



September 9, 2016

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED], and [REDACTED]

This Statement of Reasons is in response to your joint complaint filed on November 2, 2015, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the June 27, 2015 election of officers conducted by Painters District Council 5 (DC5) of the International Union of Painters and Allied Trades.

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 clerical staff of DC5 mailed your campaign literature without the DC5 address as the return address on the mailings, but included the DC5 return address on your opponent's campaign literature. Section 401(c) of the LMRDA contains a mandate that unions not discriminate between candidates in the distribution of campaign material. The Department's investigation established that at the candidates' meeting, Election Committee (EC) Chairperson [REDACTED] recommended that candidates take their campaign material to the post office to insure that it met all USPS requirements for mailing campaign material. The investigation found that candidates were not told that the DC5 clerical staff would put return address labels on their campaign material, nor did the election rules indicate that the clerical staff would do so. The investigation did not reveal any evidence that the EC or union clerical staff put return address labels on any candidate's campaign material or otherwise discriminated in the distribution of campaign material. There was no violation.

You also alleged that Business-Manager and Secretary-Treasurer Denis Sullivan campaigned when he mailed the notice of election to the membership on DC5 letterhead that identified him as the business manager, was signed by him as the

business manager, and listed him among the candidates for office. Section 401(g) of the LMRDA prohibits union funds or resources from being contributed or applied to promote the candidacy of any person in an election. The investigation revealed that the union's pamphlet, *Conducting District Council and Local Union Officer Elections*, states that the business manager is responsible for preparing and mailing the election notice. The election notice contained factual information about the election and did not support or promote the business manager's candidacy for office. There was no violation.

You also alleged that Sullivan used a union resource, the union's attorney, to promote his candidacy for office. The investigation found that Sullivan consulted with the union's attorney during the election campaign about election issues and paid him with union funds. The investigation established that the union's attorney attended a candidates' meeting to discuss LMRDA election requirements and prohibitions. He did not endorse Sullivan or any other candidate, did not give advice to individual candidates, and did not campaign for any candidate. There was no violation.

You also made several allegations regarding the photos that appeared on Sullivan's website. In particular, you allege that website photos of Painters General President Ken Rigmaiden and Vice President [REDACTED] gave the appearance that the International endorsed Sullivan. You further allege that these photos were taken at union facilities and union sponsored events by a union employee on union time using a union camera, were used in a union publication, and contained the union logo without permission. The investigation found that the photos were taken by a union official with his personal camera and were not a union resource, even though the union may have used them on its website or in publications. There is no prohibition in the Act or union constitution or other election rules against using personal photos of union officers in campaign literature. Further, the Painters constitution states that no member "shall be permitted to . . . establish websites, bearing the seal of the International Union . . ." The appearance of the logo in the photos at issue does not implicate this prohibition, however, because the website itself did not impermissibly bear the seal of the International. Nothing on the website created the impression that the International union had endorsed Sullivan. There was no violation.

You also alleged that [REDACTED] and [REDACTED], administrators of Local 188's official Facebook page, used their administrator roles to add Local 188 members to a private Facebook group titled "Glaziers Local 188/DC 5 Elections Discussion Group." Further, you alleged that [REDACTED] and [REDACTED] "moved and added" all the members from the official Local 188 Facebook page to their personal Facebook campaign page. The investigation established that [REDACTED] and [REDACTED] created an election discussion page on Facebook as a part of their campaign strategy. [REDACTED] demonstrated to the Department how he and [REDACTED] added members to their campaign Facebook page.

The demonstration confirmed that [REDACTED] and [REDACTED] added members without using the official Local 188 Facebook page.

You further alleged that the discussion page was named in a way that made it look like an official Local 188 Facebook page. However, the investigation revealed that a statement was posted on the "Glaziers" Facebook page that clearly identified it as a campaign page. Moreover, the investigation did not reveal any evidence that this election discussion group was an official Local 188 page or that Local 188 endorsed any of candidates linked to this group's Facebook page. There was no violation.

The Department, however, also found some evidence that the official Local 10 website ([www.iupatlocal10.org](http://www.iupatlocal10.org)) contained a message linking to [REDACTED] campaign website: "[REDACTED] has requested that our members visit his website as he campaigns in the election of BMST in June of 2015." This constitutes a violation of the LMRDA's prohibition on the use of union resources to support the candidacy of a person in the election. However, in order for a challenged election to be declared void and a new election ordered, a preponderance of the evidence must show "that the violation ... may have affected the outcome of an election." 29 U.S.C. § 482(c). Here, [REDACTED] lost the election, so the violation had no effect on the outcome of the election.

