



June 1, 2021



Dear [REDACTED]

This Statement of Reasons is in response to your complaint to the Department of Labor (Department) dated September 27, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of Local 459 (local or Local 459), International Brotherhood of Electrical Workers (International), conducted on June 25, 2019.

The 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 election.

You alleged that on two occasions local officers campaigned using union funds through use of the local's facilities, equipment, and supplies while performing their official duties and being paid by the union. Specifically, you alleged that local president Tony Henry criticized you at a membership meeting when he stated you were "not really liked," subsequent to reading the International President's (IP) letter explaining the basis for your removal from office as local president. Section 401(g) prohibits a union from using union funds to promote the candidacy of any person. The term "union funds" is broadly defined to include union facilities, equipment, and the salaries of officers and office staff, among other things. *See 29 C.F.R. § 452.76.*

The investigation disclosed that on December 12, 2018, the IP suspended you from the office of local president and ordered an investigation into your conduct at a December 10, 2018 membership meeting. After the conclusion of that investigation, the IP removed you from office as Local 459 president by letter dated February 22, 2019. That letter was read to the local's membership by Henry, newly appointed local president, to explain to the members the basis for your removal from office. The investigation disclosed that the letter was factual, newsworthy and did not contain campaign material. Further, President Henry denied making any disparaging remarks against you; and you readily admit you were not present at that meeting. Even if the local

president had made a single disparaging remark against you, that remark would be considered incidental to legitimate union business as the membership had a right to know the reasons for the removal of their president. There was no violation.

In addition, you alleged that the local business manager promoted his candidacy when he criticized you at the annual stewards' meeting, an event paid for entirely with union funds. The investigation disclosed that the local held its annual stewards' workshop on April 18, 2019. The all-day event, paid entirely with union funds, including the salaries of the business manager, the facilities, equipment and refreshments, commenced with registration at 9 a.m. and concluded at 3:30 p.m. For approximately 45 minutes (10:45 am - 11:30 a.m.), Business Manager ██████████ presented a PowerPoint narration entitled "6 Months of 459 in 36 Slides: Clarification and Update of Recent Events."

A review of those 36 slides disclosed a factually accurate recitation of your history with Local 459 providing detailed information to stewards concerning your removal as Local 459 president and as Assistant Business Manager and the events that led to those decisions. Among those facts was a recitation of the numerous internal and administrative filings you made over the years. ██████████ further stated that all of those filings did not result in any action against the union, a factually accurate statement. The business manager also explained his earlier decision to remove you as assistant business manager, a position you held simultaneously while serving as local president.

Finally, ██████████ displayed the IP's letter to explain the basis for terminating your tenure as local president. The content of the presentation was factual and newsworthy as such information concerning the leadership of the local would be of interest to the membership. Further, the presentation was not a significant part of the workshop, but merely a segment. Stewards were at the workshop for approximately 6.5 hours and this factually based presentation was a fraction of that time. To the extent the presentation could be considered a violation, there was no effect. Meaning, if the presentation were to be considered a violation, the only office affected would be that of business manager, the office for which you ran unsuccessfully. That office was won by a margin of 374 votes (125 votes for you, 499 votes for ██████████); 64 steward-members attended the presentation with 54 of them voting in the election. Given the significant margin of victory, there was no effect on the outcome of the election even if the presentation could be deemed campaigning.

You alleged the current president presided over and signed election-related notices which was tantamount to "free advertising." Specifically, you alleged that incumbents used their union officer titles in their campaign literature which constituted an endorsement by the union. The local has no policy against candidates using their official titles in their campaign literature. Significantly, nothing in the incumbent's campaign material gave the impression that it constituted anything other than

campaign material. The inclusion of the incumbents' titles was a statement of fact indicative of no endorsement by the union as a whole. Further, the investigation disclosed that you used your past title in your election-related materials, identifying yourself as "Past President LU 459," also a statement of fact. Moreover, you signed election notices when you were the president of Local 459. There was no violation.

You alleged there were three issues affecting your campaign mailing. You alleged that the local deliberately delayed the mailing of your campaign literature until the incumbents were ready to mail their campaign material. As evidence to support your allegation, you stated you delivered your campaign material to the local on May 20, but received your campaign material on the same day that you received the incumbents' campaign material. Section 401(c) requires unions to comply with reasonable requests of any candidate to distribute, by mail or otherwise at the candidate's expense, campaign literature in aid of such person's candidacy to all members in good standing. The investigation disclosed that the two office workers (staff) responsible for processing campaign literature did so only after completing office work. The staff processed campaign mailings for you, Business Manager [REDACTED] and President [REDACTED]. The investigation disclosed that [REDACTED] paid for his campaign mailing on May 23; [REDACTED] paid on May 25, 2019, a Saturday of the Memorial Day weekend. The staff returned to work on Tuesday, May 28, at which time they completed affixing labels and delivered all campaign literature to the post office for mailing. The ballots were mailed the following day. There was no evidence that your campaign mailing was deliberately delayed. The local complied with your request to distribute your campaign mailing at your expense. There was no violation.

