



September 9, 2010


Dear |||:

This Statement of Reasons is in response to your complaints filed on March 8, 2010 and March 23, 2010 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the International Union of Bricklayers and Allied Craftworkers ("BAC"), AFL-CIO, Local 3, on December 19, 2009.

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

You alleged that candidates ||| and ||| were contractors and should not have been eligible to run for president and vice chairman, respectively. The investigation established that Article VI, Section 8(e), of the Local 3 Bylaws and Code 11 of the BAC Constitution prohibit a contractor member who has the authority to "hire, fire and impose substantial discipline" and who is employed in that position on a "continuous and ongoing" basis from seeking and holding union office.

The investigation revealed that ||| was issued a contractor license in 2006 that expires in 2012 and ||| 's most recent license expired in 2008. The investigation established that neither ||| nor ||| was employed as a contractor on a "continuous and ongoing" basis or exercised the authority to "hire, fire and impose substantial discipline." Merely holding a contractor license does not disqualify a member from running for union office. There was no violation.

You alleged that Local 3 deviated from past practice by not allowing candidates to inspect the voter eligibility list on the morning of the election. The investigation revealed that no candidate was permitted to view the voter eligibility list. Your observer, however, was permitted to view a list of union members' names and

addresses and the returned ballot list on the morning of the election. There was no violation.

You alleged that your opponent used the official union logo on his campaign literature. Section 401(g) of the LMRDA prohibits the use of a labor organization's "moneys" to promote the candidacy of any person in a covered election. "Moneys" has been broadly interpreted as almost anything of value including the use of a labor organization's logo, in certain circumstances. Specifically, a union logo may not be used where the union has taken steps to restrict use of the logo (such as copyrighting the logo or requiring permission before using the logo for any purpose), and where it is used in a manner that implies that the union has endorsed the candidate.

The investigation established that neither the BAC constitution nor Local 3's bylaws addresses the use of the union logo in campaign literature. The investigation further revealed that the logo on |||'s literature did not resemble the official union logo. The Local 3's logo contains a round state of California seal with two hands holding two trowels, whereas the logo on |||' campaign literature was not round, had "BAC" in a large font, and only one hand and one trowel. There was no violation.

You alleged that incumbent president ||| selectively distributed *out of work dues* to members who were known ||| supporters. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person.

The investigation established that Local 3's Management Committee adopted the free-dues policy in March 2009 in an effort to retain members. The policy provides that one month's worth of free dues would be given to members listed on the out-of-work list for three consecutive months. There was no evidence that the free dues were disparately distributed to certain members. There was no violation.

You alleged that on November 23, 2009, union office secretary Dorie Telucci emailed |||, who was then international president of the BAC, and asked him whether he was endorsing your campaign. Under section 401(g) of the LMRDA, the use of union funds to promote the candidacy of any person is prohibited. This prohibition requires that officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in campaigning. See 29 C.F.R. §§ 452.73 and 452.76.

The investigation determined that |||, a member of Local 3, was inquiring whether the international president was endorsing your candidacy. The investigation established that neither |||'s email nor the response from the international president that he had not endorsed your campaign was promotional or disparaging of any candidate. Even if the email was composed on union time while using a union

computer, the content of the email could not be construed as campaigning or promotional. Furthermore, the investigation did not reveal any evidence that the email was distributed any further by ||| or |||, or was used in any candidate's campaign. There was no violation.

You alleged that ballot security was compromised because the post office gave the union the keys to the post office box and that ||| supporters could have accessed the box prior to the ballot pick-up. 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.

The investigation revealed that access to the post office box was restricted and that no one at the union had any keys to the post office box. The investigation revealed that when the election committee chairperson and others arrived at the post office to pick up the ballots, the postal clerk produced the key which was used to open the box. The clerk stated that no one, except postal employees, had accessed the box. The ballots were then transferred to a plastic bin which was locked with plastic seals to keep the ballots secure during their transport to the tally site. The investigation revealed that 779 ballots were returned to the post office. A reconciliation of used and unused ballots indicated that all 2,500 ballots printed were accounted for. There was no violation.

You alleged that the ballots of 71 members were not counted because of nonpayment of dues, that member |||'s ballot should have been counted, and that supervisors were improperly allowed to vote. Under the provisions of section 401(e) of LMRDA, every member in good standing is entitled to vote in elections required under Title IV to be held by secret ballot.

The investigation revealed that in order for members to vote in the December 2009 election, dues had to be paid through October 2009, and members had until 4:00 p.m. on December 18, 2009, to pay any outstanding dues. An examination of voter eligibility and election records revealed that two mistakes were made in determining voter eligibility. The Department's examination of the dues and union records for each of the 71 members whose ballots were not counted confirmed that 70 of the 71 ballots should not have been counted. While |||'s ballot was correctly excluded from the tally because he worked as a salaried foreman and made joint decisions to hire and fire employees, another member, |||, was incorrectly determined to be ineligible to vote. Since ||| was eligible to vote, the union violated section 401(e) of the LMRDA by not counting his ballot. In addition, |||'s ballot was counted even though he had been identified by his employer as a supervisory member. Inasmuch as members who work as supervisors and contractors were not eligible to vote, the union violated section 401(e) of the LMRDA by counting |||'s ballot.

Under the LMRDA, the Department may only seek to set aside an election where a violation of the Act may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Neither one of the two violations concerning the counting of the votes could have affected the outcome of any race because the smallest vote margin was 16 votes.

You alleged that the local failed to adhere to the provisions of Article 11, Section 3 of its constitution when it did not provide candidates with its responses to all election protests filed. Section 401(e) of the LMRDA provides that elections shall be conducted in accordance with the constitution and bylaws of such organizations insofar as these provisions are not inconsistent with the LMRDA. Article 11, Section 3 of the Local 3 Constitution states that the election committee shall investigate any protest filed and shall within 10 days after a protest is received, notify the member protesting and all candidates for any office as to which the protest was filed of its decision upon the protest.

The investigation established that one candidate received copies of protests and the election committee's responses to the protests, but that other candidates may not have received this information. While Local 3 may have failed to follow Article 11, Section 3 of its constitution and, thus, violated section 401(e) the LMRDA, there was no effect on the outcome of the election since the nature of this protest does not concern the election itself.

There were four other issues raised by you that were not timely invoked and exhausted by you in accordance with union election protest procedures. Two of the issues were not timely filed; a third issue raised by you was a pre-election issue, but you did not file a protest until post-election; and a fourth issue you were aware of but you did not raise until the appeal stage of union election procedures. Consequently, the Secretary lacks the authority to consider the merits of these issues.

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

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: James Boland, President

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