You alleged that [REDACTED], incumbent candidate for Local 188 Business Representative (BR), campaigned at a foreman training class. Under 401(g) of the LMRDA, officers and employees may not campaign on time that is paid for by the union or use union facilities to campaign. The investigation established that [REDACTED] was on his personal time, on a Saturday when he campaigned to eight training class attendees who were on their lunch break. The Saturday class was held on the first floor of a building owned by the Apprenticeship Trust and Finishing Trades Institute. While DC5 leases space in the building for its union office, no union facilities were used for campaigning. There was no violation.

You next alleged that [REDACTED], Local 1236 BR, campaigned on union time and on union property when, during work hours, he asked Local 364 Business Representative [REDACTED] if he would be supporting the incumbent business manager's slate. The investigation found that the brief conversation occurred when both men were on their lunch breaks and the single question did not constitute campaigning. There was no violation.

You also alleged that Local 1236 BR [REDACTED] campaigned on union time using his personal cell phone. [REDACTED] acknowledged that he did not know exactly when these phone calls took place or to whom [REDACTED] spoke. The investigation found that [REDACTED] was a smoker who regularly talked on his cell phone in the parking lot so he could smoke. The evidence also revealed that [REDACTED] phone cover is the same for

both his personal phone and his union cell phone. ██████ denies making campaign calls on union time, and, the investigation did not reveal any evidence that ██████ campaigned by phone or on union time. There was no violation.

You further alleged that the DC5 ██████ challenged the nomination of ██████ when she emailed International Vice President ██████ during union work hours and asked whether ██████ had to resign as president to run for the office of business manager. The investigation established that ██████, in her capacity as an administrative assistant, inquired about ██████ eligibility for office, but the inquiry did not constitute campaigning prohibited by 401(g) of the LMRDA. There was no violation.

Additionally, you alleged that non-EC members and DC5 staff members took election records and voted ballots from three polling sites in Alaska and Washington and delivered them to the post office for mailing to DC5's Seattle office. Also, you alleged that not all ballot packages were sealed. Section 401(c) of the LMRDA contains a mandate there must be adequate safeguards to insure a fair election. 29 C.F.R. §452.110. The investigation found that each polling location tallied the ballots cast at the location, phoned the results to DC5, provided the results electronically to DC5, and then packaged and mailed or personally delivered the election records, ballots, and tally slips to the DC5. There was no requirement that these tasks be done by particular individuals. Further, the investigation did not reveal any evidence of tampering, and you were not aware of any tampering. Even if the ballot packages were not sealed, the recorded vote totals had been communicated to the DC5 in advance of the records being sealed and delivered to the DC5 office. The investigation, which included a full recount of the ballots, did not uncover any discrepancies with the polling site tallies and the final results. There was no violation.

You also alleged that voted ballots and challenged ballots were not secured by appointees of the EC on election day, but were stored upon delivery at DC5 by the staff, and were not stored securely until the recount. The investigation revealed that after the election, the ballots and election records were returned to the DC5 office and ██████ stored them in her office until the recount. The investigation further found that when ██████ was not at her desk, the office was locked and only ██████ and the business manager had a key to ██████ office. Further, during the recount, the ballots were locked in the DC5 safe, to which only 4 persons had the combination. The storage of the ballots both prior to and during the recount did not violate any union rules and adequately safeguarded the security of the ballots. As mentioned above, the investigation found that each polling location tallied the ballots cast at the location; telephoned the results to the DC5; provided the results electronically to the DC5; and then packaged and mailed or drove the ballots and tally

slip to the DC5. The Department conducted a recount of the ballots and no discrepancies were found during the recount. There was no violation.

You also alleged that DC5 did not properly resolve challenged ballots. The investigation found that DC5's recount resolved 22 challenged ballots. The investigation revealed that four of the 22 ballots were cast by eligible members and included in the ballot count. Of the 18 members who were found ineligible, eight had not paid the initiation fees, six were no longer members, three were suspended, and one paid a "solidarity fee," but was not a member entitled to vote. Also, the group of 22 included 11 members identified by [REDACTED] as having been denied the right to vote because of the union's failure to properly resolve challenged ballots. Of the 11 members specifically identified, one voter's ballot was counted; one voter's ballot was not voted; three voters were not members; one was the non-member who paid the solidarity fee, and five had not paid initiation fees. There was no violation.

