



December 8, 2015



Dear [REDACTED]

This Statement of Reasons is in response to your November 17, 2014 complaint filed with the United States Department of Labor (Department) 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 held by the Operative Plasterers' & Cement Masons' International Association (OPCMIA) (the union), on August 12, 2014. Your complaint to the Department contained the allegations that you raised in your post-election protest dated August 13, 2014.

In your protests, you made numerous overlapping allegations, which implicate requirements of the LMRDA. The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that a violation of the LMRDA occurred in two instances, but did not affect the outcome of the election. No violations were found with respect to your remaining allegations. Below is an explanation of this conclusion according to the relevant requirements of the LMRDA.

Delegate Eligibility

In your protests before and after the election, you made a number of allegations relating to the incumbent slate's challenges to the eligibility of delegates prior to the Convention. Specifically, you alleged that the union selectively challenged the delegates to the convention who were supporting your slate and that the credentials committee summarily disallowed the challenges to eligibility made by your slate. These allegations implicate the LMRDA's requirement that every international labor organization select its officers either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot and the requirement under the Act's regulations that union election procedures be fair to all members.

The investigation revealed that the incumbent slate through its representative challenged thirteen (13) delegates, and the credentials committee upheld ten (10) of those challenges. According to OLMS's investigation, these members were properly disqualified from voting and did not vote. Each delegate is allowed one vote. The investigation also revealed that your slate sent [REDACTED] to the credentials committee to present challenges of twenty-one (21) delegates, however the challenges were all rejected on the basis of lack of documentation and [REDACTED] lack of personal knowledge. The investigation also revealed that your slate sent [REDACTED] to present challenges of twenty-one (21) delegates to the credentials committee, but they were all rejected on the basis of lack of documentation and his lack of personal knowledge. The investigation indicated that eight (8) of these challenges should have been upheld because one delegate did not meet the working-at-the-trade requirement, one delegate had been nominated without proper notice of the nominations to members, three delegates were appointed, and three delegates were local union officers mistakenly believed to be delegates by virtue of their position (ex officio). Accordingly, the investigation confirmed a violation. In the election at issue, the closest margin was thirty (30) votes (office of Plasterer Vice-President) so that, even if the challenges had been accepted by the credentials committee, the resulting ineligibility of those delegates could not have affected the election.

In addition, as part of its investigation into this allegation, OLMS also investigated the eligibility of other delegates from additional locals and found that many locals had sent delegates who had been improperly elected, been appointed, or incorrectly assumed that certain local officers were ex-officio delegates when this was not provided in the local's by-laws. However, these additional violations affected twenty (20) votes, which still did not affect the outcome of the closest race. It also should be noted that not only was the international's failure to disqualify those improperly selected delegates a violation, the failure of those locals to properly select their delegates was a violation of the Act.

Also with respect to the delegate election, you alleged that the incumbents refrained from making delegate challenges until it was too late to rerun elections. Some of the thirteen (13) delegates whose credentials were challenged stated that they were not informed that their credentials were invalid until they arrived at the convention to register. The investigation revealed that the union did not establish a time period for making challenges and treated candidates equally with respect to the timing of challenges. The LMRDA has no such requirement. Accordingly, there was no violation.

Access to the Delegate List

You alleged that the list of delegates to the convention was not timely or properly provided to your slate. Under the LMRDA, under certain conditions, a bona fide

candidate has a right to a one-time inspection of a list of members covered by collective bargaining agreement within thirty days prior to an election. Assuming, for the sake of argument, that inspection of a delegate list is considered similarly, the investigation indicates that this request was granted; your slate was permitted to review the delegate list on August 10, 2014, two days before the election. The evidence gathered indicates that your slate members were not permitted to write down members' names and that the delegate list did not indicate whether delegates were appointed or elected. However, the Act does not provide the right to copy the list or that the list must indicate such delegate status. Accordingly, there was no violation.

