

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210



July 17, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your October 30, 2008 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, as amended ("LMRDA"), 29 U.S.C. §§ 481 - 484, occurred in connection with the June 10, 2008 election of union officers held by Local Union 292 of the International Brotherhood of Electrical Workers, AFL-CIO ("Local 292" and "IBEW," respectively).

The Department conducted an investigation of each of your allegations. As a result of the investigation, the Department concluded that no violation of the LMRDA that could have affected the outcome of the election occurred during the 2008 election.

You alleged a misuse of union and employer funds. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote the candidacy of any person. You alleged that on May 28, 2008, candidates [REDACTED], [REDACTED], and [REDACTED] attended and campaigned at a lunchtime pizza party and rally held for union members working at the Minneapolis/St. Paul International Airport. You stated that you did not attend the event, but heard that it lasted longer than the workers' 30 minute lunch break and that several candidates gave campaign speeches. The Department's investigation revealed that the rally only lasted a few minutes past the lunch break and that all candidates at the rally campaigned by giving a short speech. The Department's investigation also revealed that the candidate for financial-secretary, Ron Larson, campaigned on your behalf, as well as his own. Although it was a misuse of employer funds to hold a rally at the employer's facility during a few minutes of employer-paid time, there was no effect on the outcome of the election because all four candidates present at the event had an equal opportunity to campaign. [REDACTED] and [REDACTED] both lost their officer races, while Larson won the position of financial-

secretary with a margin of 201 votes. Only 20 to 60 people were reportedly present at the event.

You also alleged that union members were denied a reasonable opportunity to vote. Specifically, you alleged that the absentee ballots were mailed late and some members did not receive their ballots in time to return them by election day. Section 401(e) of the LMRDA guarantees every member in good standing the right to vote for the candidates of his or her choice. Implied in this right is the requirement that the union provide members with a reasonable opportunity to vote. You stated that the IBEW Local Union Election Guide requires ballots to be mailed "at least 15 days before the date when the voted ballots must be mailed in order to be received by the specified date for counting ballots." However, the union does not consider the guide to be binding and the IBEW Constitution and Local 292 Bylaws do not contain any requirement concerning the date by which absentee ballots must be mailed. Although the Department recommends that all ballots be mailed several weeks before they are due, the LMRDA does not contain a mailing deadline for ballots unless the ballot and election notice are combined, which was not the case here. Local 292's failure to mail all the absentee ballots by the date provided in the Election Guide does not constitute a violation of the union's constitution or bylaws or Section 401(e) of the LMRDA.

Further, the Department's investigation determined that the union did not deny members a reasonable opportunity to vote by mailing absentee ballots late. The investigation revealed that a ballot was mailed to each of the 74 eligible members who submitted a timely absentee ballot request. Local 292 used an outside company to print the absentee ballots, and the ballots were not ready until May 28, 2008. The Department's investigation revealed that on May 29, 2008, absentee ballot packages were mailed to the members who had previously requested them. After May 29, 2008, most absentee ballots were mailed the same day the union received the request. The union continued to fill requests in a timely manner, mailing ballots every business day through June 5, 2008, the deadline to submit an absentee ballot request. The Department attempted to contact the 28 members who requested absentee ballots and did not vote in the election. Of the employees contacted, one member reported a problem with his ballot, which was returned to him because it arrived at the union post office box after the election. However, that member had requested an absentee ballot five days before the election and the union mailed him a ballot that day. Regarding the mailing dates of the absentee ballots, the Department finds that Local 292 met its obligation to provide its members a reasonable opportunity to vote. *See 29 C.F.R. 452.94.*

The Department's investigation found that members requesting absentee ballots were not denied a reasonable opportunity to vote in any other manner. The Department

reviewed the 57 absentee ballots received by Local 292 before the election deadline and determined that the union erred in assessing the validity of four of these ballots. One member was incorrectly ruled ineligible to vote and three ballots were disqualified as lacking identifying information when the members had not been provided with instructions concerning the absentee ballot procedure. However, the closest margin in the election was five votes in the executive board race. Thus, failure to count the four absentee ballots identified above could not have affected the outcome of the election.

Your allegation that ineligible members may have been allowed to vote was not filed with the union within 30 days, as required by the union's election protest procedure. You did not submit this allegation in writing until you sent an October 13, 2008 letter to IBEW Vice President Joseph Lohman. On October 17, 2008, Lohman responded that this new complaint was not timely. The Department's investigation revealed that you learned of the potential ineligibility of members due to nonpayment of working dues in late August or early September 2008. You mentioned the issue to IBEW Representative Greg Shafranski on September 10, 2008. Yet, you waited more than 30 calendar days before you submitted a written protest to the union, making the protest untimely. Accordingly, the Department could not take action concerning this allegation, even if it were substantiated. *See LMRDA § 402(a).*

Several allegations from your appeal to IBEW are not properly before the Secretary of Labor because you did not file your complaint concerning these allegations with the Secretary within one calendar month of the final answer you received from the union. *See LMRDA § 402.* In a letter dated September 12, 2008, Lohman addressed your allegations concerning the use of a list of union members' phone numbers and the use of employer funds with respect to a company vehicle. You did not file this complaint until October 30, 2008; thus, those allegations are not considered.

On October 30, 2008, you verbally informed the Department that you did not intend your complaint to include your prior allegations concerning access to the polls and a violation of a "Gentlemen's Agreement." You stated that you waived these allegations; therefore, the Department does not consider them part of this complaint.

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

Sincerely,

Cynthia M. Downing

Chief, Division of Enforcement

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