



February 12, 2021

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your October 20, 2020, complaint to the Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the mail ballot election of union officers that concluded on June 12, 2020, by Local 89, American Postal Workers Union (APWU).

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations.

You alleged that after the initial collection of ballots from the post office was completed on June 12, 2020, candidate [REDACTED] returned to the post office, collected additional ballots, and hand-carried those ballots to the union hall without the participation of election officials or observers. In your interview with the Department, you stated you did not see candidate [REDACTED] handle any ballots, rather, your main concern was that no other candidate was present when candidate [REDACTED] allegedly collected additional ballots and transported them to the union hall. Section 401(c) of the LMRDA provides, in relevant part, that adequate safeguards to ensure 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. 29 U.S.C. § 481(c). In any secret ballot election which is conducted by mail, this candidate right to observe includes every phase of the counting and tally process, including the collection of ballots. 29 C.F.R. § 452.107(c).

The investigation disclosed that the ballots were collected at approximately 9:45 a.m. on June 12, 2020, at the Darby, Pennsylvania, post office, across the street from the union hall where the tally was later conducted. You were present at the ballot collection, as were candidate [REDACTED], election committee judge [REDACTED], election committee teller [REDACTED], and a representative of MK Elections, the balloting company. The only person to handle the ballots at the post office was the balloting company representative. While walking back to the union hall from the post office, [REDACTED] and [REDACTED] decided to return to the post office to confirm no ballots were left behind.

The post office clerk informed ██████ that additional ballots remained at the post office. Neither ██████ nor ██████ took possession of the ballots. Instead, they returned to the union hall and informed the election judge and balloting company representatives. After learning that additional ballots were at the post office, election committee judge ██████, a balloting company representative, and candidate observers returned to the post office. ██████ believed that all those who attended the first collection of ballots were also present at this second collection. In any event, your concern that the ballots were in the sole possession of candidate ██████ for a period of time was unfounded. The investigation determined that neither ██████ nor any other candidate handled any ballots. Only the balloting company representative handled the ballots during both collections from the post office. The local adequately safeguarded the ballots. There was no violation.

You alleged that the local should not have included in its tally those ballots where the voter did not completely fill in or shade the squares next to candidate names to indicate the voter's choice of candidates. Section 401(c) of the LMRDA provides, in relevant part, that every member in good standing shall have a right to vote. Consistent with the LMRDA's purposes of fostering and promoting union democracy, the Department's regulations provide that unions must count ballots voted in such a way as to indicate fairly the intention of the voter. 29 C.F.R. § 452.116. The ballot instruction stated "fill in the box completely", displaying a darkened square as the example to follow for voting for one's candidate of choice. The investigation disclosed that 81 of the 623 ballots showed either a check mark, an "x," or partial shading in the square corresponding to the voter's candidate of choice. Neither the local's nor the APWU's governing documents address whether to include or exclude such ballots. Although the voter did not completely shade the squares next to candidate names, the marks they did make clearly indicated their choice of candidates. The union properly included these ballots in the tally because the intent of the voters was clear. There was no violation.

You alleged that the local should have counted 33 voted ballots that were returned but not enclosed in secret ballot envelopes because, you assert, the ballots could have been removed from the return ballot envelopes without compromising voter secrecy. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Such safeguards include adequate instructions to members for properly casting their ballots. 29 C.F.R. § 452.110(b). The Department reviewed the voting instructions, which stated in relevant part:

3. *Place your marked ballot into the SECRET BALLOT ENVELOPE and seal the envelope.*
4. *Place the SECRET BALLOT ENVELOPE into the Return Envelope which contains your voter information. The Return Envelope will be processed and separated from the*

Secret Ballot Envelope prior to opening the Secret Ballot Envelope, so your personal information cannot be linked to your ballot.

The investigation disclosed that the election committee segregated the 33 return envelopes containing ballots not enclosed in a secret ballot envelope, deciding not to include those ballots because ballot secrecy could be compromised. The election committee had the option to either include or exclude all ballots not returned in secret ballot envelopes from the tally. The election committee decided to exclude the ballots, and the investigation found that it consistently excluded all ballots not returned in a secret ballot envelopes. While the Department's publication, "Conducting Local Union Officer Elections"¹ suggests as a best practice that the penalty – voiding ballots returned without secret ballot envelopes – should be included in the balloting instruction, nothing in either the LMRDA or this union's governing documents requires the inclusion of such penalty notice. The election committee's decision was not unreasonable: it was consistent with the voting instructions, which were clear and specific regarding the manner in which voted ballots were to be returned. There was no violation.

In addition to the allegations discussed above, you included in your complaint eight other allegations which were either not raised or were not timely raised in your initial internal protest to Local 89. These allegations were not properly exhausted pursuant to section 402 of the LMRDA. *See* 29 U.S.C. § 482. Accordingly, these allegations were outside the scope of the Department's investigation.

It is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file in this matter.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

cc: Mark Dimondstein, President
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¹ <https://www.dol.gov/agencies/olms/compliance-assistance/publications/guide-for-conducting-local-union-officer-elections>

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