



September 2, 2014

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on January 6, 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 UNITE-HERE, Local 54, on June 28, 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 the [REDACTED] headed by incumbent candidate [REDACTED] violated Rule 8 and Rule 11 of the election rules by campaigning at the polling sites and in the parking areas of the polling sites. Rule 8 of the election rules prohibits electioneering within any location serving as a polling place and in the parking lots and the parking garages at such location. Rule 8 permits electioneering on the sidewalks near the polling site so long as it takes place at least 100 feet from the entrance to that site.

The investigation disclosed that the [REDACTED] transported members to the polling site located at a convention center in vans that had partisan campaign signs posted on them. The members were dropped off near the main entrance of the center; however, the center's security did not permit the drivers to wait for voters in front of the entrance to the center. [REDACTED] vans also dropped off members in front of the Chester, Pennsylvania polling site. The election committee, in response to a complaint that one such van remained at the entrance, told the van driver to move which he did. The LMRDA was not violated.

With respect to the prohibition in Rule 8 against campaigning within 100 feet from the entrance to a polling site, the investigation showed that candidates and supporters of

the [REDACTED] as well as candidates and supporters of your slate violated the 100-foot no campaign rule. The investigation also disclosed that the election officials enforced the rule uniformly whenever they witnessed a violation or a violation was brought to their attention. There was no violation of the LMRDA that may have affected the outcome of the election.

Rule 11 of the election rules prohibits anyone in or around the polling place from attempting to influence, coerce or disturb anyone attempting to vote. There is no evidence that anyone attempted to interfere with the right of a member to vote while the member was voting or waiting to vote. The LMRDA was not violated.

You alleged that poll clerks told Hispanic voters in Spanish to vote for certain candidates while the clerks and the voters were in the voting area. Section 401(c) of the LMRDA requires a union to provide adequate safeguard to insure a fair election. In addition, the Department regulations prohibit campaigning within the polling place. 29 C.F.R. § 111.

The investigation disclosed that a representative from the New Jersey State Board of Mediation was in the voting area during the balloting and saw poll clerks apparently explaining the ballot to some members in Spanish while pointing to a large posted sample of the ballot. The investigation, however, did not disclose that poll clerks instructed voters in Spanish or in any other language to vote for any candidate. Further, a Spanish-speaking candidate on your slate stated during the investigation that no Spanish speaking voters complained to him about someone instructing them to vote for certain candidates. The LMRDA was not violated.

You alleged that the ballot did not inform voters that the top three officers would be delegates by virtue of office. A review of the ballot showed that the ballot stated "President/Delegate, Vice-President/Delegate, and Financial Secretary Treasurer/Delegate." The LMRDA was not violated.

You alleged that voters were instructed not to fold their ballots and to place the ballots in the ballot box face up. Section 401(b) of the LMRDA requires every local labor organization to elect its officers by secret ballot. 29 C.F.R. § 452.84. A secret ballot under the LMRDA is the expression by ballot, voting machine, or otherwise, of the voter's choice of candidates cast in such a manner that such choice cannot be identified with the voter. 29 C.F.R. § 452.97; 29 U.S.C. § 402(k).

The investigation disclosed that True Ballot, the company hired by the union to conduct the election, told the union that the ballots should not be folded because the folds in the ballots could affect the functioning of the device used to scan the ballots. As a result, an election official told voters not to fold their voted ballots. During the investigation, the

election official denied that he also told voters to place their ballots in the ballot box face up. A representative from the New Jersey State Board of Mediation who was in the voting area while voters were casting their ballots confirmed during the investigation that, although the election official told voters not to fold the ballots, the official did not tell voters to place their ballots in the ballot box face up. In any event, there is no evidence that ballot secrecy or voters' free choice was compromised during the election. The LMRDA was not violated.

You alleged that representatives of the [REDACTED] campaigned in areas at employer facilities that were closed to public access and that other candidates were prohibited from accessing those areas to campaign. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of officers. Thus, a union official is prohibited from using his or her union status, a union resource, to gain access to the nonpublic areas of an employer and campaign for the incumbents unless such access is made available to all candidates.

You provided the name of a witness who saw union representatives campaigning in private areas at the Trump Plaza. During the investigation the witness stated that he never saw any union representatives campaigning at the Trump Plaza. You also provided the name of a witness who saw union representatives campaigning in private areas at the Borgata Hotel. The union representatives stated during the investigation that they did not engage in any such campaigning. Also, Borgata's Vice President for Human Resources advised that she was not aware of any union representatives campaigning at the Borgata Hotel and that no one reported that any campaigning had occurred in the hotel. In addition, a member employed at the Bally Hotel stated that he overheard the incumbent vice president talking to employees in the cafeteria and in the hallways of the hotel and that during these conversations the vice president never mentioned the election, and he did not solicit members' votes or seek their support in the election. Further, the investigation disclosed that one of the union representatives that you or your supporters accused of campaigning at an employer facility was on extended medical leave during the election and did not return to work until several months after the election was completed. The LMRDA was not violated.

You alleged that members whose names were not on the voters' eligibility list were required to vote a challenged ballot. Even if true, this allegation would not constitute a violation of the LMRDA. A union may challenge a voter's eligibility to vote and require the voter to cast a challenge ballot until a decision regarding such eligibility is reached. The LMRDA was not violated.

