



January 5, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on September 1, 2011. Your complaint alleges that numerous violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the June 24-25, 2011 election of officers for Laborers International Union of America (LIUNA) Local 1197.

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 there was no violation affecting the outcome of the election.

First, you allege that members were denied a reasonable opportunity to vote in violation of Section 401(e) of the LMRDA. 29 CFR 452.94 provides that:

. . . there is an obligation on the labor organization to conduct its periodic election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. A union may meet this obligation in a variety of ways, depending on factors such as the distance between the members' work site or homes and the polling place, the means of transportation available, the nature of the members' occupations, and their hours of work.

You specifically allege that a significant number of members either lived or worked 100 or more miles away from the polling site. You also contend that 51 members worked at jobs located 90 or more miles away from the polling site.

The Department investigated the distance between the members' homes or work sites and the polling place and determined that there were 1,323 eligible members and 382 of them voted (a 29% turnout rate). The polling site was open for voting between 4 p.m. and 8 p.m. on June 24, 2011 and between 7 a.m. and 11 a.m. on June 25, 2011. Of all eligible voters, 342 live 1.5 or more hours from the polling site and 68 of them voted (a

20% turnout rate). There were 152 members live two or more hours from the polling site and 16 of them voted (a 10.5% turnout rate). The investigation also concluded that at least 15 employers are located more than 1.5 hours from the polling site with 196 members (15% of eligible members) working at those employers. Nine of the 196 members voted (a 4.6% turnout rate). Although these distances are not insignificant, there is no hard and fast rule regarding the maximum allowable geographic distance to the polls, and the geographical dispersion of the members in the instant case does not itself establish a violation.

OLMS identified nine employers for whom members could have been working on both days that the polls were open - Friday June 24 and Saturday June 25. There were 21 members working at those employers' worksites on both days and five of them voted. The five members who voted worked an eight hour shift on June 24. The other 16 members who did not vote on either day worked between eight and 14 hours on June 24. All 21 members worked between 7.5 and 10 hours on June 25. Based on the hours of members' work and the hours the polls were open, OLMS concluded that a violation of Section 401(e) of the LMRDA occurred because members could not have made it to the polls and there was no opportunity for absentee voting. However, the violation could not have affected the outcome of the election because the number of members precluded from voting was not more than 16 and the smallest winning margin was 137 votes.

Second, you allege that a Field Representative campaigned while working for the union and driving a union vehicle in violation of Section 401(g) of the LMRDA. Section 401(g) prohibits the use of union resources to promote the candidacy of any person. Specifically, you allege that the Field Representative distributed campaign literature at a bridge job in Effingham, Illinois while working for the local and driving a union vehicle. You also allege that the Field Representative verbally campaigned while at a job site at a bank in McLeansboro, Illinois.

Union officers and employees may, however, use their personal funds or property to campaign. Article III, Section G1 of the Rules for 2011 LIUNA Convention Delegates provides that campaigning during paid vacation, lunch, breaks, or other paid time off is permitted. Article III, Section G3 also provides that union officers and employees provided with union-owned or leased cars, and who are allowed to use those cars for personal use, may also use them for campaign activities provided that no costs or expenses incurred are paid from union funds.

The investigation determined that the only time the Field Representative discussed the election on a job site was while he was on vacation on June 21, 2011. In addition, he stated he had driven his wife's car to the job site and there is no evidence to the contrary. There was no violation of the LMRDA.

Third, you allege that members received campaign phone calls, some of them on their personal cell phones, from incumbents in violation of Section 401(g) of the LMRDA. Specifically, you allege that incumbents made these calls on union-issued cell phones and/or used a union list of members or union-issued cell phone contact lists to obtain members' phone numbers.

During the investigation, the incumbents admitted to making campaign calls, but stated they had used their home phones or their wives' cell phones to make the calls. In addition, the incumbents stated that they obtained members' phone numbers from their personal relationships or from listings in the public phone books. Overall, the interviews of those members who received campaign calls did not substantiate that union-issued cell phones or union lists were used to make those calls. One member asserted that the union had his number for business reasons, and that he had not given out his number for any other reason. However, even assuming the call to that member was made using a union list, the potential violation could not have affected the outcome of the election given the closest winning margin of 137 votes.

For the reasons set forth above, the Department concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on these matters.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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