You further alleged that Local 1959 did not verify candidate eligibility at nominations because DC5 shipped Local 1959 membership records to Eastern Washington for dues processing. Section 401(e) of Act requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. 29 U.S.C. § 481(e); *see* 29 C.F.R. § 452.2. Section 155(d) of the International constitution requires candidate eligibility to be reviewed and reported on at the time of nominations. The investigation established that Local 1959's membership data had been updated in the computer system prior to nominations and was available for candidate eligibility determinations. However, Local 1959 Business Representative [REDACTED] was not aware that he had access to the system to verify the eligibility of candidates at the nominations meeting. The investigation revealed that the EC advised [REDACTED] to accept all nominations and that the DC5 staff would verify the eligibility of all Local 1959 candidates the next day. Subsequently, the International Union found all Local 1959 nominated candidates eligible for office. Local 1959 failed to verify the eligibility of candidates at the nominations meeting. However, as stated above, in order for a challenged election to be declared void and to a new election ordered, a preponderance of the evidence must show "that the violation ... may have affected the outcome of an election." 29 U.S.C. § 482(c). In this case, there was no effect on the outcome of the elections because all nominated candidates were eligible to run for office.

You also alleged that [REDACTED] should not have been allowed to run for the office of Local 1959 BR because he had been suspended for nonpayment of dues. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate, subject to reasonable qualifications uniformly imposed. The International found Local 1959 BR candidate [REDACTED] eligible following the protest of his eligibility. Regardless of the accuracy of that finding, there was no

violation that affected the outcome of the election because ██████ lost his bid for office.

You next alleged that on election day Local 1236 BR ██████ affixed campaign stickers to members entering the Portland, Oregon polling site to vote. The investigation confirmed that ██████ affixed campaign stickers to members entering the polling site to vote. While the Department's regulations state that campaigning is prohibited within a polling site, 29 C.F.R. § 452.111, wearing a sticker into the polling area does not, by itself, constitute campaigning. The investigation further found that one removed sticker was briefly placed on a water cooler near the door of the polling site but was promptly removed by an EC member. There was no violation.

You also alleged that member ██████ saw ballot boxes at the Lakewood, WA polling site unattended for 20-30 minutes. The investigation established that the polling site was in a room inside the community center in Lakewood. ██████ stated that she did not go inside the building or the polling site and could not see the room where the voting took place from where she stood outside. The site watcher reported that no voters arrived at the polling site while ██████ was watching from outside of the building. Further, the election watcher stated he was assisted by another man who was present whenever the election watcher was not. There was no evidence that the ballot boxes were unattended. There was no violation.

You next alleged that EC member ██████ "liked" a comment on Facebook supporting Sullivan. In order to provide adequate safeguards to insure a fair election pursuant to section 401(c) of the LMRDA, election committee members may not engage in any activities or take any actions that may be viewed as partial to one or more candidates. However, there is no prohibition on election committee members expressing their personal opinions of candidates outside their role on the election committee. The investigation found that no one complained of or other evidence that this committee member's official actions were biased in any way. There was no violation.

You further alleged that ██████ was not provided the same opportunity as Sullivan to attend the Local 740 nomination meeting in Portland, Oregon, because either he or Sullivan was required to attend the Eastern Washington Joint Apprenticeship meeting. The investigation did not substantiate the allegation. The evidence revealed that Sullivan took leave to attend the Local 740 nomination meeting. The Painters' General Counsel confirmed that there was no requirement for either the president or the business manager to attend the Local 740 meeting although one usually does. Further, the evidence indicated that ██████ could have attended the meeting by video conference from Portland, as was possible from Seattle, and still attended the nomination meeting. Thus, the evidence does not support a finding that ██████ was

denied the opportunity to attend the Local 740 nomination meeting. There was no violation.