You alleged that certain employers permitted employees to leave work during their work shifts at the request of the [REDACTED] so that the members could be driven to the polling places and vote but members employed at a Harrah Hotel in Philadelphia,

Pennsylvania were prohibited from leaving work during work hours to vote. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

The investigation disclosed that members employed at the Harrah Hotel located in Philadelphia, Pennsylvania were permitted to leave work during their meal break and vote. Further, one of your supporters provided the Department with a copy of a notice that was posted at the hotel informing members that they would be allowed to swipe in and out of work to vote during their meal break. The investigation also disclosed that this notice was posted at the four Harrah properties located in Atlantic City, New Jersey. The investigation further disclosed that the employees employed at the two Trump properties and those employed at the Borgata Hotel were permitted to leave work during their break to vote. The LMRDA was not violated.

You alleged that members who supported your slate were assigned mandatory overtime work on the day of the election to prevent them from voting. Section 401(e) of the LMRDA provides that every eligible member is entitled to vote in an election of union officers. The investigation disclosed that only one of your four witnesses to this allegation agreed to be interviewed by the Department and that this witness was unable to provide the Department with any information regarding this allegation. In addition, managers at two of the employer facilities where the alleged mandatory overtime work occurred stated during the investigation that members were not assigned mandatory overtime on the day of the election. Further, human resources personnel at two such facilities stated that mandatory overtime is assigned only when there is an actual need for such overtime and that no employees would be assigned mandatory overtime in an effort to keep members from voting. The LMRDA was not violated.

You alleged that you announced your candidacy in December 2012 and you were terminated from employment in February 2013. You also alleged that incumbent [REDACTED] was involved in your employer's decision to terminate you.

The investigation disclosed that you and five other employees were terminated for failing to comply with company rules. The union filed a grievance regarding your termination and the matter went to arbitration. The investigation disclosed no evidence that your termination was connected with your candidacy. The LMRDA was not violated.

You alleged that the polling hours were not convenient for members whose shifts ended hours before the polls opened. Section 401(e) of the LMRDA provides that every eligible member has the right to vote. Thus, a union has an obligation to conduct its election of officers in such a way to afford all its members a reasonable opportunity to cast a ballot. 29 C.F.R. § 452.94. The investigation disclosed that the polling hours were

from 7:00 a.m. to 7:00 p.m., and that these hours accommodated all members despite their work hours. Furthermore, as previously mentioned, some employers permitted members to clock in and out or to leave work during break times to vote. The investigation further disclosed that no member was prevented from voting because of the polling hours. The LMRDA was not violated.

You alleged that Local 54 intimidated and harassed shop stewards who did not support the [REDACTED]. Section 401(e) of the LMRDA prohibits improper interference or reprisal of any kind by a union or any of its members with respect to the right of members to vote for and support candidates of their choice. The investigation did not substantiate that stewards were subjected to any intimidation or harassment. Further, even if stewards were removed from such positions because they supported your campaign, the stewards were not elected union officers and, thus, any removal would not constitute a violation of the LMRDA. In any event, the investigation did not disclose the name of any member whose employment was threatened or terminated because the member supported your slate. Nor is there any evidence that any member was prevented from voting for your slate as a result of any alleged intimidation and harassment. The LMRDA was not violated.

You alleged that members were required to sign cards pledging their support to the [REDACTED] in order to ride in the vans provided by the slate to transport voters to the polling sites. Even if true, this allegation would not constitute a violation of the LMRDA.

You alleged that the [REDACTED] required candidates on that slate to collect pledge cards from members and to contribute \$50.00 to the campaign. Even if true, this allegation would not constitute a violation of the LMRDA.

You alleged that a supporter of the [REDACTED] tricked a candidate into signing a letter indicating that the candidate was withdrawing from your slate. The investigation showed that the candidate misunderstood a letter that indicated that he was withdrawing from your slate and signed it. However, the candidate's name was placed back on your slate after he wrote a letter to the election committee explaining that he did not intend to withdraw from the slate. The candidate's name appeared on the ballot as delegate on your slate. The LMRDA was not violated.

You alleged that you requested the secretary treasurer to provide you with a list of members' telephone numbers and home addresses to campaign, the secretary treasurer failed to respond to your request, and the McDevitt slate was permitted to use a union list of members to campaign. Section 401(c) of the LMRDA requires a union to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use a list of members in any way

other than the right of inspection granted under the LMRDA, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. 29 C.F.R. § 452.71(b).

The investigation showed that the union did not provide a list of members' telephone numbers and home addresses to any candidate, including the [REDACTED]. The investigation disclosed that the pledge cards that the [REDACTED] distributed to and collected from members requested the member's telephone number. The [REDACTED] used the information from the pledge cards to campaign. The [REDACTED] did not use a union list to obtain members' contact information. The LMRDA was not violated.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc:

[REDACTED]
UNITE HERE Local 54
1014 Atlantic Avenue
Atlantic City, NJ 08401

Mr. D. R. Taylor, President
UNITE HERE

[REDACTED]

Christopher B. Wilkinson
Associate Solicitor for Civil Rights and Labor-Management