



April 15, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your November 18, 2010 complaint filed with the United States Department of Labor 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 conducted by the Laborers' International Union of North America (LIUNA) Local 1191 on June 23, 2010.

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 occurred which may have affected the outcome of the election.

You alleged that incumbent officer [REDACTED] used union telephone lists to call Local 1191 members to campaign for the [REDACTED] in violation of section 401(g) of the LMRDA. Section 401(g) prohibits the use of union funds to promote any candidate for union office. The Department's investigation determined that [REDACTED] made 29 phone calls to the residences of Local 1191 members from his home phone around the time of the election, using a list of members' phone numbers gained either in his official capacity as a union officer or from the union's records. Because more than one Local 1191 member lives at certain of these residences, 29 numbers corresponded to 31 individual members of Local 1191. Accordingly, the Department determined that Pulice may have campaigned to a maximum of 31 Local 1191 members in violation of section 401(g).

However, section 402(c)(2) of the LMRDA provides that an election will only be overturned where a violation may have affected the outcome of the election. Since only 31 members may have received campaign phone calls and the smallest margin of victory was 133 votes, the violation did not affect the outcome of the election.

You also alleged that incumbent officer [REDACTED] while using a union vehicle, visited the Marathon refinery while on union time in order to distribute campaign stickers for the [REDACTED], in violation of section 401(g) of the LMRDA. Campaigning by an incumbent officer, while on union time and while using a union-owned vehicle is prohibited. The Department investigated this allegation, interviewing those union members that you alleged witnessed [REDACTED]'s campaigning. However, none of these witnesses or others interviewed by the Department substantiated your allegation. Accordingly, there was no violation.

Similarly, you alleged that incumbent officer [REDACTED] campaigned for the [REDACTED] by distributing Local 1191 stickers at the Zug Island worksite, during work hours and while driving a union vehicle. Specifically, you allege that [REDACTED] gave Local 1191 stickers to Steward Dave Counts and that Counts told approximately 30 members at Zug Island that they could have the new Local 1191 stickers only if they used the stickers to cover-up the opposition slate stickers. The Local 1191 stickers were not campaign material. The Department's investigation disclosed one member who indicated that he was told by Counts that he could only have the Local 1191 sticker if he covered his opposition slate sticker, which he refused to do. Counts denies that this conversation occurred. However, even if the conversation occurred and constituted improper campaigning, there would be no effect on the outcome of the election.

You alleged that your boss, incumbent Business Manager [REDACTED], directed you to purchase televisions and other electronics to be used as Brothers' Club raffle prizes and that you then complied with this request while you were on work hours and while using a union vehicle. The Department's investigation revealed that you purchased these televisions and other items prior to the Labor Day picnic in September 2009. The Department determined that at the time you purchased these items it was not clear that the raffle prizes or proceeds from the sale of the raffle tickets would be used to contribute to the [REDACTED] campaign. The Department's investigation disclosed that at the time you purchased these items, the "[REDACTED]" had not yet been formed and there was no campaigning involved with the Brothers' Club raffle. Consequently, your use of a union vehicle and union time does not constitute a violation of section 401(g) because there is insufficient evidence that the raffle prizes were intended to promote any particular candidate at the time you made the purchases.

In a closely related allegation, it was asserted that [REDACTED], who was a candidate for Business Manager in the 2010 election, used Brothers' Club funds raised through the raffle ticket sales to support the [REDACTED] campaign in violation of section 401(g). Specifically, it was alleged that Local 1191 officers and business agents were required to work during the union's Labor Day picnic, and were instructed to sell Brothers' Club raffle tickets while working at the picnic. It was stated that prior to the picnic, [REDACTED]

told the business agents to sell these raffle tickets and that the proceeds would help support his election campaign.

The Department's investigation confirmed that funds from the Brothers' Club were used to promote the ██████████ during the election period. However, the use of these funds is not, by itself, a violation of the LMRDA. The Brothers' Club is a fund administered by Local 1191 officers and business agents that is funded through officer and business agent donations and raffle ticket sales. The Brothers' Club is not supported by union money or dues. Since the fund does not constitute "moneys received by [a] labor organization," disbursements from the fund to support the Aaron Slate campaign did not violate section 401(g).

The Department investigated the allegation that the Brothers' Club fund should be considered union resources used in violation of section 401(g) because Local 1191 officers and business agents were on union time at the Labor Day picnic and therefore union resources were used for the raffle ticket sales that contributed to the fund and, ultimately, to the ██████████ campaign. The investigation revealed conflicting evidence regarding whether officers and business agents were required to be at the picnic and were thus on union time. But even assuming that officers and business agents were on union time when selling the Brothers' Club raffle tickets, the sale of raffle tickets was incidental to the union business of running the picnic. The Department's interpretive regulations indicate that campaigning incidental to regular union business is not a violation of the Act. 29 C.F.R. § 452.76.

