



May 13, 2013



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on February 1, 2013, with the U.S. Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Brotherhood of Teamsters, Local 822, on October 24, 2012.

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

You alleged that two post office boxes were purchased by two members of the opposing slate to collect ballots during the local's election, that there was no accountability of the keys to the mailboxes, and that Local 822's post office repository system was compromised. The LMRDA requires that labor organizations provide adequate safeguards to ensure fair elections. 29 U.S.C. § 481(c). Pursuant to this provision, a labor organization's wide range of discretion regarding the conduct of the election is circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110.

The election was run by members of Joint Council 83; no members of Local 822 were on the election committee. However, two incumbents running for reelection purchased the two post office boxes for use during the election: Trustee James Seymore completed the application for the first post office box (Box 41181), which received the returned undeliverable ballots. Recording Secretary Steve Jacobs completed the application for the second post office box (Box 12061), which received the returned voted ballots. These two mailboxes were located at the same post office where the union received its regular mail.

The investigation revealed that the candidates for election who obtained the mailboxes did not retain keys to the mailboxes. As to Box 41181, Seymore received two keys, which he turned over to election committee member [REDACTED]. The investigation

determined that the keys were used once by election committee member [REDACTED] to retrieve the returned undeliverable ballots. You and the other candidates were notified before he went to the post office for that purpose, and you were present when [REDACTED] accessed Box 41181. There was no evidence that Box 41181 was accessed by anyone else at any time.

As to Box 12061, no one received any keys. There was no evidence that anyone accessed Box 12061 until [REDACTED] picked up the ballots from the post office on the day of the election. At that time, the postal clerk was asked to empty the post office box. There was no violation with regard to the local's use of the post office boxes to collect ballots.

You alleged that, during the ballot tally, you observed that approximately 200 ballots were marked with a Sharpie marker in an almost identical fashion for the [REDACTED] slate, which ran in opposition to the [REDACTED] slate that you headed. You stated that your observers, [REDACTED] and [REDACTED], made comments about the similar-looking ballots. However, you acknowledged that you did not challenge any ballots on this basis.

Joint Council office administrator [REDACTED] attorney [REDACTED] [REDACTED] of Local 95, and [REDACTED] – all of whom observed the ballot tally and none of whom is a member of Local 822 – stated that they noticed nothing similar about the way the ballots were marked. They also stated that they heard nothing during the tally about similar-looking ballots.

The Department reviewed the ballots. Of the 714 ballots returned, 28 were marked with Sharpie markers: 18 in thick black, 1 in thick blue, and 9 in thin black. Of those 28 ballots, 23 were cast for the [REDACTED] slate, 2 for the [REDACTED] slate, and 3 for mixed candidates. There was no consistency in the ways the ballots were marked and no evidence that a single person voted multiple ballots. During the Department's investigation, [REDACTED] and [REDACTED] were given the opportunity to inspect the ballots, which included the 28 ballots marked with Sharpies as described above.

You then alleged that the box in which the ballots were kept had been tampered with. However, you acknowledged that, on the day of the ballot tally, you watched the ballots go into the box, which was then sealed and signed at the top by you and the observers. The seal on the top of the box was intact when the Department picked up the records. There was no evidence that the bottom of the box had been tampered with to allow ballots to be removed or switched. There was no violation.

You alleged that the ballot totals did not match the number of the ballots counted and that the number of ballots mailed was not provided to you. Specifically, you stated that the local had more than 3,000 ballots printed for only 2,300 members and that you never saw the extra, unmailed ballots. The LMRDA provides for the proper counting and reporting of ballots. 29 U.S.C. § 481(e). The regulations specify that "the counting and

reporting should account for all ballots cast in the election.” 29 C.F.R. § 452.108. Even where there has been a violation of the LMRDA, the violation is actionable only if it “may have affected the outcome of an election.” 29 U.S.C. § 482(c)(2).

The investigation revealed no evidence of ballot fraud or tampering. The extra, unmailed ballots were kept in [REDACTED] locked Joint Council 83 office in Richmond. No member of the local had a key to that office, and no member of the local visited that office during the relevant time. In addition, as noted above, the voted ballots were held in a sealed box until the Department picked up the records, and there was no evidence that the box had been tampered with.

The investigation revealed a discrepancy between the number of ballots the Ben Franklin Printing Company stated it printed for the election (3,000) and the number of ballots the election committee stated it received from the printing company (3,132). The election committee originally mailed 2,229 ballots. It received 261 duplicate ballot requests; these were faxed to [REDACTED] with no other record maintained. As noted above, [REDACTED] picked up the returned undeliverable ballots during the election. The number of undeliverable ballots he retrieved was 32, but it is unclear whether those 32 were additional to or included in the 261 duplicate ballot requests. Finally, there were 555 unused ballots in the election records. Thus, the investigation revealed that the total number of ballots accounted for was between 3,045 and 3,077, between 55 and 87 ballots short of the number the election committee stated it received from the printing company. The smallest margin between winning and losing candidates was 389 votes. Thus, the 55 to 87 ballots that were unaccounted for could not have changed the outcome of any race. There was no violation that could have affected the outcome of the election.

You raised several other issues during the investigation that were not investigated because they were not timely invoked and exhausted in accordance with the union election protest procedures, as required by section 402(a) of the LMRDA, 29 U.S.C. § 482(a). The Secretary lacks the authority to consider the merits of these issues.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I am closing our file regarding this matter.

Sincerely,

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Chief, Division of Enforcement

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