



March 24, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor dated April 9, 2014, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the International Brotherhood of Teamsters (IBT) Local Union 118 on December 10, 2013.

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 there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the night before the election, members of the Markwitz Slate had an illicit meeting in Local 118's conference room with the trustees and election supervisors. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair and democratic election.

The investigation revealed that the alleged meeting did not occur. Rather, on December 9, 2013, the night before the election, Assistant Trustee [REDACTED] picked up election supervisors, [REDACTED] and [REDACTED] from the airport. Upon arriving in Rochester, [REDACTED] and [REDACTED] were driven to the union office to check on supplies needed for the tally. Christopher Toole, candidate for Secretary-Treasurer on the Markwitz Slate, was at the union office and greeted people, including [REDACTED] and [REDACTED]. Despite your allegation that a "meeting" occurred, there was no evidence of any improper discussion of the election. There was no violation of the LMRDA.

Next, you alleged that Local 118 failed to provide election or campaign rules governing the election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair and democratic election. The IBT's Constitution does not require that Local 118 provide election or campaign rules to its members. Nevertheless, IBT's Constitution and Local 118's Bylaws contain election rules. *See* IBT Constitution Article XXII, Section 4-5; Local 118 Bylaws, Section 17. No requirement for separate election or campaign rules exists. Furthermore, review of the record shows that Local

118 did in fact provide election rules in its Nomination/Election Notice dated October 2, 2013. There was no violation of the LMRDA.

You alleged that Local 118 denied members the right to vote because they did not receive original ballots or duplicate ballots they requested. Section 401(e) of the LMRDA provides that members in good standing shall have the right to vote.

The investigation found that [REDACTED] processed duplicate ballot requests by maintaining a log with the requestor's name, address, and phone number. Each day, [REDACTED] emailed the ballot request log to election supervisor [REDACTED]. Once [REDACTED] received the log, she contacted the members listed to verify their information and then immediately mailed the members a duplicate ballot package, with the word "duplicate" at the top of the address label. You provided 10 affidavits from members claiming that they had not received a ballot. However, the record showed that 3 of those members actually voted in the election. The remaining 7 did not vote, although they were eligible and were sent a ballot in the initial mailing.

The investigation also established that of the 4,667 ballots mailed, 207 were returned as undeliverable. Of those, 59 were successfully resent because the Post Office provided forwarding addresses, which the union used to re-mail the ballot packages. There were 57 undeliverable ballot packages which could not be forwarded and were not resent. Of the remaining 91 undeliverable ballots, the Department determined that only 29 of those members were eligible to vote. While the union should have taken steps to resend ballots to those members, any violation of the LMRDA could not have affected the election outcome because the closest margin of victory was 119. There was no violation of the LMRDA affecting the outcome of the election.

You further alleged that ballots were cast on behalf of members of Local 118, even though they never received or returned a ballot. Specifically, you alleged that there were two members named [REDACTED] and that a ballot was cast for one of them, despite the fact that neither typically voted in union elections. You also alleged that a ballot was cast for a member who was deceased prior to the election. These allegations raise the issue of whether ballot fraud or tampering occurred. The LMRDA requires that unions provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c).

The Department reviewed Local 118's Election Control Roster (ECR) and determined that no ballot was returned by either member named [REDACTED]. Additionally, Local 118 properly challenged and did not count a deceased member's ballot. The Department also surveyed members who allegedly did not vote in the previous 2009 officer election, but voted in the 2013 officer election. Based on the results of that survey, there was no evidence that anyone tampered with their ballots, and the Department concluded that those members cast their own ballots. There was no violation of the LMRDA.

You also alleged that members in good standing were disenfranchised when their votes were automatically and improperly disqualified. Specifically, you alleged that 135 members were disqualified as ineligible by election supervisor [REDACTED] because she claimed that those members were not current in paying their dues, despite being on dues check-off. You claimed that 25 of these ballots were from ten-month employees of a school district, who did not work during the summer. You also claimed that a member hand carried his ballot to the post office box by 9:00 a.m. on the day of the tally, but that his vote was not counted. Section 401(e) of the LMRDA provides that every member in good standing is entitled to vote.

The investigation confirmed that 135 members were declared ineligible. The Department reviewed the ECR and contacted employers to determine which of the 135 members were on dues check-off and could have had wages deducted, including the ten-month employees. The Department determined that of the 135 challenged ballots, 37 members were either cash payers and failed to pay, or were deceased or terminated. The Department also concluded that 30 members were otherwise ineligible, leaving 68 members as possibly eligible to vote. Even if Local 118 incorrectly disqualified 68 ballots, the smallest margin of victory was 119. Accordingly, any violation that may have occurred could not have affected the outcome of the election.

Next, you alleged that Christopher Toole, a candidate for Secretary-Treasurer on the Markwitz Slate, instructed members to deface or rip off their address from the ballot return envelope, which invalidated their ballots. You claimed that you overheard a member at the UPS facility complaining about Toole's improper instructions. Section 401(c) requires that unions provide adequate safeguards to insure a fair election.

The investigation revealed that 22 ballots were voided, 11 because of a missing address label. Despite this finding, however, there is no evidence that Toole instructed members to deface the envelopes. Further, the record shows that Local 118 explicitly provided instructions to members, in bold lettering, not to remove the label from the envelope, and warned that if removed, the ballot may be voided. There was no violation of the LMRDA.

You made several other allegations that were not timely protested to Local 118, pursuant to Teamsters' pre-election protest rules. Section 402(a) of the LMRDA requires that a member must have "exhausted the remedies available under the constitution and bylaws" of the union in order to file a complaint with the Secretary of Labor. Thus, your allegations are not properly before the Department. 29 C.F.R. § 452.136 (b-1). Additionally, you made an allegation that, even if true, would not violate requirements of Title IV of the LMRDA. This allegation was not investigated.

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. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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