



May 27, 2021

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint to the Department of Labor, dated August 5, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the re-run election of union officers concluded on May 31, 2019, by Local 239 (local or Local 239), American Postal Workers Union (National), under the National's supervision.

The Department of Labor (Department) 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 re-run election.

You alleged the local permitted ineligible members to vote and denied eligible members the right to vote when it used an outdated, September 2018 mailing list of members' addresses. Specifically, you alleged that the local did not use the most current membership list created by the election committee in April 2019 for the May 31, 2019 re-run election. Instead, you alleged that the local used the September 2018 membership list the local used in its original September 4, 2018 officer election. Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. In furtherance of that goal, unions are required to make reasonable efforts to update members' mailing addresses for the purpose of mailing ballots.

Contrary to your assertion, the investigation disclosed that the list of members' mailing addresses used in the May 2019 election was not the one used in the September 2018 election. Rather, the local used a more updated membership mailing list than even the April 2019 compilation. The investigation disclosed that on May 9, 2019, the election committee directed business agent [REDACTED] to print several sets of members' mailing addresses for the re-run election. [REDACTED] enlisted the assistance of maintenance clerk craft director [REDACTED] to print several sets of members' address labels to be used for various types of mailings, including the election notice, the mail ballot packages, the return ballot envelopes, and the duplicate ballot packages. [REDACTED] and

██████ used different membership lists to create these mailing labels for the re-run election, resulting in two different versions of each set of labels.

██████ created a Microsoft Word label template using and cross-checking three lists to ensure the accuracy of the addresses of local members: the National's paper list of members' names but no addresses; the local's dues check-off report for pay period 8, 2019 (April 14 through April 27, 2019); and a list of members' names and addresses used in the distribution of the local's publication, NIXIE. ██████ wife was the editor of that monthly publication and updated the mailing list monthly.

██████ used the NIXIE list on the local's computer. The NIXIE list contained the April 2019 updates to the membership list made by the election committee. On May 14, 2019, ██████ delivered his printed labels and those of ██████ to the union hall, leaving all labels on a table for the election committee's use.

It is unclear which of the two lists Local 239 used to mail the ballots—██████ or ██████. However, in either case, Local 239 made reasonable efforts to update its mailing list for the mailing of ballots in the re-run election. The investigation disclosed that of the 196 mail ballot packages mailed to members, only three were returned as undeliverable. There was no violation regarding the union's efforts to update the list.

However, section 401(e) was violated when two eligible members were not mailed a ballot, and one ineligible member was permitted to vote. This violation involving three votes, however, could not have affected the outcome of the election because the lowest margin of victory was in the race for president, won by 23 votes. No violation occurred that may have affected the outcome of the election.

You alleged the local denied eligible members the right to vote when it did not provide eligible members with a duplicate ballot. You and/or your witnesses identified members ██████

██████ as having requested but never received a duplicate ballot. Election committee member ██████ was responsible for fulfilling all duplicate ballot requests. She stated she received between seven and ten requests for duplicate ballots and fulfilled all requests from members in good standing. The investigation disclosed no evidence that ██████ made a request to the election committee for a duplicate ballot, nor does he claim to have done so. In addition, the investigation disclosed that ██████ mailed ██████ a duplicate ballot package. Further, the investigation disclosed that ██████ voted in the election. Finally, one undeliverable duplicate ballot package was returned to the post office for insufficient postage. The investigation disclosed no date stamp on that undeliverable ballot package. Consequently, there is no way to determine whether the ballot package was returned before or after the May 31, 2019 election. However, even

assuming without conceding that the ballot package in question was returned in enough time to re-mail that package, there would be no effect on the outcome of the election. The lowest margin of victory was for the office of local president which was won by a margin of 23 votes, far in excess of this single undeliverable duplicate ballot package. There was no violation.

You alleged the local failed to follow its constitution and bylaws when it permitted candidate [REDACTED] to serve as his own observer. Section 401(e) directs unions to conduct their elections in accordance with their constitution and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. Section 401(c) allows candidates to serve as their own observers. 29 C.F.R. § 452.107(a). Article 9, Section 25 of Local 239's Constitution prohibits a candidate from serving as his or her observer. The National Constitution is silent on the issue of candidates serving as their own observers. The National, which was supervising this election, waived the observer provision of the local constitution by permitting all candidates to serve as their own observers, as reflected in the election rules. There was no violation.

You alleged the local did not properly count the ballots in that not every member of the election committee saw each ballot. Specifically, you did not agree with the "call method" the local election committee used where one election committee member read out the votes on each ballot while two other election committee members recorded those votes on a tally sheet, without each election committee member taking turns calling out the votes. Section 401(e) provides that every member in good standing shall have the right to vote. That provision also requires unions to conduct their elections in conformity with their constitutions and bylaws insofar as such provisions are not inconsistent with the LMRDA. Article IX, section 9 of the Local 239 Constitution provides that the election committee shall be responsible for the conduct of the election and decide all controversies arising out of the election process. Article 12 of the National Constitution requires that the ballots be counted in the presence of no less than three members of the election committee.

The investigation disclosed that the election committee used the call method to count the ballots. Nothing in the union's governing documents prohibits that method, nor does the LMRDA. The election committee members were not required to switch places in calling out the votes and tallying. The election committee was authorized to conduct the ballot tally with the requirement of at least three election committee members present for tabulation. The local complied with the requirement when one election committee member called out the votes and the other two members registered those votes on separate tally sheets. The Department conducted its own review of the ballots and records and found no evidence of fraud. There was no violation.

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

Sincerely,



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Chief, Division of Enforcement

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