



April 13, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint received by the United States Department of Labor on September 14, 2009, 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 Local 1900, (Local 1900 or local), International Brotherhood of Electrical Workers (International), concluded on March 7, 2009.

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

You alleged that your opponent, [REDACTED], used the International's logo and the local's logo in his campaign flyer, giving the impression that the International and local endorsed his candidacy, in violation of the Election Rules. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), provides, in relevant part, that no moneys received by any labor organization by way of dues shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of the LMRDA. 29 USC § 481(g). A union's logo may constitute "moneys" where the logo has market value, such as when the logo is protected by trademark, and where the union restricts the use of its logo in some manner. Therefore, the use of a union logo may be a violation of section 401(g) of the LMRDA under certain circumstances. However, any such violation would not affect the outcome of the election, as required by 29 U.S.C. § 482(c)(2), where the union logo was used in such a manner that it was clearly campaign material, and as such, did not create a reasonable inference that members would assume the union had endorsed the candidate.

Here, the International's logo is protected by trademark and the election rules prohibited the use of the International or local logo for campaigning purposes. The investigation disclosed that [REDACTED]'s campaign flyer contained a photograph of him in his

union office, with a poster that bears the International's logo behind him. However, even if this use of the International's logo constituted a violation of the statute, it cannot be shown that this violation may have affected the outcome of the election because it is clear from the photograph that the flyer was campaign material belonging to [REDACTED], and not an endorsement by the International.

In addition, in the photograph, [REDACTED] is wearing a t-shirt with the insignia "IBEW L.U. 1900," along with his name. The investigation determined that [REDACTED] created the insignia displayed on his t-shirt and that insignia bore no resemblance to the local's logo. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election when unsecured ballot boxes were left underneath a conference table in the local's executive board room. Section 401(c) of the LMRDA, 29 USC 481(c), provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. As such, a union's wide range of discretion regarding the conduct of its elections is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation disclosed that on January 29, 2009, local executive board members, including you, met in the conference room where sealed boxes containing ballot packages were stored underneath the conference table. Election committee members had written their names on the tape sealing each ballot box, with the notation "DO NOT OPEN." Also stored underneath the conference table was an unsealed box containing a batch of election notice reminders.

Leaving the sealed boxes containing the ballots in an unsecured area constituted an inadequate safeguard, in violation of section 401(c) of the LMRDA, 29 USC 481(c). However, the investigation disclosed that on the day following the local executive board meeting, the election committee chair inspected the sealed boxes, found no evidence of tampering, and then mailed the ballots to the membership. The election committee's finding of no ballot tampering was corroborated by the Department's examination of the ballots which showed no irregularities or evidence of fraud, as none of the voted ballots had any unusual markings. The report of an open box is explained by the box containing election notice reminders. Moreover, the Department accounted for 1998 of the 2000 ballots that were printed. The lowest margin of victory was a 35-margin vote. Given these facts, the Department concludes that there was no violation that may have affected the outcome of the election.

You alleged that the post office box designated to hold voted ballots was closed before the March 7, 2009 ballot return deadline, as evidenced by a "box closed" notation on two ballots that were returned to members. The investigation disclosed that your son's returned ballot envelope was postmarked March 4, 2009, while the other returned ballot envelope, belonging to [REDACTED], was postmarked March 6, 2009. The investigation further disclosed that the rented post office box was closed on March 9, 2009. The Post Office explained that mail delivery is sometimes delayed, and that ballots postmarked

prior to the ballot return date may not have been delivered to the union's box prior to the ballot return date or the date the box was closed. There was no violation.

You alleged that your opponent's supporters distributed fliers and buttons inside the Rockville Service Center in violation of company policy and campaign rules. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits, among other things, the use of employer funds to promote the candidacy of any candidate. This prohibition includes campaigning on company time. In addition, the campaign rules prohibited campaigning on company time, among other prohibitions. The investigation disclosed that you and supporters of your opponent [REDACTED] distributed campaign flyers to employees as they entered the gates of the employer's facility. Many employees' desks displayed campaign flyers and/or buttons from either you or your opponent. However, the display of these campaign items on employee desks does not in itself establish a section 401(g) violation because the investigation did not establish that anyone actually distributed these items while on the company's premises during working hours. Flyers could have been brought in by members themselves from the gates. There was no violation.

You alleged that your campaign flyers, posted on union bulletin boards, were masked by your opponents' campaign flyers. The local permitted campaign literature to be posted on its bulletin boards on the employer's premises. Although the bulletin boards were locked, all candidates were able to gain access, including you. The investigation disclosed that there were three locations where campaign materials were blocked from view or removed. In every instance, the overlap of the material or the missing literature was promptly corrected. There was no violation.

You alleged that you were disadvantaged by having the ballots mailed to members three weeks earlier than in the previous election, thereby preventing you and other insurgent candidates from gaining name recognition from the membership before members received their ballots and voted for candidates who were familiar to them. Section 401 (c) of the LMRDA, 29 U.S.C. § 481(c), provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. This includes the opportunity to campaign so that members have a free, fair, and informed expression of their choices among candidates seeking union office. *See* 29 C.F.R. § 452.66. Here, nothing in the IBEW constitution or the election rules prevented any candidate or union member from campaigning prior to or after the nominations meetings concluded on January 8, 2009. Further, the investigation disclosed that the election committee chair took your concerns into consideration and moved the ballot mailing date from January 27 to January 30, 2009. The tally date was March 7, 2009. You were advised of the January 27 ballot mailing date at the candidates' meeting on January 26, 2009. You objected and the mailing date was changed to January 30 to accommodate you. Your supporters distributed your campaign material in the first week of February 2009 while

you were on vacation. You were not treated any differently from any other candidate and were not disadvantaged by the January 30<sup>th</sup> mailing date. There was no violation.

You alleged that on January 8, 2009, prior to the commencement of a nominations meeting in Hughesville, Maryland, International Representative (IR) Ken Cooper congratulated all incumbents, stating "thank you guys; you've done a great job for these three years," leaving the impression that the International endorsed the re-election of those officers. Section 401(g) of the LMRDA prohibits a union from using its funds to promote any person's candidacy. 29 U.S.C. § 481(g). The investigation disclosed that IR Cooper attended all of the local's nominations meetings to ensure that they were properly conducted, as there had been a protest concerning nominations in an earlier election. The investigation did not establish that IR Cooper addressed the membership at this or any other nominations meeting. IR Cooper's presence at this or any other nominations meetings did not give the appearance of an endorsement. There was no violation.

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

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