



June 30, 2014



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on December 9, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the International Union of Operating Engineers, Local 701, on August 1, 2013.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA. Following is an explanation of this conclusion.

You alleged that the incumbent business manager, Nelda Wilson, had access to a list of members' names, addresses and email information; Wilson used this information to campaign, and she denied your request for such information.

Section 401(c) of the LMRDA requires a union to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use a list of members in any way other than the right of inspection granted under the LMRDA, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. 29 C.F.R. § 452.71(b).

The investigation disclosed that there was no discriminatory use of a union list of members. Specifically, the investigation showed that nominations were by petition for the 2013 election, and the petition contained a space for members' registration numbers. If a member failed to write the registration number on Wilson's nominations petition, she obtained the registration number from the union's office manager. Wilson did not use a list of members to obtain that information. During the investigation you stated that you obtained members' registration numbers from the union's secretarial staff.

Further, the investigation did not disclose any evidence that Wilson used a union list containing members' email information to campaign. The LMRDA was not violated.

You alleged that the union pays Wilson a \$750.00 car allowance in compensation for use of her personal vehicle to conduct union business and that she used her personal vehicle to campaign.

Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person. 29 C.F.R. § 452.73. Thus, campaigning by union officers must not involve the expenditure of union funds in violation of section 401(g). 29 C.F.R. § 452.76.

The investigation disclosed that Wilson is not provided a union vehicle but receives a \$750.00 vehicle allowance in compensation for use of her personal vehicle to conduct union business along with reimbursements for travel expenses (gas, hotel and meals) associated with conducting such business. Wilson, however, was not prohibited from using her personal vehicle to conduct personal business, including campaigning. Further, the review of the local's travel reimbursement records showed that the union did not reimburse Wilson for any expenses resulting from Wilson's use of her vehicle to conduct personal business, including campaigning. Thus, such campaigning did not involve the expenditure of union funds. The LMRDA was not violated.

You alleged that Wilson campaigned on union time when attending district meetings and field representative [REDACTED] campaigned on union time at various job sites.

Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person. Thus, union officials may not campaign on time that is paid for by the union. 29 C.F.R. § 452.76.

The investigation disclosed that Wilson attended district meetings held in February 2013 and in April 2013 at which she engaged in official union business. Wilson stated during the investigation that she collected signatures for her nominations petition before and after the February 2013 meeting but that she did not collect any signatures during that meeting. Wilson further stated that she did not collect any signatures in connection with the April 2013 meeting. In any event, the investigation disclosed that the meetings started at approximately 8:00 p.m., after Wilson had completed her regular working hours, which start between 8:00 a.m. and 9:00 a.m. Thus, Wilson's collection of the signatures before and after the February 2013 meeting did not occur while she was being paid by the union.

Further, although you alleged that Wilson and [REDACTED] at various jobsites on June 24-26, 2013, the Department's review of the union's leave calendar disclosed that Wilson and [REDACTED] took leave for the entire days of June 24-26, 2013, and the

entire days of July 8-9, 2013, and campaigned. [REDACTED] also took leave on June 13, 2013, and campaigned. The investigation did not disclose any evidence that either Wilson or [REDACTED] campaigned while being paid by the union. The LMRDA was not violated.

You alleged that Wilson hired an attorney to assist Wilson in her campaign and that union funds were used to pay the attorney for the campaign services.

Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person. 29 C.F.R. § 452.73. Thus, campaigning by union officers must not involve the expenditure of union funds in violation of section 401(g). 29 C.F.R. § 452.76.

The investigation disclosed that Wilson, in her capacity of business manager of the local, hired [REDACTED], an attorney, to provide the union with LMRDA compliance advice during the 2013 election. [REDACTED] said she advised the local on conducting the officer election and did not advise Wilson on her campaign. Further, the Department's review of the itemized billing statement [REDACTED] submitted to the union for her services showed that [REDACTED] billed the union for services relating only to matters connected with the conduct of the union election. The LMRDA was not violated.

You alleged that attorney [REDACTED] wrote a July 5, 2013 letter to the membership on behalf of the union recommending that the deadline for requesting campaign mailings be extended and that such extension benefited Wilson's campaign.

Section 401(c) of the LMRDA requires a union to provide adequate safeguard to insure a fair election. 29 C.F.R. § 452.110.

The investigation disclosed that the July 5 [REDACTED] letter recommended extending the deadline for requesting a campaign mailing from July 5 to July 12 to ensure that the union had sufficient time to comply with all reasonable requests to distribute campaign literature. The union adopted the recommendation and the deadline was extended. There is, however, no evidence that the decision to extend the deadline for requesting a campaign mailing was politically-motivated or made in bad faith. In any event, the investigation showed that neither Wilson nor the candidates affiliated with her campaign had a campaign mailing after the original campaign mailing deadline of July 5. You were the only candidate who mailed campaign literature after that date. Thus, you and the candidates affiliated with your campaign were the only candidates who benefited from the extension of the campaign mailing deadline. The LMRDA was not violated.

Finally, you alleged that Wilson was permitted access to jobsites and campaigned there but you were denied that opportunity after Local 701's then-general counsel wrote a February 18, 2013 letter to contractors informing them that you and two of your slate

members were no longer employees of Local 701 and, therefore, the contractors should not provide you or the two slate members special access to job or construction sites. You alleged that, because of the February 18 letter, companies permitted Wilson access to the Schnitzer Steel, Interstate Crane, and Knife River jobsites to campaign and denied you access to these jobsites.

Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

The investigation disclosed that both you and Wilson were permitted access to these sites and campaigned. In support of your allegation of unequal access to jobsites, you stated during the investigation that you saw a Wilson campaign flyer posted on a trailer at the Schnitzer Steel job site in June or July of 2013 and that you were denied access to that jobsite. The investigation disclosed, however, that you and your supporters campaigned at that job site earlier in February 2013 and in March 2013. Specifically, a union steward employed at that job site stated during the investigation that in February 2013 and in March 2013 he circulated nomination petitions inside the Schnitzer Steel facility endorsing you and the candidates affiliated with your campaign after one of your supporters asked him to do so. In addition, a member stated during the investigation that he witnessed you campaigning at the Knife River jobsite during the election. Moreover, Wilson stated during the investigation that, when she and field representative [REDACTED] arrived at the Interstate Crane jobsite as well as other jobsites to campaign, members at these jobsites informed Wilson that you and your supporters already had campaigned at those jobsites. The evidence therefore supports a finding that both you and Wilson were permitted access to the jobsites and campaigned. The LMRDA was not violated.

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

Sincerely,

Patricia Fox, Chief
Division of Enforcement

cc: James T. Callahan, General President

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