



September 24, 2014



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on March 27, 2014, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the Amalgamated Transit Union (ATU) Division 1091 on November 20, 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.

You alleged that the election committee refused to answer your questions while you were serving as an observer at the ballot tally. The investigation revealed that you asked election committee members questions about their experience and knowledge about rules and guidelines for conducting an election. The election committee members answered some, but not all, of your questions. The election committee's refusal to answer all of your questions was not an interference with your observer rights which include the right to observe at the polls and at the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. There was no violation.

You alleged that the election committee did not adhere to a provision in the Department's Guide, *Conducting Local Union Officer Elections*, providing that only election officials, voters and observers are allowed in the polling area. This provision is included as a suggestion and not as a requirement in the Guide. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. You contend that the local did not adhere to this Guide when the local's administrative assistant, [REDACTED], entered the polling area, told you to sit in the designated seat for the observer and keep quiet or she would call 911.

The investigation established that when ██████ heard you raising your voice with the election committee members, she informed President Wyatt of your actions. You acknowledged that ██████ directed you to the observer chair, which was approximately three feet from the voting table, and that you were able to properly observe the check-in of eligible voters and the polls while sitting in the chair. The investigation revealed that this was the only instance of ██████ entering the room where voting took place. There was no violation.

You alleged that the union's decision to call the police to the union hall was a planned event to harm your candidacy for office and to suppress the vote of members who may have been aware of the police presence at the union hall and reluctant to go to the polls to vote. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate of his choice.

The investigation established that police arrived at the union hall on the morning of the election and talked to both you and President Wyatt. There were approximately six to eight members in the polling room when the police arrived. As you are aware, the police were there for only a short period of time. There was no evidence that members left before voting because of this. You did not provide the names of any individuals who said they were influenced not to vote by this incident. The investigation found that several witnesses stated that members were more likely to come to the polls and vote because they wanted to know why the police were at the union hall. There is no evidence that there were any members who did not vote because of the police presence at the union hall. There was no violation.

You alleged that the unopposed candidate for first transit executive board member, ██████ came into the polling area and asked to speak to union President Wyatt in violation of section 401(e) of the LMRDA. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate of his choice without being subject to . . . improper interference of any kind by such organization or any member.

The investigation established that ██████ spoke to Wyatt in Wyatt's union office about a personal matter and at that time had not been issued a ballot. Both Wyatt and ██████ deny that any campaigning took place during the discussion. There was no violation.

You alleged that member ██████ approached you with his ballot in his hand while you were in the polling room. This allegation, in and of itself, does not raise a violation of the LMRDA.

You alleged that when member ██████████ walked into the polling room and announced that he was not voting for you, his statement violated the ballot secrecy provision of section 401(e) of the LMRDA. Section 401(e) of the LMRDA provides that any election required by this section must be held by secret ballot. A secret ballot under the LMRDA is "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice \* \* \* cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. 29 C.F.R. § 452.97.

██████████ statement does not constitute a violation of the ballot secrecy provision of the LMRDA because ██████████ was able to cast his ballot in secret. No campaigning or negative campaigning is permitted inside the polling site. In that there were no other voters in the polling room when ██████████ made his comment, his comment did not affect the outcome of the election.

You alleged that the local failed to provide adequate safeguards to ensure a fair election because the election committee did not count the number of printed ballots prior to the election. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. 29 C.F.R. § 452.110.

While the investigation established that the election records do not contain evidence of the number of ballots printed, the LMRDA does not require that the election committee count the ballots prior to the election. The investigation revealed that the local's administrative assistant prepared the ballots at the union hall and printed one ballot for each member. There were six different colored ballots for each worksite. The evidence revealed that the sign-in list of members voting matched the number of ballots cast. There was no evidence that anyone other than eligible members voted, that members voted more than once or that there were any ballot substitutions. The investigation did not reveal any evidence of ballot fraud or tampering with the ballots. No violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election because unopposed candidates ██████████ and ██████████ and administrative assistant, ██████████, should not have been permitted to observe the tally.

Neither the LMRDA nor ATU Constitution places any restrictions on who can observe the tally. The local's past practice has been to allow anyone who wants to observe the tally to do so. While the investigation revealed that observer ██████████ pointed out a counting error, which the election committee then corrected, there was no evidence of any improper action on the part of any observer. Consistent with Department regulations, observers were not permitted to handle, count or tally the ballots. 29 C.F.R. § 452.110. No violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election because the election committee did not seal and sign the ballot box that contained the November 20, 2013 election records. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided.

The investigation revealed no evidence that the records were reopened and a recount done to provide a different election outcome. The investigation revealed that the November 20, 2013 election records were placed in a large envelope which was closed and sealed with tape, but not signed by anyone. The envelope was placed in a locked ballot box that was stored in the union's locked storage room. Although the slot in the top of the ballot box was not sealed, it was not big enough for anyone to remove the election records envelope. After the December 18, 2013 run-off election, all election records were put into a copier paper box, sealed, and signed by the Recording Secretary on January 14, 2014. The Department's review of the election records found a sealed cardboard copier paper box with Recording Secretary Alicia Moore's signature and the date January 14, 2014 across the tape. There was no violation.

You alleged that the local failed to treat candidates equally because your name was listed as [REDACTED] instead of [REDACTED] on the ballot. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed. A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness. For example, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege. 29 C.F.R. § 452.110.

The investigation revealed that none of the candidates were consulted as to how they wanted their names to appear on the ballot. The investigation established that unopposed candidate [REDACTED] name appeared in the union's database as [REDACTED] with the nickname [REDACTED], and was listed on the ballot as [REDACTED]. Presidential candidate Joneth R "Jay" Wyatt's name appeared in the database as Joneth R. Wyatt with the nickname Jay. The ballot listed him as Joneth R "Jay" Wyatt so as not to confuse him with his opponent [REDACTED]. You are listed in the database as [REDACTED] with the nickname [REDACTED], and your opponent, [REDACTED], was listed in the database and on the ballot as [REDACTED]. She does not have a nickname. You acknowledge that you are the only [REDACTED] [REDACTED] in the union.

The investigation did not reveal any evidence that voters were confused because your nickname was not listed on the ballot. The failure to include your nickname on the ballot for the race for recording secretary constitutes a violation of section 401(c) of the

LMRDA as you were treated differently from other candidates, but there is no evidence that this violation may have affected the outcome of the election.

You alleged that the local failed to follow its constitution and bylaws which provides at Section 13.16 that nomination and election of officers shall be the local's 11<sup>th</sup> order of business. Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV.

The investigation established that the local conducted nominations as the first order of business during a nomination meeting, rather than in accordance with section 13.16 of the ATU Constitution, in violation of section 401(e) of the LMRDA. This violation, however, did not affect the outcome of the election because there is no evidence that nominating members as the first order of business rather than the 11<sup>th</sup> order of business prevented anyone from being nominated for union office.

You alleged that ballots were not prepared immediately following the nomination meeting as prescribed by section 14.4 of the ATU Constitution. Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV. Section 14.4 of the ATU Constitution provides that immediately following the nomination meeting, the financial secretary or the recording secretary shall prepare a ballot.

The investigation established that nomination meetings were held on October 16, 2013, at 10:30 a.m. and 6:30 p.m. The ballots were prepared on a much later date, November 14, 2013. However, the preparation of the ballots at the later date did not affect the outcome of the election. There was no violation that would provide a basis for litigation by the Department.

You also raised issues regarding the number of people present at the union hall on election day, and regarding the fact that nominations were not included in the October 16, 2013 meeting minutes. These matters would not violate the LMRDA, even if true, and, consequently, were not investigated.

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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