



March 26, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor on October 2, 2008, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of the Laborers International Union of North American (LIUNA) Local Union 1686 (local), conducted on June 7, 2008.

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

You alleged that Local 1686 failed to timely mail a notice of the March 2, 2008, membership meeting in Helena Montana, resulting in many members receiving the notice after the meeting date. Nothing in the union constitution or the LMRDA requires the local to provide notice of a monthly membership meeting. Further, you admitted that you were aware of the date and time of monthly membership meetings but that you decided not to attend. There was no violation.

You alleged that election judges were not impartial because they and some candidates used their cell phones during the nominations meeting to call supporters to attend the nominations meeting. You stated that when you arrived at the nominations meeting, bringing with you ten members, there were only six people present, three of whom were members of the election committee and three incumbent officers. Section 401(e) of the LMRDA requires, in relevant part, that unions conduct their elections in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of the LMRDA. 29 U.S.C. § 481(c). The LMRDA provides labor organizations a wide range of discretion in conducting their own election, but such discretion is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

Nothing in the local constitution prohibits the election committee from calling members to attend a nominations meeting, and as long as the election committee does not extend the close of nominations to accommodate one set of candidates over another, there would be no violation of the LMRDA. The investigation disclosed that the election committee did not extend the nominations meeting to accommodate any candidate. In any event, the investigation did not confirm your allegation that cell phones were used for this purpose. There was no violation.

You alleged that the local should not have mailed an election notice and ballot packages to all members, including ineligible members. You identified one person, your wife, who was ineligible to vote but who was nevertheless mailed a ballot package. The investigation disclosed that the local mailed an election notice along with a ballot package to all members at their last known address, with one exception, discussed below. Section 401(e) of the LMRDA requires, among other things, that an election notice be mailed to every member at his last known home address not less than fifteen days prior to the election. 29 C.F.R. § 452.99.

In a mail ballot election where no separate election notice is mailed, the notice and ballots must be mailed to members no later than fifteen days prior to the date when they must be mailed back in order to be counted. 29 C.F.R. § 452.102. The local complied with these requirements. Because the LMRDA requires that an election notice be mailed to every member, including those not in good standing, the local properly mailed a ballot package to your wife. The investigation disclosed that the local verified member eligibility at the tally, which included ballots cast by members who were in good standing through April 2008. The investigation further disclosed that your wife's ballot was not included in the tally because she was not in good standing. With respect to the member who was not mailed a ballot package, the investigation disclosed that the member refused to provide the local with his home address and instead demanded that the local mail his notice/ballot to the local's Helena address; the local complied. There was no violation.

You alleged that the membership list was not updated after the close of nominations on April 20, 2008, as evidenced by several pieces of your campaign mailing being returned to you as undeliverable. The investigation disclosed that the local's office manager was responsible for updating the membership list. The office manager stated that before and after nominations, the local updated its membership list, consisting of 1,650 members, on a daily basis, purging, adding and updating members' addresses. Members who had not paid monthly dues for over two months were placed on a suspended status. During the election period, and well after the nominations meeting, the office manager and another member of her staff regularly called the local's field representatives in Billings, Butte, Great Falls, and Missoula to find out whether any member had paid dues at those field offices. If a member owed less than two months

dues, his or her name was moved from the suspended status and appeared on the voter eligibility list. The investigation disclosed that the local made every effort to update its membership list. Out of 1,650 members, the local, despite its best efforts, did not have addresses for 17 members, or 1% of the total membership. The local made a reasonable effort to update its membership list. There was no violation.

You also alleged that the election committee discriminated against you with respect to your campaign mailing because 13 of 27 pieces of your undeliverable campaign mailing had either no member name or no member address on the envelope; you believe the election committee used a different membership list than was used to mail incumbents' campaign material. The investigation disclosed that you and member [REDACTED] drove to Helena on May 15, 2008 to label your campaign material at the union office. Election judges assisted in the labeling process, providing members' address labels. As noted above, the local did not have full addresses for 17 members despite its best efforts to obtain such addresses, including using telephone directories to obtain full addresses. The investigation disclosed that the same membership list used by the incumbents to mail their campaign literature was used to mail yours. However, this local updates its membership list on a daily basis, purging, modifying and adding members to the list as new information on dues is provided to the local.

You and [REDACTED] participated in the labeling process, working with election committee members. Thirteen of your campaign pieces had problems with the labels; four of the labels either had no name or no address (incomplete labels) while eight of them had no labels at all. However, there is no evidence to suggest that the election committee members acted intentionally to discriminate against you; rather, the mistake appears to be simple errors on the part of all of the individuals engaged in the labeling process, including you and [REDACTED]. With respect to the remaining 14 campaign pieces returned to you as undeliverable, as explained above, these were part of the group of members for whom the local did not have current addresses, despite the local's best efforts to obtain current addresses for those members. There was no violation.