You also alleged that the delegate list was used by [REDACTED] prior to the convention to challenge delegate eligibility; specifically, [REDACTED] had access to the delegates list to challenge eligibility. This allegation implicates the union's duty under the LMRDA to refrain from discrimination in favor of or against any candidate with respect to use of lists of members. The investigation indicated the information used for the delegate challenges came from experience with different locals' policies and by-laws and reading field representative reports. You did not furnish, nor did the investigation reveal, any evidence that [REDACTED] used a delegate list to challenge delegate eligibility. Accordingly, there was no violation.

Also relating to the delegate list, you alleged that your slate requested access to the delegate list in order to distribute literature at the slate's expense and did not receive the procedure for distributing its literature to the delegates on the list. In addition, you alleged that no procedure was provided prior to the convention for distribution of campaign materials by mail to delegates. Under the Act, an international is obligated to comply with a candidate's reasonable request to distribute campaign literature at his or her expense to members, but it does not require that the procedure be provided absent any request. Neither the Act nor your union's constitution entitled you to a copy of the list. The investigation revealed that you submitted a written request on July 18, 2014, requesting a copy of the delegate list, explaining that you intended to use it to distribute campaign literature to the delegates. The evidence indicates that the union's attorney responded by letter, dated July 25, 2014, via overnight mail, stating that you were not entitled to a copy of the list. He also acknowledged a candidate's right to make a reasonable request to distribute campaign literature at his or her expense, and stated that the union had not received such a request as of that date. The evidence does not indicate that your slate subsequently made a request to the union to distribute your campaign literature. Accordingly, there was no violation.

Improper Use of Union Resources

A number of your allegations relate to the prohibition on use of union and employer resources to promote the candidacy of persons for union office. In your protest and in

response to the union's request for specific information relating to the allegations, you provided more specific factual allegations: you asserted that the incumbent slate used the union journal to promote their candidacies, that it produced a campaign video with union resources, that it campaigned during work time, that it used union resources to investigate challenges prior to the election on a discriminatory basis, that it threatened delegates during visits to locals, and that it was provided with the delegates' email addresses prior to the convention for the distribution of campaign materials. With respect to the convention, you asserted that the union may have used union funds to arrange for campaigning.

Under the Act, no moneys received by a labor organization by way of dues, assessment, or similar levy may be used to promote the candidacy of any person. With respect to the journal article, to determine whether such article constituted unlawful union-financed campaigning, OLMS considered the timing, tone, and content of the article to determine whether it effectively endorsed the candidacies of the incumbent slate. While the investigation revealed that the journal was published in the summer of 2014 prior to the August 12, 2014 election, its tone and content did not rise to the level of unlawful campaigning. The incumbent president made a laudatory statement about each of two candidates on his slate in the overall context of the work those incumbent officers had done over the prior years. Without more, however, those statements do not violate the Act. There was no mention of the election or inclusion of campaign rhetoric. Accordingly, there was no violation.

OLMS investigated your allegation relating to the campaign videos and found that the incumbent slate created three campaign videos, but did not find any evidence that the incumbent slate worked on the videos while on union time or that they used the union's equipment. Although the president used a JobCorps office outside of regular work hours to make videos, the use of the JobCorps office, which is not a union facility, is not a violation. Likewise, OLMS investigated whether the incumbent president campaigned during working time. The union president stated that he did make campaign phone calls to business managers, but that he did so on his own time and with his personal phone. Interviews with over 20 local business managers did not produce evidence, except in one instance, that these calls were made during work hours, and that one vote would not have affected the outcome of the election. No one stated that the international staff made campaign statements or threatened local delegates during visits to locals. Nor did the investigation find that the incumbent slate was provided with the delegates' email addresses for distribution of campaign materials prior to the convention. The investigation found that candidates used their own person email lists or replied to other group emails to members with their own campaign material. Accordingly, there were no violations.

With respect to the alleged improper use of union resources at the convention, the investigation found that the incumbent slate used its own funds to purchase the campaign key cards distributed to delegates and the electronic sign displaying campaign slogans. Your slate was not prevented from spending its funds to obtain similar promotional materials. Accordingly, there was no violation. Therefore, except as discussed below, the investigation did not uncover any other evidence that the incumbent slate used union resources for campaigning.