You alleged that some members did not receive your campaign literature because the local's membership lists were inaccurate, and address labels were not properly affixed to the literature. Specifically, you alleged that approximately 400 pieces of your campaign mailings were missing. The investigation disclosed that there were 1,655 members on the local's mailing list. You made three mailings: the first contained 1,549 post cards; the other two contained approximately 2,000 pieces of campaign literature each, in two boxes. The investigation confirmed that some members may have received your campaign literature with more than one label affixed to it; however, the duplicate labels were the result of human error and confusing instructions you issued to office staff. The situation was not the result of an inaccurate membership list and there was no evidence that the duplicate mailing labels improperly affected the distribution of your campaign literature. Regarding your first mailing, you asked the office staff to affix members' addresses to your campaign literature in alphabetical order, from "A" to "Z." You further directed them that should there be any remaining campaign pieces, the staff was to start the same alphabetical process over at "A." The staff complied with your directive. However, for the second box of campaign mailings, you reversed the alphabetical order, directing staff to commence with the letter "Z." The staff did not

realize that the order should be reversed for the second box until well into the process of adhering labels in alphabetical order. Once the staff discovered their mistake, they reprinted the labels and began adhering the labels in the correct order and placing the correct labels over the previously adhered labels. There was no evidence that the membership list was inaccurate or that the duplicate labels resulted in less members receiving your campaign literature. The local complied with your request to distribute your campaign literature. There was no violation.

You alleged that the local denied your request to post campaign literature at shop facilities, to post on the local's website, and to send to members' email addresses and cell phones via text message. You further alleged that the local's \$500 charge for an email distribution was unreasonable as was its requirement that it approve all campaign material prior to distribution. The investigation disclosed that the International's policy prohibited campaigning on union websites. Shop facility campaign postings were prohibited by applicable collective bargaining agreements with employers. The local contacted UCOMM, the company responsible for the local's communication tools, to arrange for email distribution of candidates' campaign literature requests. UCOMM alone determined the cost of campaign emails which it applied to all candidates equally. Although the local may not censure candidates' campaign literature, you chose not to make an email campaign mailing because of the cost imposed by UCOMM. 29 C.F.R. § 459.70 (unions may not regulate the contents of campaign literature). With respect to campaigning via text messaging, the local does not regularly communicate with its members via text. Consequently, the local had no updated cell numbers of its members to pass along to UCOMM. Further, the local mailed three boxes of your campaign literature. Thus, the local did not deny any reasonable request you made for the distribution of your campaign materials. There was no violation.

You alleged the nominations notice did not comply with the requirements of Local 459's bylaws. Specifically, you alleged the nominations notice did not provide the specific date for mailing the ballots to allow candidates to know the amount of time they had to campaign before the ballot mailing. In addition, members had no knowledge of the nominees' names until they received their ballots. Although the LMRDA does not prescribe particular nomination procedures, it does require that the procedures employed be reasonable and conform to the union's constitution and bylaws. 29 C.F.R. § 452.55. As such, notice of nominations may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate candidates of their choice, consistent with the union's constitution and bylaws. 29 C.F.R. § 452.56. The International Constitution was silent regarding the content of notices of nominations and election, requiring only that officer elections be held in June of an election year (Article XIV, Sections 10 and 12). Local 459's bylaws reiterated the election month requirement and added that nominations are

to be conducted in May (Article III, Section 7(a)). That provision also provided that notice must be mailed to all members at least 20 days prior to the nominations meeting but did not specifically address the content of election notices. Article III, Section 8(a) of the local bylaws provided, in relevant part, that the nominations notice and the ballot package must indicate the date for the mailing of the ballots; the last day on which voted ballots will be received; and, the date, time, and place of the tally.

With respect to the names of nominees, such information is not required in a nominations notice as no nominations will have yet occurred. However, that information was readily available to any attendee of the local's five nominations meetings which incumbent candidates were required to attend. Nothing precluded you or any other candidate from attending those nominations meetings. In addition, any candidate had the option of contacting an election judge for such information. Further, the names of nominees were listed on the ballot, as detailed below.

The Department's investigation disclosed that the nominations notice did not contain the specific date the ballots would be mailed, nor did the notice contain the deadline for receipt of voted ballots, or the date, time and place of the ballot tally. However, these defects were remedied in the subsequent mailing of the ballot packages on May 29, 2019, which served as election notices. The ballot itself contained the relevant information, including the names of nominees for each election. Although the local did not fully comply with Article III, Section 8(a) of the local bylaws, those technical violations could not have affected the outcome of the election. Members had well over the 20 days required by the local bylaws to receive and return their voted ballot before the tally date on June 25, 2019. There was no violation that may have affected the outcome of the election.

