



March 31, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your December 1, 2008 complaint filed with the United States Department of Labor (Department) 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 IBEW Local 481 election of officers held on June 11, 2008.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that no violation that affected the outcome of the election occurred.

You alleged that business agents used the union's membership list to urge voters to attend [REDACTED] campaign rallies. The investigation revealed that the [REDACTED] campaign had three personal lists of members with names and phone numbers. There was no evidence that any of the lists were acquired from the union. Two lists were generated by sign-in sheets from the three campaign rallies held by the [REDACTED] campaign where members who attended were asked to sign up. One personal list was held by Executive Board candidate [REDACTED]. [REDACTED] compiled the list from past jobs, the phone book and from mutual friends. The investigation also revealed that while business agents could view membership lists on the union computer system they were not able to print or alter the lists in any way.

As evidence that lists were used to campaign, you also alleged that two members, [REDACTED] and [REDACTED], received a call from Business Agent Henry Burks inviting them to an O'Donnell rally. The Department interviewed the two members and both of them denied receiving campaign calls and Agent Burks denied using a membership list to campaign. Section 401(c) and the Department's regulations provide that unions should "refrain from discrimination in favor of or against any candidate with respect to the use of lists of members." 29 U.S.C. § 481(c); 29 C.F.R. § 452.71(b). Here, there was no evidence to support an allegation that membership lists were used in a discriminatory manner. There was no violation of the LMRDA.

You alleged that the [REDACTED] campaign violated a union rule that prevented campaigning within 13 feet of the polling place doors and that people wearing [REDACTED] team t-shirts formed

a gauntlet of [REDACTED] team members that voters had to walk through to get inside the polling site. You also alleged that [REDACTED] and his business agents were passing out shirts while taking the names and phone numbers of those receiving them. You claimed that passing out the shirts could easily be taken as a sign that a reward or favoritism was going to be granted for supporting the [REDACTED] slate candidates and that passing through the gauntlet might have been intimidating to some voters. The investigation revealed that another candidate passed out shirts during the campaign. As part of the investigation, the Department interviewed a number of members who voted that day and only one person corroborated your allegation that there was a gauntlet. You were unable to provide the names of any voters who may have been intimidated by the activities outside of the polls and none of the voters interviewed during the election said that they were intimidated or discouraged from voting. The investigation revealed that all voting was done in secret. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for the candidate of his or her choice. 29 U.S.C. § 401(e); 29 C.F.R. § 452.105. There was no evidence that any voters were intimidated or were otherwise unable to freely exercise their right to vote in the election. Accordingly, there was no violation of the LMRDA.

You alleged that the procedure for candidate mailings was flawed because candidates were required to stuff literature for the mailing at the union hall and the Election Judge oversaw the delivery to the mail service. You alleged that under this procedure, all mailings had to be submitted for inspection by the Election Judge. You objected to this inspection because you thought the purpose of the inspection was to allow the judge to tell the opposing [REDACTED] campaign about the contents of your mailing.

The investigation revealed that the purpose of the inspection was to verify that no mailings used the IBEW logo. All of the candidate mailings were inspected and none were found to have used the logo. Moreover, as part of the investigation, the Department examined all three campaign mailings to see if your allegation that the purpose of the inspection was to share information with opposing parties was substantiated. The Department found that none of the candidates' literature was rebutted by another candidate's literature, indicating that there was no disclosure of the campaign literature to other candidates prior to mailing. Section 401(c) provides that unions must comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature and to refrain from discrimination in handling such requests. 29 U.S.C. § 401(c); 29 C.F.R. § 452.67. The investigation revealed that the union complied with your request to mail your literature and there was no evidence that the union failed to provide equal treatment to all candidates with respect to campaign literature mailing requests. There was no violation of the LMRDA.

You alleged that contractor-members were improperly permitted to vote in the election in violation of the IBEW's constitution. Section 401(e) of the LMRDA and the Department's regulations, provide that elections should be conducted in accordance with the union's constitution. 29 U.S.C. § 401(e); 29 C.F.R. § 452.109. Article XV, Sec. 5 of the IBEW constitution states in pertinent part that :

Sec. 5. No L.U. [Local Union] shall allow any member who becomes an electrical employer, or a partner in an electrical employing concern, to hold office in the L.U. or attend any of its meetings, or vote in any election of a L.U. The L.U. shall allow such a

member to continue his membership in the L.U. or take a withdrawal card for deposit in the I.O.

The investigation revealed that Election Judge ██████ attempted to determine voter eligibility of contractor-members by reviewing letters of assent. The Department conducted additional analysis to determine whether reviewing letters of assent adequately captured all of the contractors who were ineligible to vote. The Department identified 70 individuals who appeared to be contractor-members and who were on the voter eligibility list. Of those 70 members who were potentially ineligible to vote, the investigation revealed that 10 voted. Because the smallest margin of the races was 136 votes, the fact that approximately 10 voters may not have been eligible to vote could not have affected the outcome of the election. Accordingly, any violation of the LMRDA had no effect on the outcome of the election.

You alleged that the union's absentee ballot bylaw was violated when voters used absentee ballot request postcards distributed by the ██████ campaign. Section 4(c) of IBEW Local 481's bylaws provides that requests for absentee ballots may be made in writing to the Election Judge. The investigation revealed that the postcards did not contain any campaigning materials and there was no evidence that the postcards were distributed by business agents while campaigning on job sites or that the cards were distributed during work hours. Section 4(c) of the bylaws does not proscribe the form that an application for an absentee ballot must take and there was no evidence that the postcard distribution prevented any member from making an application for an absentee ballot. There was no violation of the LMRDA.

You alleged that Treasurer Jason Haltom filed charges against you with the union in order to discredit you after you declared your candidacy. The investigation revealed that Local 481 sent you six letters from October 5, 2007 – March 5, 2008, requesting a written explanation about issues related to your employment with the union as an agent. When you failed to respond, charges were filed against you with the international body on March 19 and 24, 2008. These charges were dismissed as untimely by the Fourth District of the IBEW in a letter dated July 14, 2008.

There was no evidence to show that the union filed the charges after you declared your candidacy. A review of the minutes of the monthly meetings from December 2007-April 2008 showed that the union had no record of your candidacy declaration. The Department interviewed a number of witnesses, including your son, who stated that you announced your candidacy at a nominations meeting, held in May 2008. Moreover, the charges filed against you were not made public and not read during the monthly meetings. In addition, the investigation revealed that you told some members about the charges yourself. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of a person. 29 U.S.C. § 401(g). There is no support for your contention that union funds were used for campaign purposes, in this case to discredit your candidacy. There was no violation of the LMRDA.

For the reasons set forth above, it is concluded that with respect to each of your specific allegations that no violation of the LMRDA occurred that may have affected the election. Accordingly, I have closed the file in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

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