Further, the Department found insufficient evidence to support the claim that ██████████ instructed officers and business agents to sell the raffle tickets for the purpose of promoting his campaign. This claim is also undermined by the timing of the picnic, five months before the ██████████ was announced and seven months before any funds from the Brothers' Club account were disbursed for the ██████████ campaign. Accordingly, there was no violation.

You alleged that supervisors working for Ric-man told their Local 1191 employees to vote for the ██████████. Section 401(g) prohibits the use of employer funds or resources to promote any candidate for office. Specifically, you allege that two individuals working for Ric-man, who you could not identify in any way, told you that their supervisors instructed them to vote for the ██████████ in the upcoming election. The Department interviewed supervisors and employees at Ric-man and found no information supporting your allegation about supervisors promoting the ██████████. There was no violation of the Act.

You also alleged that AAA, the company with which Local 1191 contracted to conduct the election, failed to follow the union's constitution and bylaws when it did not use separate P.O. boxes for properly returned ballots and those returned as "undeliverable." Section 401(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 Department's investigation found that the LIUNA Election Guide recommends that the union use separate P.O. boxes to receive ballots; however, this is a recommendation, not a requirement. The LIUNA Constitution and Bylaws also do not mandate that a local union use separate P.O. boxes during its election. Further, the Department determined that AAA receives mail daily from the post office in a secured lock-box, which only AAA and the postal workers may access. There was no violation.

You alleged that Local 1191 failed to provide proper notice of the election and denied members the right to vote in the election. Section 401(e) requires that every member in good standing be entitled to vote in elections under Title IV of the LMRDA. Section 401(e) also requires that at least 15 days prior to an election, unions must mail notice of the election to each member at his or her last known home address. In your complaint, you questioned whether all members received notice of election or if notice was only sent to members in good standing. In addition, you alleged that one member, [REDACTED], received two ballots.

During its review of the election records, the Department determined that notice was sent to all members, not only to members in good standing. With respect to [REDACTED], the investigation found that he was issued a duplicate ballot during the course of the election. Although [REDACTED] submitted both ballots for consideration, only [REDACTED]'s duplicate ballot was counted. We note that the Department found that, for unknown reasons, one member was not sent a ballot until June 14, 2010 (less than 15 days prior to the election). To the extent that there was an administrative error regarding the mailing list, it would have only affected this one member. There was no violation that may have affected the outcome of the election.

You next alleged that the union failed to inform you of the ballot preparation process, failed to provide you with an accounting for all printed ballots, and failed to properly maintain custody of the ballots prior to the tally. Section 401(c) of the LMRDA provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. During the Department's investigation, you admitted that you never requested an accounting of all printed ballots and that you voluntarily declined to witness the ballot preparation and collection. The Department found that members

were permitted to observe the ballot preparation and some members took advantage of this opportunity to observe. Further, the Department found no areas of concern relating to AAA securely maintaining custody of the ballots. There were no violations of the LMRDA.

You alleged that the union did not permit observers to be present when the post office delivered the return ballots to AAA. Section 401(c) provides, in pertinent part, 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 Department's investigation found that Election Committee (EC) Chief ██████ permitted individuals to meet him at the AAA site in order to observe delivered returned ballots. While there may have been some miscommunication between EC Chief ██████ and some opposition slate candidates regarding whether witnesses could observe receipt of the ballots, it does not appear that any member requested and was denied the opportunity to observe the returned ballots. There was no violation of the LMRDA.

In a related allegation, you asserted that witnesses were denied the right to observe the opening of ballots and the voter eligibility check. The right to observe includes the right to be present at the time that eligibility determinations are made. During the Department's investigation, you stated that you no longer believed that ballots were opened by AAA outside the presence of observers. AAA officials, as well as members of the Election Committee, denied that any ballots were opened before observers were present.

But, regarding AAA's eligibility check, the Department found that AAA determined eligibility as ballots were received with no observers present. While there is no evidence establishing that candidates were denied the ability to be present when AAA received ballots, there was miscommunication between the Election Committee and some candidates on this issue. Although it is a violation of section 401(c) to deny candidates the right to observe the eligibility check, the Department's investigation did not disclose evidence showing that any candidates requested and were denied access to AAA for the purpose of observing the eligibility check. Further, there is no evidence that AAA's eligibility check was inaccurate. Thus, there was no violation that may have affected the outcome of the election.

