



February 10, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor on September 19, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) occurred in connection with the election of officers of International Brotherhood of Electrical Workers Local 102 conducted on July 20, 2011, by mail ballot.

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

You alleged that the local permitted ineligible members to vote in the July 20, 2011, election when it permitted former members of Local 2066 to vote. Section 401(e) of the LMRDA provides, in relevant part, that all members in good standing are eligible to vote. Article XIII, section 3 of the IBEW Constitution provides that the International President has the right and the power to merge or amalgamate local unions in any community or section. The investigation disclosed that the International President recommended that Local 2066 and Local 102 merge, because Local 2066 was experiencing financial difficulties in 2007 and 2008. The executive board for each of these locals agreed to the merger, which took place in November 2009. Once the merger occurred, the former Local 2066 members became members of Local 102 entitled to vote in elections, including the July 20, 2011 election. There was no violation.

You alleged that your slate was denied access to a list of worksites of manufacturers, all of whom were former employers of Local 2066. Specifically, you alleged that those work site lists were available to the incumbent slate but not provided to you or your slate. Section 401(c) of the LMRDA requires that adequate safeguards to ensure a fair election be provided. Such safeguards include equal treatment of candidates. See 29 C.F.R. § 452.67. The investigation disclosed that a list of manufacturers' worksites was readily available to any Local 102 member, including you, on page three of the Local 102 Bylaws and on Local 102's website. You were not denied access to that list of manufacturers' worksites. There was no unequal treatment and there was no violation.

In a related allegation, you alleged that the manufacturer employers denied you access to their worksites but permitted the incumbent slate access. Section 401(g) of the LMRDA provides, in relevant part, that no moneys of an employer shall be contributed to promote the candidacy of any person in an election. This provision's prohibition encompasses the contribution of an employer's resources and property to promote anyone's candidacy. 29 C.F.R. § 452.78. The employers of former Local 2066 have their own policies with regard to campaigning on their property. Some employers permit limited campaigning in non-work areas, but require advance notice of intent to campaign, while others prohibit any campaigning. Under the LMRDA, employers may determine for themselves whether to permit or prohibit campaigning on their premises, as long as the employer's policy is uniformly imposed. *See* 29 C.F.R. § 452.78.

The investigation disclosed that no member of your slate made any arrangements to obtain permission from any of the employers who permitted campaigning in non-work areas. By contrast, the incumbent slate obtained advance permission from such employers. In other instances, your slate members were denied access to certain employers because those employers prohibited any campaigning. The investigation disclosed that no incumbent slate member campaigned at any of the worksites that prohibit campaigning. The employers in question provided the incumbent slate with the same opportunities that it provided to your slate, and did not promote any candidate's candidacy. There was no violation.

You alleged that the local provided your opposition with a longer period of time to submit their biographies. Section 401(g) of the LMRDA permits unions to issue information sheets containing biographical data on all candidates so long as all candidates are given equal opportunity to submit such data. 29 C.F.R. § 452.74. At a June 9 Candidates' Meeting, candidates were advised to submit their biographies as soon as possible, but no deadline was announced. The investigation disclosed that all biographies were submitted between June 9 and June 21; all biographies were printed and mailed on June 27, 2011 to all members. Consequently, it made no difference when a candidate submitted his or her biography to the local. The decision concerning when to submit a biography was in each candidate's hands. There was no violation.

You alleged that the biography of [REDACTED], a member of your slate, was not accurately displayed on the ballot. Section 401(c) of the LMRDA, provides, in relevant part, that adequate safeguards to insure a fair election shall be provided. Candidates displayed their biographies in English and Spanish. Electec Corp., a company hired by the local to conduct balloting, also provided translation for the biographies. The investigation disclosed that the title of [REDACTED] position of Business Manager was incorrectly shown in his biography. [REDACTED] position was written in Spanish for both the English and Spanish versions. Moreover, for the English version, his candidacy was identified as "Candidato Manger del negocio" while in the Spanish

version it was displayed as “Gerente de Negocios.” Even if this inadvertent mistake could be deemed a violation of the adequate safeguards provision, it does not appear that the violation may have affected the outcome of the election because [REDACTED] sent out campaign mailings through the local to all members, campaign material that correctly identified the office for which he was running. *See* 29 U.S.C. § 402(c)(2); 29 C.F.R. § 452.136(b) (Department will not pursue new election where no probable cause that outcome of election affected). There was no violation that may have affected the outcome of the election.

You alleged that a local business agent who supported the incumbent slate used the local’s computer to access the local’s membership list containing members’ emails and telephone numbers. Section 401(g) of the LMRDA prohibits, among other things, the use of a union’s resources to promote any person’s candidacy. [REDACTED] the Financial Secretary, in his signed statement to the Department, stated that he had compiled a list of approximately 350 email addresses of local members over the years in his capacity as a member, not a union official. He further stated that he used the email addresses from his home, using his personal computer. The Department’s analysis comparing [REDACTED] personal list with the local’s 1,776 email addresses of its members showed that there were 274 overlapping names. The two lists were stored using different programs. The evidence indicated that [REDACTED] list was not the same one used by the local. There was no violation.

You alleged that Business Agent [REDACTED] was provided with a copy of the local’s list of members’ emails, and that [REDACTED] used that list to mail campaign literature. You assert that you should have been provided with this same list. Section 401(c) of the LMRDA requires that all labor unions refrain from discrimination between candidates in the use of lists of members. The investigation disclosed that the office manager, who transmitted the membership list to the mailer, denied providing any other copies of members’ email addresses to any member or candidate, and provided a written and signed statement to that effect. Moreover, [REDACTED] provided a similar written and signed statement denying he had ever asked for or received a list of members’ email addresses or telephone numbers. There was no credible evidence that [REDACTED] requested or received a list of members’ email addresses or telephone numbers. There was no violation.

You alleged that candidates running for local executive board were ineligible to run for office because they were project managers. You were unable to identify any candidate who was a project manager. Section 401(e) of the LMRDA provides in relevant part that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. The International Constitution prohibits certain categories of members from holding office. Article XV, Section 5, of the IBEW Constitution provides, in relevant part that “No Local Union shall allow any

member who becomes an electrical employer, or a partner in an electrical employing concern, to hold office in the Local Union or attend any of its meetings, or vote in any election of a Local Union. The Local Union shall allow such a member to continue his membership in the Local Union or take a withdrawal card for deposit in the I.O.”

The investigation disclosed that the local verified each nominee’s employer status by researching the New Jersey Division of Consumer Affairs website to determine whether the nominee held a state electrical license with a business permit. Such a permit would indicate that the member is an electrical contractor and therefore ineligible to run for office. The investigation confirmed that none of the nominees held a business permit. Nor did any nominee hold a position of project manager, a position not covered by the CBA, and one which would disqualify any member holding such a position from running for office. There was no violation.

For the reasons set forth above, your administrative complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

cc: Edwin D. Hill, International President
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