contrary, union officials and employees retain their rights as members to participate in the affairs of the union, including campaign activities on behalf of either faction in an election. Such campaigning must not involve the expenditure of funds in violation of section 401(g). However, campaigning by a union official that occurs incidental to regular union business does not violate the section 401(g) prohibition on union contributions. 29 C.F.R. § 452.76.

Jones disputed that he was campaigning with ██████████ at BIW on September 26, 2013, or any other day. He contended that he was attending to two members' dues issues. ██████████ contended that she was at BIW on September 26, 2013, "investigating grievances." The investigation confirmed that Jones and ██████████ were on official union business at the time in question. The investigation did not reveal any evidence to establish that the campaigning by Jones and ██████████ was anything more than campaigning incidental to regular union business. There was no violation.

Complainants ██████████ alleged that union officers made campaign phone calls to retirees while on union time. Section 401(g) provides that union funds may not be contributed or applied to promote the candidacy of any person in an election subject to Title IV.

This allegation was not corroborated. The Department conducted a phone survey to determine the validity of this allegation. Of the retired members surveyed, none had received a phone call from a union officer prior to the election. However, one retiree disclosed that he volunteered to call retirees to encourage them to vote for Wadleigh, who is a friend. According to the retiree, he called less than 10 retirees and only contacted those who were friends. The retiree stated that he did not receive any telephone numbers from the union and was not encouraged by any union officers or members to make the phone calls. There was no violation.

Complainants ██████████ alleged that a special meeting was held during regular union business hours to gather signatures supporting presidential candidate Wadleigh. Section 401(g) provides that union funds may not be contributed or applied to promote the candidacy of any person in an election subject to Title IV. However, campaigning by a union official that occurs incidental to regular union business does not violate the section 401(g) prohibition on union contributions. 29 C.F.R. § 452.76.

The investigation revealed that at a regular stewards meeting, signatures supporting Wadleigh were sought when those present were on personal time, either on lunch break or at the conclusion of the meeting. There was no violation.

Complainant [REDACTED] alleged that one of the tellers walked away from the check-in table with some ballots in her hand. Section 401 (c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided.

The investigation confirmed this allegation, but the investigation did not disclose any evidence of ballot fraud, or that any ballots were left unsecured. The Department's investigation included a review of the ballots, ballot receipts, and voter lists. OLMS investigators also closely examined the ballots to determine if multiple ballots were voted with similar handwriting, ink, or positioning of check marks on the ballots and found no indication of ballot tampering, ineligible persons voting, or ballot fraud. There was no violation.

Complainant [REDACTED] alleged that the tellers were not properly trained. [REDACTED], however, did not articulate any specific problem arising from the lack of training, and the investigation revealed no violation affecting outcome that could be attributed to the tellers. There was no violation.

Complainants [REDACTED] alleged that the observers were not given an opportunity to observe the ballot tally. Section 401(c) 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.

The investigation established that observers [REDACTED] and [REDACTED] were required to move from their original position because they were too close to the teller table. They were asked to sit at another table that was also within an observable distance of the teller's table. They and other observers were also allowed to walk around the tellers' table, as long as they did not interfere with the ballot count. Neither observer was prevented from adequately observing the tally process. There was no violation.

Complainant [REDACTED] alleged that the number of ballots cast did not match the number of members who voted. Section (c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided.

The Department's investigation revealed that a total of 1525 ballots were cast, 32 more ballots than the number of members who checked in to vote. However, the Department's review of the election records revealed ballot receipts for each one of the 1525 votes cast. The investigation revealed a discrepancy between the number of votes cast (1525) and the number of members who signed the checked in sheet (1493). However, the discrepancy was attributable, in part, to the fact that the third shift eligibility list was not available when the polls opened, so tellers were not able to check in third shift members; and, in part, to the tellers' failure to properly check in other

members. The investigation established that the voting procedures initially required members to sign the sign-in book and to check-in with the tellers so that their names could be crossed off the voter eligibility list before receiving a ballot.

Investigation established that the requirement for members to sign-in at the door of the polling site which was initially mandatory became voluntary. The investigation did not reveal any evidence that ineligible members voted. There was no violation affecting the outcome of the election.

Complainant [REDACTED] alleged that the tellers gave members the wrong ballots. Section 401(e) provides that every member shall have the right to vote for or otherwise support the candidate of his choice.

The investigation revealed that there were three different colored ballots for each group of members: retirees, Bath Iron Works employees, and Hardings employees. Each ballot contained the LMRDA covered officer positions. The Bath Iron Works and Hardings ballots included candidates for chief steward and grievance committee at the respective facilities. The steward and grievance committee positions are not officer positions covered by the provisions of the LMRDA. The Department's review of the election records revealed that the members who may have voted the wrong color ballot were able to vote for the races that are covered by the LMRDA. Errors in votes for steward and grievance committee positions would not violate the LMRDA and provide a basis for litigation by the Department. There was no violation.

Complainant [REDACTED] alleged that the integrity of the ballots was compromised because the local lodge unsealed the ballot boxes after the election. 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 any observer at the polls and at the counting of the ballots.

The investigation found that after the initial election tally, the local conducted a recount of the ballots without notice to and outside the presence of candidates and observers. During the recount, the local lodge found that a Bath Iron Works employee had cast a Hardings facility ballot rather than a Bath Iron Works ballot. The LMRDA covered positions were not affected by this mistake. All of the ballots contained the LMRDA-officer positions.

The Department's investigation included a review of the ballots, ballot receipts, and voter lists. Section 401(e) requires that election officials shall preserve for one year the ballots and all other records pertaining to the election. The review revealed that the local lodge could not account for 26 missing blank ballots. However, the review also included a close examination of the ballots to determine if multiple ballots were voted

with similar handwriting, ink, or positioning of check marks on the ballots and found no indication that the missing ballots were used improperly. The investigation did not reveal any evidence of ballot tampering, ineligible persons voting or ballot fraud. There was no violation affecting the election outcome.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file regarding this matter.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

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