You alleged that the incumbent secretary-treasurer used Local 1686 resources, specifically union paid postage, to obtain metered postage for her campaign literature. The investigation disclosed that the incumbent secretary-treasurer made two campaign mailings in May 2008. In both instances, the secretary-treasurer used the local's stamp machine to mail her campaign literature. Section 401(g) of the LMRDA prohibits the use of union funds, including resources, to promote any member's candidacy. The investigation disclosed that the incumbent local secretary-treasurer paid for the postage stamps, providing the Department with a receipt for each mailing. For use of its postage meter, the local charged 42 cents for each piece of mail. All other candidates had the same opportunity to purchase postage from the local's postage meter to mail

their campaign literature. No Local 1686 resources were used to prepare and mail either of the secretary-treasurer's campaign mailings. There was no violation.

You alleged that the local failed to list four district council delegate positions on the ballot, as required under the local constitution, and instead had only two delegate positions on the ballot. The investigation disclosed that there were three district council delegates selected in this election; two delegate positions were specifically listed on the ballot and the business manager/secretary-treasurer, by virtue of that office, serves as a third district council delegate. While it is true that Article IV, section 3 of the District Council Constitution entitles Local 1686 to four delegates, the investigation disclosed that the local requested and obtained a variance of this provision. By letter of April 11, 2007, the International President granted the local a variance so that Local 1686 would have three delegates, in proportion to the other locals comprising the Rocky Mountain State District Council. The International President had the authority to grant such a variance under Article IX, section 11(b) of the International Constitution. There was no violation.

You alleged that the incumbent secretary-treasurer was not present at the ballot tally to verify voter eligibility, as required under the local constitution. The investigation disclosed that the local secretary-treasurer believed that her presence at the tally to verify voter eligibility may have the appearance of a conflict of interest, given that she was a candidate for office, so she did not attend, leaving the three election committee members to conduct the tally. Article VI, section 3(d) of the Uniform Local Union Constitution (Local 1686 Constitution) provides, in relevant part, that the verification process, including eligibility of voters, be conducted jointly by the local secretary-treasurer and the election committee members. By not being present, the secretary-treasurer violated the express provisions of Article VI, section 3(d) of the local Constitution.

A violation of the election provisions of the LMRDA which occurred in the conduct of an election is not grounds for setting aside an election unless the violation may have affected the outcome of the election. 29 C.F.R. § 452.136(b). Here, the investigation did not substantiate that this violation may have affected the outcome of the election. The investigation disclosed that the secretary-treasurer was unaware of the rules regarding voter eligibility determinations and therefore, her presence would not have added to the verification process. In addition, voter eligibility determinations were carried out by the election committee members, under direct observation of your two observers, among others. The election committee used the most updated eligibility list, generated the day before the election tally, and this was the list used by the election committee to verify eligibility. There was no violation that may have affected the outcome of the election.

You alleged that eligible members were denied the opportunity to vote because their votes were not included in the tally. Section 401(e) of the LMRDA entitles every member in good standing to vote in an election subject to the LMRDA. 29 C.F.R. § 452.84. A review of the election records showed that seventeen ballots should have been included in the tally but were not. The investigation disclosed that 15 members' names were not on the eligibility list despite the fact that they were on dues check-off; their employer had failed to timely remit their dues to the local. The LMRDA requires unions to include in the tally ballots cast by members who are on dues check off but, through no fault of their own, the employer does not timely remit the dues to the local. 29 C.F.R. 452.87. Also not included in the tally was one ballot marked "void" because the member chose not to vote for some offices but did clearly mark the ballot for other offices; the intent of the voter was clear and this ballot should have been included in the tally. A union must count any ballot voted in such a way as to indicate fairly the intention of the voter; an entire ballot may not be voided because the voter did not vote for all offices. *See* 29 C.F.R. § 452.116. Finally, the ballot for one member should have been included in the tally even though he had joined another union because he had paid his dues through April 2008 and was a member in good standing at the time of the election. *See* 29 C.F.R. 452.84. The local's failure to include in its tally the seventeen ballots cast by members in good standing violated section 401(e) of the LMRDA.

However, this violation would not have affected the outcome of the election for any office because all offices were won by margins greater than seventeen votes. There was no violation that may have affected the outcome of the election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers' International Union of North America
905 16th Street, N.W.
Washington, D.C. 20006-1765

Kim Rickard, Business Manager/Secretary-Treasurer

LIUNA, Local 1686
3100 Horseshoe Bend Road
Helena, Montana 59624