



February 16, 2021

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your August 28, 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 that may have affected the outcome of the election.

First, you alleged that the format of the return ballot envelope – printing the member’s name and address on the back of the return ballot envelope -- resulted in the U.S. Postal Service misdirecting voted ballots to the sender rather than delivering those ballots to the post office designated for return ballots. You provided the names of three members whose voted ballots were allegedly returned to them rather than delivered to the post office. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Unions have a wide range of discretion regarding the conduct of their elections but that discretion is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110(a). Section 401(e) of the LMRDA requires, in relevant part, that unions conduct their elections in accordance with their constitution and bylaws. 29 U.S.C. § 481(e). Article XI, section 18 of the local constitution provides, in relevant part, that “[m]embers' name, address and the unique identification number should be printed, typed or legibly written on the return envelope to be valid.”

The investigation disclosed that the balloting company, MK Elections, pre-printed each member’s name and address on the back of the return ballot envelope. The election records revealed that two of the three members you identified timely mailed their voted ballots, which were included in the tally. The third member stated she re-mailed her return ballot envelope after it was returned to her. A review of the election records disclosed that her name was not on the list of members who voted. The investigation

was unable to determine what precisely occurred in this single instance of a voted ballot returned to the member rather than the post office. In any event, the Department's investigation found no evidence to suggest that there were any other instances of ballots returned to the voting member rather than the post office. Further, the election committee chair stated he received no complaints from members that their ballots had been returned to them. Finally, contrary to your assertion, the printing of the member's name on the back of the return ballot envelope was not inconsistent with Article XI section 18 of the local constitution. There was no violation.

Next, you alleged that members either did not receive a requested duplicate ballot or received it too late to return it in time to be included in the tally. As evidence, you stated that member [REDACTED] did not receive a duplicate ballot until June 12, 2020, the day of the tally. Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall have a right to vote. In addition, Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. The investigation disclosed that the local established a procedure for members to request a duplicate ballot. The local published the duplicate ballot procedure in an election notice, which was posted on worksite bulletin boards and on the local's website. The election notice stated that any member who had not received a ballot by May 28, 2020, should contact MK Elections to request a duplicate ballot. The notice also included the MK Elections contact telephone number. As part of its procedure, MK Elections maintained detailed records documenting the dates a member requested and was mailed a duplicate ballot. The investigation disclosed that Ms. Potter requested a duplicate ballot on June 8, 2020, and MK Elections mailed a duplicate ballot to her on the same day. MK Elections followed its procedure for timely mailing duplicate ballots. There was no violation.

Related to the above allegation, the investigation determined that the local maintained an accurate mailing list in accordance with section 401(e) of the LMRDA. Fewer than three percent of the mail ballot packages the local union mailed were returned as undeliverable. For any undeliverable ballot package envelope returned with an affixed postal service label containing the correct mailing address, MK Elections re-mailed the ballot package to the member's new address. Further, if the undeliverable ballot packages did not have a corrected forwarding address, the election committee and the local's office secretary attempted to contact those members to obtain their new addresses, so MK Elections could re-mail the ballot packages. There was no violation.

In addition to the allegations discussed above, you included in your complaint ten other allegations, which were either not raised or 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
American Postal Workers Union
1300 L Street NW
Washington, DC 20005

Nick Casselli, President
APWU Local 89
864 Main Street
Darby, PA 19023

Beverly Dankowitz, Associate Solicitor for Civil Rights and Labor-Management