



July 11, 2013



Dear [REDACTED]

This Statement of Reasons is in response to your March 4, 2013 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by Transport Workers Union (TWU) Local 241 on November 7, 2012.

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

You alleged that Local 241 denied you access to the Jewish Theological Seminary (JTS) worksite to campaign, while permitting other candidates access to the worksite in violation of section 401(c) of the LMRDA. Specifically, you alleged that a shop steward did not respond to your request to gain access to the JTS in a timely manner.

Section 401(c) of the LMRDA requires unions to refrain from discrimination in favor or against any candidate. The Department's investigation revealed that Local 241 held a candidates' meeting on October 17, 2012, which you and other candidates attended. Also in attendance was the local's shop steward for the JTS worksite. The investigation found that at least four of the candidates present asked the shop steward for his telephone number, and shortly thereafter contacted him and arranged to visit the JTS site to campaign to members. You, however, did not email the JTS shop steward to request access to the JTS worksite until October 23, 2012. At that time, the shop steward's work email service had not yet been configured on his new personal cellular phone. He could, however, receive phone calls and voice mails. The JTS human resources manager confirmed that the shop steward receives and responds to work emails on his personal cellular phone since JTS does not provide the shop steward with a computer.

The record reflects that the JTS building was closed between October 29 and November 1, 2012 because of Hurricane Sandy. JTS is regularly closed on Fridays and thus, was not accessible on November 2. It was not until Monday, November 5 when the shop steward was able to view your email request. He immediately responded by email and informed you that you could visit the JTS site the next day, November 6. The shop steward also left you a voicemail message with this same information. You failed to respond to either message. There is no evidence that Local 241 denied any candidate access to JTS. Accordingly, there was no violation of the LMRDA.

You alleged that [REDACTED] a candidate for vice president, used employer funds to campaign in violation of 401(g) of the LMRDA. Specifically, you alleged that [REDACTED] while on employer-paid time, drove members who worked at Columbia University's Bakers Field Athletic Department and were also on employer paid time, to vote at the union hall polling site as an attempt to influence and buy their votes. You claimed that [REDACTED] and these members were on duty.

The Department reviewed [REDACTED] timecard records and confirmed that [REDACTED] took a vacation day on November 7. Although you provided the name of a witness who saw [REDACTED] picking up 10 members from Bakers Field, the statement of your witness along with other members' statements, supports the notion that these members were on their lunch break during this time. There was no violation of the LMRDA.

You alleged that Local 241 failed to maintain adequate safeguards, by allowing vice presidential candidate [REDACTED] to drive Election Services Solution (ESS) official [REDACTED] from the union office to the Lamont-Doherty Earth Observatory polling site located in Palisades, New York. ESS was the company hired by the union to conduct the balloting. [REDACTED] had with him, the ballot box to be used at the Lamont-Doherty site. Section 401(c) of the LMRDA provides, among other things, that "adequate safeguards to insure a fair election shall be provided."

The Department's investigation showed that Local 241 had agreed to provide ESS officials transportation to the six polling sites during the election. Because of the conditions following Hurricane Sandy, taxi services were limited, causing [REDACTED] to be without transportation to the Lamont-Doherty polling site. No one from the election committee was able to leave his or her post. As a result, [REDACTED] volunteered to transport [REDACTED] to the site.

Both [REDACTED] and [REDACTED] testified that at all times [REDACTED] maintained possession of the ballot box. Their testimony is supported by the fact that when [REDACTED] arrived at the site, he assembled the folded metal ballot box in front of the 10 members present who examined the ballot box. The investigation revealed that only 10 of the members listed on the Lamont-Doherty voter eligibility list actually signed in and voted in the election.

The Lamont-Doherty polling site issued yellow voting ballots. The Department's investigation accounted for all 10 of these yellow ballots. An examination of these 10 ballots revealed no indication of fraud or tampering. In any event, these 10 ballots would not have affected the outcome of the election inasmuch as the smallest margin of victory was 14 votes.

You alleged that Local 241 provided ESS officials with an incorrect voter eligibility list for the Black Building polling site, thereby preventing eligible Public Safety members from voting in the election. Section 401(e) of the LMRDA provides that every member in good standing is entitled to one vote and have that vote counted.

The Department's investigation found that while the Black Building polling site initially did not have a complete list with the eligible Public Safety members when the polls opened, the ESS officials quickly remedied the problem. Immediately, the entire list, including the Public Safety members, was reprinted and delivered to an ESS teller. Furthermore, the eight Public Safety members who appeared to vote during the early polling hours before the completed list arrived were allowed to cast challenged ballots. The names on the challenged ballot envelopes were cross-referenced against the completed voter eligibility list, and each of the eight Public Safety members who cast a challenged ballot was deemed eligible. Upon that determination, the ESS official removed the ballots from the challenged ballot envelopes and added them with the rest of the ballots for tallying. There was no violation of the LMRDA.

You alleged that the incumbent president, Sebastian DiPalma, who ran unopposed for recording secretary in this election, used employer funds to campaign, in violation of 401(g) of the LMRDA. Specifically, you alleged that DiPalma stood outside the union hall dressed in his Columbia University locksmith uniform to "meet and greet" members during the election.

There was no evidence that DiPalma campaigned on November 7. Instead, the investigation revealed that while DiPalma had expected to work on November 7, he received several calls from members experiencing problems with their pay because of Hurricane Sandy. DiPalma instructed members to meet him outside the union hall as he needed to go there to obtain the documents and information necessary for him to assist them. [REDACTED] a Columbia University human resources coordinator, confirmed that she communicated with DiPalma regarding employees' payroll matters. Additionally, DiPalma's timecard reflects that he was paid by the union for lost time on November 7. There was no violation of the LMRDA.

You alleged that Local 241 failed to maintain adequate safeguards when ESS officials tallied the votes hurriedly and did not place the tally sheets in the elections records box.

The Department's investigation revealed that ESS counted the ballots in three teams of two tellers. The ballots were recounted for accuracy due to the close margin of victory in the president's race. The recount confirmed the tally results for the president race. An ESS official explained that the tally sheets were not placed in the election records box because ESS needed those tally sheets in order to prepare its Election Certification Results to Local 241. ESS effectively maintained the tally sheets and produced them for the Department's investigation. We found no evidence of tampering or discrepancies that would change the outcome of the election. Accordingly, there was no violation of the LMRDA.

In addition to the allegations discussed above, the Department notes that you included in your complaint three allegations which were not raised in your initial internal protest to Local 241. These allegations were not properly exhausted pursuant to section 402 of the LMRDA. *See* 29 U.S.C. § 482. Accordingly, these allegations were outside the scope of the investigation. You also make several other allegations that, even if true, would not violate requirements of Title IV of the Act and, thus, were also not included in the investigation.

For the reasons set forth above, it is concluded that no violation of the LMRDA affecting the outcome of the election occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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