The investigation did reveal that candidate [REDACTED] of the incumbent slate sent a campaign email to delegates attaching a letter written on union letterhead with the union logo. The letter detailed [REDACTED] accomplishments and asked delegates for their support in the election. The use of union logo is sometimes considered as the use of a union asset. Accordingly, a violation may have occurred. However, you did not include this specific violation in either your original protest or follow-up description of your allegations. Therefore, this violation cannot be considered within the scope of your complaint to the Secretary and could not provide a basis for litigation.

Disparate Treatment Regarding Campaign Opportunities

You alleged that there was no communication informing all candidates of equal access to hotel resources or campaign material. In this regard, you also alleged disparate treatment of your slate with respect to campaigning opportunities. Under the LMRDA, a union is obligated to provide adequate safeguards to insure a fair election. As interpreted in the LMRDA's regulations, such safeguards include an equal opportunity for all candidates to campaign in the context of a convention at which officers are to be elected where access to the floor is limited to delegates. 29 C.F.R. 452.79. The investigation did not reveal that the union discriminated against candidates by making campaigning information available to some but not all candidates. The investigation revealed that, as discussed above, the incumbent slate developed its own campaign strategy and used its own funds to provide hotel key cards and an electronic sign with its campaign slogans on them. Your slate could also have used its funds to campaign in this way. That the incumbent slate did not communicate to your slate how it intended to campaign at the convention does not amount to a violation of the Act.

Also related to convention campaigning opportunities, you alleged that your slate's supporters were told to remove their campaign t-shirts before entering the convention while the incumbent slate's supporters were allowed to wear theirs. The convention rules prohibited the distribution of campaign literature inside the convention hall, but specifically allowed delegates to wear hats, shirts, ties, buttons, or any campaign paraphernalia at any time and place. Witnesses reported seeing supporters of both slates wearing campaign t-shirts. The investigation revealed that you and another MDT candidate reported that a sergeant-at-arms stated that campaign t-shirts were not

permitted in the convention hall. It further revealed that you went to the union's attorney who told you that such t-shirts were allowed; and another candidate from your slate reported this to the election committee chairman who subsequently told the sergeant-at-arms that t-shirts were allowed. Accordingly, because the mistake was addressed in a timely manner, there was no violation.

Slate Voting

You alleged that slate voting was permitted in the international officer election in contravention to the OPCMIA constitution. You alleged that the voting instructions were unclear and that voters may not have understood that they were not required to vote for a whole slate, but could split their votes among the slates. The constitution does not address slate voting. The investigation revealed that delegates were instructed in a number of ways how to mark the ballot; the ballot itself contained instructions on the reverse side regarding the way in which votes should be marked and the front side stated, "See reverse side for instructions." The instructions stated:

You may vote for a full slate. To vote for a full slate, fill in the bubble next to the name of the slate of your choice. If you vote for a full slate, only the slate vote will be counted, and any votes for individual candidates not on that slate will be ignored. Do not vote for more than one slate. To vote for candidates individually, completely fill in the bubble next to the names of the candidates of your choice and do not put any marks in any of the bubbles next to the names of slates.

The investigation further established that similar instructions were delivered on the convention floor on August 12, 2014. The instructions were posted on the door of the polling place, and the election committee chairman stated that he reminded delegates of the instructions when they entered the polling place and offered them copies of the instructions. Further, while the records review showed that five members indicated both a slate vote and votes for individual candidates, none of the members interviewed stated that he or she was unable to understand how to properly mark the ballot from the instructions given. Accordingly, there was no violation.

Final Tally

You alleged that the final tally was not announced or reported at the convention. You alleged further that the tally was read into the record the day after the election, but too rapidly to take notes. The LMRDA requires adequate safeguards to insure a fair election and requires the voting results for each local labor organization's election to be published. The investigation revealed that the election committee announced the winners of the election immediately after the tally, but they did not give a full report of

the tally until the following day. Further, the result totals were read into the convention record and were published in the convention proceedings and the final election report. There is no particular rule under the union's constitution or the LMRDA governing the announcement of the election results at the convention; thus, there was no violation

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

Sincerely,

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Chief, Division of Enforcement

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