You also alleged that voter secrecy was compromised because ballots that were not returned in the secret ballot envelopes were counted in the tally. Section 401(b) requires that local labor organizations hold elections by secret ballot. The Department's investigation found that no ballot packages were opened prior to observers being present; however, ballots not cast in secret ballot envelopes were counted by AAA, pursuant to the Election Committee's instructions. The Department's review of the

election records disclosed that there were 1,066 return ballot envelopes and 1,033 secret ballot envelopes, leaving 33 ballots not in secret ballot envelopes. Both AAA and the Election Committee asserted that no one could see how a member voted because the ballots were immediately separated from the return envelope, folded shut, and mixed with all other ballots. Despite the fact that ballots not in secret ballot envelopes were included in the tally, the Department did not find any evidence showing that voter secrecy was compromised. Accordingly, there was no violation of section 401(b).

You alleged that four employers conspired to have 388 of their employees collect blank ballots and turn the blank ballots over to the United Slate (one of the opposition slates) to be voted in the election. You stated that former Business Manager [REDACTED] and complainants [REDACTED] and [REDACTED] (members of the United Slate), were the source of this information.

During the Department's investigation, [REDACTED] and [REDACTED] provided signed statements admitting that this was a fabrication. [REDACTED], [REDACTED], and [REDACTED] admitted that they never collected blank ballots. Further, no United Slate candidate received as many as 388 votes. Since the individuals who provided you with the information that formed the basis for your allegation admitted that the information was fabricated, and there is no evidence supporting their original story, there is no violation of the Act.

Finally, you alleged that the Secretary-Treasurer's position was listed on the ballot as an ex-officio District Council Delegate without the requisite approval of the union's executive board or membership. This issue was protested for the first time in your complaint to the Department. Since internal union protest procedures were not properly exhausted, as required by section 402(a), the Department did not investigate this allegation. *See* 29 U.S.C. § 482(a).

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  
Chief, Division of Enforcement

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April 15, 2011

[REDACTED]

[REDACTED]

Dear Messrs. [REDACTED] and [REDACTED]

This Statement of Reasons is in response to your November 18, 2010 complaint filed with the United States Department of Labor 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 conducted by the Laborers' International Union of North America (LIUNA) Local 1191 on June 23, 2010.

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 occurred which may have affected the outcome of the election.

You alleged that [REDACTED], who was a candidate for Business Manager in the 2010 election, used Brothers' Club funds raised through the raffle ticket sales to support the [REDACTED] campaign in violation of section 401(g) of the LMRDA. Section 401(g) prohibits the use of union funds to promote any candidate for office. Specifically, you assert that Local 1191 officers and business agents were required to work during the union's Labor Day picnic, and were instructed to sell Brothers' Club raffle tickets while working at the picnic. You state that prior to the picnic, Aaron told the business agents to sell these raffle tickets and that the proceeds would help support his election campaign.

The Department's investigation confirmed that funds from the Brother's Club were used to promote the [REDACTED] during the election period. However, the use of these funds is not, by itself, a violation of the LMRDA. The Brothers' Club is a fund administered by Local 1191 officers and business agents that is funded through officer

and business agent donations and raffle ticket sales. The Brothers' Club is not supported by union money or dues. Since the fund does not constitute "moneys received by [a] labor organization," disbursements from the fund to support the [REDACTED] campaign did not violate section 401(g).

You assert that the Brothers' Club fund should be considered union resources used in violation of section 401(g) because Local 1191 officers and business agents were on union time at the Labor Day picnic and, therefore, union resources were used for the raffle ticket sales that contributed to the fund, and ultimately, to the [REDACTED] campaign. The Department's investigation revealed conflicting evidence regarding whether officers and business agents were required to be at the picnic and were thus on union time. But even assuming that the officers and business agents were on union time when selling the Brothers' Club raffle tickets, the sale of the raffle tickets was incidental to the union business of running the picnic. The Department's interpretive regulations indicate that campaigning incidental to regular union business is not a violation of the Act. 29 C.F.R. § 452.76. Further, the Department found insufficient evidence to support the claim that [REDACTED] instructed officers and business agents to sell the raffle tickets for the purpose of promoting his campaign. This claim is also undermined by the timing of the picnic, five months before the [REDACTED] was announced and seven months before any funds from the Brothers' Club were disbursed for the [REDACTED] campaign. Accordingly, there was no violation.

You also alleged that AAA, the company with which Local 1191 contracted to conduct the election, failed to follow the union's constitution and bylaws when it did not use separate P.O. boxes for properly returned ballots and those returned "undeliverable," in violation of section 401(c) of the LMRDA. 29 U.S.C. § 481(c). Section 401(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 Department's investigation found that the LIUNA Election Guide recommends that the union use separate P.O. boxes to receive ballots; however, this is a recommendation, not a requirement. The LIUNA Constitution and Bylaws also do not mandate that a local union use separate P.O. boxes during its election. Further, the Department determined that AAA receives mail daily from the post office in a secured lock-box, which only AAA and the postal workers may access. There was no violation.

