

S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343



January 20, 2016



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on October 24, 2014, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by UNITE HERE, Local 11 (Local or Union), AFL-CIO, on June 18, 2014.

The Department of Labor (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 that may have affected the outcome of the election.

You alleged that the union failed to follow the constitution and bylaws when you were denied the opportunity to have a slate of candidates. Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the union's constitution and bylaws as long as they are not inconsistent with the law. Article V, Section 7(b), of the Local 11 Bylaws states that a request for designation as a slate shall be approved by the election committee if the slate (i) includes a candidate for at least two-thirds of the separate categories of offices or positions to be filled at the election (including categories which may have been filled by acclamation), and (ii), where two or more places are to be filled in a category of elective offices or positions, includes at least one-half of the number of persons to be elected to each such office or position.

The election notice stated that any request to run as a slate must be submitted in writing to the election committee no later than June 6, 2014, and must include candidates for at least two-thirds of the positions. Also, the election notice stated that if any candidates are included on a proposed slate, there must be at least two candidates for vice president on the slate. Further, the election notice provided that if any candidates for executive board are included on a proposed slate, there must be at least seven candidates for executive board on the slate. The Department's investigation established

that on May 21, 2014, you submitted a list of six candidates to election committee chair [REDACTED]. On June 6, 2014, [REDACTED] informed you that you did not meet the criteria to run as a slate because you did not have enough candidates, you did not have enough offices filled, and you had two candidates running for the secretary-treasurer position where you should only have had one. [REDACTED] gave you until 5:00 p.m. on that day to submit an updated list. You did not submit an updated list by the extended deadline. On June 9, 2014, after you viewed a sample of the draft ballot, you asked [REDACTED] if you could combine your group of candidates with the [REDACTED] group. [REDACTED] allowed you to do so, but she informed you that the candidates of both groups would only be permitted to run as independents, and not as a slate, because you did not submit an updated list by the deadline.

A review of your slate submissions reveals that you did not meet the criteria for designation as a slate. There were a total of nine offices listed on the ballot. You needed to have two-thirds of the candidates for at least six categories of the officer positions. Thus, you were required to submit the names of candidates for at least six offices to meet the two-thirds slate requirement, with candidates for at least half of the positions for multi-position offices. You provided candidates for the following six offices: president, secretary-treasurer, executive vice-president, recording secretary, vice presidents, and the executive board. However, you were required to submit the name of one candidate for the secretary-treasurer position, but you provided the names of two candidates. You were also required to submit the names of at least two candidates for the four vice-president positions to be filled, but you only submitted one name. In addition, for the executive board, there were 14 places to be filled and you were required to provide the names of at least seven candidates, but you only provided the names of two candidates. Consequently, you did not meet the Bylaws requirements for slate designation. There was no violation.

You alleged that the union paid for vans to drive voters to the polls, but only if the voters supported the Walsh slate. Section 401(g) of the LMRDA provides that no union funds may be used to promote the candidacy of any person in an election subject to Title IV. The Department's investigation revealed that the Organize to Win slate used its own campaign funds to rent vans to provide members with transportation to the polling sites. Members who were provided with transportation were also given Organize to Win campaign flyers paid for by the slate. The union provided a list of all UNITE HERE employees who drove vans and a leave request from for each employee for the June 18, 2014 election. There was no violation.

You alleged that the union failed to elect by secret ballot because the Organize to Win slate knew how members would vote because the members told the Organize to Win slate members how they would vote when they were transported to the polls. Section 401(e) of the LMRDA provides that any election required by this section must be held

by secret ballot. Further, Section 3(k) of the LMRDA defines “secret ballot” as “the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice ... cast in such manner that the person expressing such choice cannot be identified with the choice expressed.” The investigation revealed that the Organize to Win slate transported members to the polls, but did not escort members into the polls to cast their votes. The slate did not interfere with the members’ right to cast their ballots in secret. There was no violation.

You also alleged that people stood over members’ shoulders while they voted and that there were no voting partitions at the polls. Section 401(c) of the LMRDA requires local union elections to be held by secret ballot. The Department’s investigation revealed that each polling site had voting booths that allowed for members to vote in secret. The Local 11 polling site had booths with curtains and booths at other locations had cardboard partitions. Each of the polling sites had registration, voting and observer areas. In particular, at the Local 11 location, there were ushers who escorted members to the registration tables. After members registered, they were given a ballot and proceeded to the voting booth on their own. After members voted, they placed their ballots in the ballot box and exited the polling site through a different door. There was no evidence that any voter saw how another member voted. One member alleged that organizer ██████████ escorted members inside the polling area and that his presence was intimidating to members. The election committee chairperson was shown a picture of ██████████ but did not recognize him and his name did not appear on a list of volunteers. Even if ██████████ were present during the balloting, the investigation did not reveal any evidence that members were intimidated by his presence such that they did not exercise their right to participate in the election. There was no violation.