You also alleged that Local 1236 BR [REDACTED] questioned [REDACTED] right to vote and may have intimidated members and kept them from voting. Section 610 of the LMRDA prohibits the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which the member is entitled under the provisions of the LMRDA. The investigation revealed that [REDACTED] thought [REDACTED] was a supervisor or foreman and ineligible to vote, and believed that he should vote a challenged ballot. Local 10 Financial Secretary and EC member [REDACTED] examined the membership records and found that [REDACTED] was identified as a journeyman painter and eligible to vote. The evidence does not support a finding [REDACTED] engaged in any conduct violative of section 610. In any event [REDACTED] action did not prevent [REDACTED] from participating in the election. He voted a regular ballot. There was no violation.

You next alleged that a letter was sent to members of Local 1959 on June 18, 2015 that provided them incorrect information on a new dues payment system. The investigation confirmed that the letter contained an error in the telephone number for members to call to pay dues to be eligible to vote. The letter transposed two of the last four digits of the phone number, but contained the correct email address. An earlier letter sent to members included the new dues processing location for Local 1959 and contained the correct number for members to call. Some members called Local 1959 to obtain the correct number. The investigation did not reveal any evidence that members were unable to pay their dues, and thus unable to vote, because the June 18, 2015 letter contained this typographical error. There was no violation.

You further alleged that DC5 [REDACTED] made errors as she entered the tally totals from each local into a spreadsheet. The investigation confirmed that two errors were made. One error affected the business manager's race and whether the challenged ballots needed to be counted. The EC conducted a recount on July 1-2, 2015 for the business manager's race and confirmed that the errors were not in the original tally, only in the spreadsheet. The investigation substantiated the EC's conclusion. There was no violation affecting the outcome of the election.

You also alleged that DC5 Administrative Assistant, a member of another union, should not have been involved in the ballot tally. The investigation found the Administrative Assistant is a member of OPEIU, and her administrative support role in DC elections, described in allegations above, has been the same for the 20 years she has worked for the DC. There is nothing in the act or union constitution that prohibits DC staff from performing administrative duties related to elections. Further, you do not allege any



wrongdoing by [REDACTED] and none was found during the investigation. There was no violation of the LMRDA.

You also alleged that the election results were not published as quickly as they were supposed to be published. Section 401(e) of the LMRDA provides that votes shall be counted and the results published. The DC5 Bylaws state that the election board shall tabulate the vote and immediately submit a report to the DC5. The investigation established that the election results were announced to candidates immediately following the original tally and recount on July 2, 2015. The results were posted on the DC5's website after the July 4th holiday, on Wednesday, July 8, 2015. The LMRDA does not establish a specific time period for the results to be published. There was no violation.

You further alleged that Local 1959 was not current in per capita dues and its members were ineligible to nominate. Under Article X1, Section 11.3, of the DC5 Bylaws, a local must be current in paying its per capita tax to the District Council as well as to the International in order to participate in elections. However, the International's General Counsel informed the Department that this provision is in conflict with the International constitution, which states that any member in good standing can nominate a member for office and vote. In any event, the investigation revealed that LU 1959's per capita dues were up to date. While the investigation also found that the union's financial records appeared to indicate that Local 1959 owed funds to the DC, these entries were for reimbursements that the DC had excused. There was no violation.

You also alleged that Local 77 should not have been allowed to nominate a BR candidate when grouped with Local 427 after its membership fell below 150 members. Section 151(c) of the International Constitution states that DC Bylaws may mandate that a certain number of BRs be elected from certain local unions or certain classes of membership provided that no local union with fewer than 150 active members in good standing as of April 1 of an election year may be guaranteed a BR. Inasmuch as LU 77's active membership fell below 150 members, it was grouped with LU 427. Both Local 77 and 427 were allowed to nominate a candidate for BR. The candidate nominated by LU 77 won the election for BR. The International, consistent with the LMRDA principle of enfranchising voters, stated that no local could be denied the right to participate in the election after being grouped with another local. There was no violation.

Finally, your complaint to the Department made allegations that, even if true, would not constitute violations of Title IV of the LMRDA,<sup>1</sup> and other allegations that were not

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[REDACTED]



timely invoked and exhausted<sup>2</sup> by you in accordance with Painters District Council 5's election protest procedures and the requirements of the LMRDA. *See* 29 U.S.C. § 482. Consequently, the Secretary lacks the authority to consider the merits of these issues and they were not investigated. 29 C.F.R. § 452.135 (a).

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: Kenneth E. Rigmaiden, General President  
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