You next alleged that AAA and the Election Committee failed to obtain good mailing addresses for resending ballots that were returned undeliverable in violation of section 401(e) of the LMRDA. 29 U.S.C. § 481(e). Section 401(e) requires that every member in good standing be entitled to vote in elections under Title IV of the LMRDA. Section 401(e) also requires that at least 15 days prior to an election, unions must mail notice of the election to each member at his or her last known home address. You have alleged

that AAA and the Election Committee failed to take reasonable steps to correct known bad addresses once ballots were returned undeliverable. The Department reviewed the election records and found that 34 ballots were returned undeliverable prior to the tally. AAA and the Election Committee made efforts to find good addresses for all undeliverable ballots and were able to successfully resend 12 of the 34 to good addresses. Accordingly, there was no violation of the Act.

You alleged that the union did not permit observers to be present when the post office delivered the return ballots to AAA in violation of section 401(c) of the LMRDA. 29 U.S.C. § 481(c). Section 401(c) provides, in pertinent part, 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 Department's investigation found that Election Committee (EC) Chief ██████ permitted individuals to meet him at the AAA site in order to observe delivered returned ballots. While there may have been some miscommunication between EC Chief ██████ and some opposition slate candidates regarding whether witnesses could observe the ballots, it does not appear that any member requested and was denied the opportunity to observe the returned ballots. There was no violation of the LMRDA.

In a related allegation, you asserted that witnesses were denied the right to observe the opening of ballots and the voter eligibility check in violation of section 401(c) of the LMRDA. 29 U.S.C. § 481(c). The right to observe includes the right to be present at the time that eligibility determinations are made. During the Department's investigation, you stated that you no longer believed that ballots were opened by AAA outside the presence of observers. AAA officials, as well as members of the Election Committee, denied that any ballots were opened before observers were present. But, regarding AAA's eligibility check, the Department found that AAA determined eligibility as ballots were received with no observers present. While there is no evidence establishing that candidates were denied the ability to be present when AAA received ballots, there was miscommunication between the Election Committee and some candidates on this issue. Although it is a violation of section 401(c) to deny candidates the right to observe the eligibility check, the Department's investigation did not disclose evidence showing that any candidates requested and were denied access to AAA for the purposes of observing the eligibility check. Further, there was no evidence that AAA's eligibility check was inaccurate. Thus, there was no violation that may have affected the outcome of the election.

You also alleged that voter secrecy was compromised in violation of section 401(b) of the LMRDA because ballots that were not returned in the secret ballot envelopes were counted in the tally. 29 U.S.C. § 481(b). Section 401(b) requires that local labor organizations hold elections by secret ballot. The Department's investigation found that no ballot packages were opened prior to observers being present; however, ballots not

cast in secret ballot envelopes were counted by AAA, pursuant to the Election Committee's instructions. The Department's review of the election records disclosed that there were 1,066 return ballot envelopes and 1,033 secret ballot envelopes, leaving 33 ballots not in secret ballot envelopes. Both AAA and the Election Committee asserted that no one could see how a member voted because the ballots were immediately separated from the return envelope, folded shut, and mixed with all other ballots. Despite the fact that ballots not in secret ballot envelopes were included in the tally, the Department did not find any evidence showing that voter secrecy was compromised. Accordingly, there was no violation of section 401(b).

You next alleged that you were denied the right to observe the preparation and mailing of the ballots in violation of section 401(c) of the LMRDA. 29 U.S.C. § 481(c). Section 401(c) provides, in pertinent part, that adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the mailing of ballots. During the Department's investigation, you both provided sworn statements declaring that you were in fact present when the ballot envelopes were stuffed for mailing. You both stated that you chose to leave early, but were at no point denied the right to observe the ballot preparation and mailing. There was no violation.

You also alleged that that Election Committee denied at least three of your slate's observers access to the tally in violation of section 401(c). Section 401(c) provides, in pertinent part, that adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the tally. Local 1191's Constitution and Bylaws require that if candidates wish to have observers present at the tally, then the candidate must submit the observer's name to the Election Committee in writing by the day of the election tally. *See* Local 1191 Constitution, Art. VI, Sec. 3(b). You stated that you were not notified of this provision. The Election Committee confirmed that this requirement was applied uniformly to all candidates and the Department found no evidence to dispute the Election Committee. Finally, during the Department's investigation, you admitted that the United Slate had numerous observers present at the tally, such that United Slate observers witnessed all the various aspects of the tally. The United Slate was not disadvantaged by the denial of three observers. Accordingly, there is no violation which may have affected the outcome of the election.

Finally, you alleged that the Secretary-Treasurer position was listed on the ballot as an ex-officio District Council Delegate without the requisite approval of the union's executive board or membership, in violation of section 401(e) of the LMRDA. 29 U.S.C. § 481(e). Since internal union protest procedures were not properly exhausted, as required by section 402(a), the Department did not investigate this allegation. *See* 29 U.S.C. § 482(a).

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  
Chief, Division of Enforcement

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