You alleged that Local 11 failed to provide proper notice of election. Section 401(e) of the LMRDA provides that notice of election must be mailed to each member at his last known home address not less than fifteen days prior to the election. 29 C.F. R. § 452.99. You provided the names of eleven members who stated that they did not receive an election notice by mail. The investigation revealed that in the months preceding the election, the union had taken steps to update its mailing list including requesting updated address information from employers and contacting the postal service for address corrections. The union provided a list of 20,892 members to the mailing service used in the election. However, only the 20,450 active members were mailed the election notice. The LMRDA requires a union to mail election notice to all members. Inasmuch as the union only mailed notices to the 20,450 active members, 442 members, or 2 percent of the membership, did not receive a mailed election notice in violation of the Act. There was no effect on the outcome of the election, however, because the smallest margin of victory for any office was over 2,300 votes.

With regard to the 11 members who stated that they did not receive a ballot, the Department’s review of the election mailing records revealed that the names of 8 of

these 11 members were on the mailing list and they were mailed a notice. Five voted in the election. Of the remaining three members, two had not paid dues for a lengthy period of time, and one was not on the list at all. There was no violation.

You alleged that you were not permitted to have an observer at all polling sites and at the ballot tally. Specifically, you alleged that members [REDACTED] and [REDACTED] were not allowed to be observers. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. Pursuant to the Local 11 Bylaws all observers had to be active members in good standing. Candidates were allowed one observer per polling site and had to submit their observer list to the election committee in writing prior to the June 18, 2014 election. The investigation revealed that on June 17, 2014, you submitted your observer list of eight individuals, including yourself, to [REDACTED]. [REDACTED] was not included on the observer list; however, she went to the Pomona College polling site to serve as an observer for you. The investigation revealed that once it was determined that she was not a member in good standing, she was informed that she could not serve as an observer. She was asked to leave the polling location and complied with the request. [REDACTED] informed the Department that she has been on disability and has not paid dues since 2010. With regard to [REDACTED], a dues verification check by the union confirmed that he has been on withdrawal status and has not paid his dues since 2013. Inasmuch as members must be in good standing to be observers, and these two members were not in good standing, they were not qualified to serve as your observers. There was no violation.

You alleged that the incumbent officers were not qualified candidates and should not have been permitted to run for office. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. Article V, Section 3(b), of the Local 11 Bylaws states that "no member may be eligible to be nominated to any office in this Local Union unless s/he is employed or available for employment in the jurisdiction of this Local Union, an officer [of Local 11], or an employee of this Local Union or the International Union." Pursuant to the Local 11 bylaws, incumbent officers are eligible to run for union office. Moreover, contrary to your assertions, the local's bylaws are not in conflict with the UNITE Constitution. Article 8, Section 3(a) of the UNITE Constitution provides that the eligibility requirements to run for office and to continue to hold office for officers and executive board members of affiliates and for other full-time paid elective offices . . . in such organizations shall be set out in the affiliate's by-laws. Inasmuch as Local 11's Bylaws set the eligibility requirements to run for office as required by the UNITE HERE Constitution, there is no conflict between Local 11 Bylaws and the UNITE HERE Constitution. As the incumbent candidates were both officers and employees of Local 11 at the time of the election, they meet the requirement of

Article V, Section 3(b) and were eligible to be nominated to any office. There was no violation.

You alleged that ineligible members (incumbent officers) were permitted to vote in the election even though they do not work within the jurisdiction of the local (in the industry or craft). Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of his choice. Article 5, Section 1, of Local 11's Bylaws provides that members in good standing shall be permitted to vote. Similarly, Article 8, Section 2, of UNITE HERE's Constitution states that a member shall be eligible to vote in any election in an affiliate only if he or she is a member in good standing in accordance with the affiliate bylaws. The investigation established that members had to be current in their dues through April 2014. The incumbent officers were members in good standing and current in their dues. As such, they were eligible to vote in the election. There was no violation.

You also alleged that the Local 11's Bylaws state that "passive members are not allowed to vote. The term "passive member" referenced in Article II, Section 3 and 3(a), of the Local 11 Bylaws applies to any person who is a manager, owner, proprietor, or any person who is employed outside the jurisdiction of Local 11. This term does not apply to the officers (incumbent candidates) because they are not managers, owners or proprietors. The incumbent candidates, as officers, were employed within the jurisdiction of the local and active members in good standing. There was no violation.

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 have closed the file regarding this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: Mr. D. Taylor, President
UNITE HERE
275 7th Avenue, 16th Floor
New York, NY 10001-6708

Mr. Thomas Walsh, Local President
UNITE HERE Local 11
464 S. Lucas Avenue
Los Angeles, CA 90017

Ms. Sarah Varela, Attorney at Law
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105

Anthony J. Palik, Attorney at Law
268 Bush Street, #3838
San Francisco, CA 94104

Christopher B. Wilkinson, Associate Solicitor
Civil Rights and Labor-Management Division