You alleged that the local failed to provide a bona fide candidate the right to inspect its membership list when the election judge calculated the 30-day period from the date of the tally. Section 401(c) provides, in relevant part, that every bona fide candidate shall have the right, once within 30 days prior to an election in which he is a candidate, to inspect a list containing the names and last known addresses of all members. The Department's investigation disclosed that the local calculated the 30-day period from the tally date rather than the date on which it mailed the ballots to members. The local did not deny you the right to inspect the membership list at any time, however, because you never requested to make such an inspection. There was no violation.

You alleged the incumbent officers were given an advantage because they were aware of the exact number of members in the local and could tailor their campaign literature to that figure. Section 401(c) provides in relevant part that adequate safeguards to ensure a fair election shall be provided. Such safeguards apply to all aspects of the election process, including campaigning. 29 C.F.R. § 452.66. As the former local

president, you were aware of the membership count. Any other candidate had the opportunity to obtain that information by calling the election judge or office staff. There was no violation.

You alleged the local did not take adequate measures to ensure the accuracy of its membership mailing list. In support of your allegation, you stated 23 pieces of your campaign mailings were returned as undeliverable. To ensure a fair election, the local is required to take reasonable efforts to provide accurate membership lists. On May 17, 2019, the local posted a notice at the shop facilities alerting members to provide any change in their addresses. In addition, the local contacted a member's steward or employer to obtain updated addresses for any undeliverable mailings. Further, the local followed up on any returned nominations notices, finding updated addresses for undeliverable mail. The Department's review of the election records disclosed that only 19 of the 1,655 mailed ballots were returned as undeliverable. The local took adequate safeguards to ensure a fair election by taking reasonable steps to ensure the accuracy of its membership mailing list. There was no violation.

You alleged that the cutoff date for requesting duplicate ballots was inadequate. The local set June 18, 2019, as the deadline for requesting a duplicate ballot---exactly one week before the ballots were to be collected from the post office for the tally. The one-week period allowed members to request, receive and vote a duplicate ballot. The local provided adequate safeguards regarding the cutoff date for requesting a duplicate ballot. There was no violation.

You alleged the ballots were collected from the post office earlier than announced to candidates. Specifically, you stated you arrived at the post office 10 minutes earlier than the noon hour announced by the local only to discover the ballots had already been collected. You contended that the effect of the local's early collection of those ballots was to deny candidates their right to have an observer at the collection and transportation of those ballots to the tally location. Among the adequate safeguards provided in Section 401(c) is the right of candidates to have an observer present at every phase and level of the counting and tallying of ballots, including earlier phases such as the preparation and mailing of the ballots, among other rights. The International Constitution provided that "(a)ny candidate for office . . . may be present at the preparation and mailing of ballot packages, the ballot pick-up and the counting of ballots." The International's Election Guide (Election Guide) states in relevant part: "Pick up ballots from the post office at the scheduled time and date. Do not for any reason attempt to gain access to the ballots prior to that time."

The investigation disclosed that the local announced the ballots would be collected at noon on June 25, 2019, from the Johnstown Post Office. Despite this announcement, the local collected the ballots earlier, at approximately 11 a.m. In collecting the ballots

ahead of the announced time, the local violated Section 401(c) and its International Constitution and Election Guide by denying you the right to observe the collection process. However, that violation had no effect on the outcome of the election. No additional ballots were delivered after 10 a.m. when the Johnstown Post Office completed sorting its mail. Further, there was no indication of ballot tampering. Thus, there was no violation that may have affected the outcome of the election.

You alleged that one ineligible member, [REDACTED], was permitted to vote, leading you to believe that other ineligible members may have been permitted to vote. The investigation disclosed that there were two [REDACTED], one who was retired and ineligible to vote, and the other who was eligible to vote. The local mailed a ballot to the eligible member with that name who voted in the election. There was no violation.

You alleged the local failed to retain secret ballot envelopes after the conclusion of the election. Section 401(e) provides in relevant part that election officials designated in the union's constitution and bylaws shall preserve for one year the ballots and all other records pertaining to the election. The investigation confirmed that the local did not retain the secret ballot envelopes, in violation of Section 401(e). However, there was no effect on the outcome of the election. [REDACTED], although unaware that the secret ballot envelopes had not been retained, was emphatic that all election judges verified that each secret ballot envelope contained only one ballot. Further, you admitted you were unaware of any "funny business" regarding the ballots. There was no violation that may have affected the outcome of the election.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

[REDACTED]

Tracy L. Shanker
Chief, Division of Enforcement

cc: Lonnie R. Stephenson, International President
International Brotherhood of Electrical Workers
900 Seventh Street, NW
Washington, DC 20001

Paul Cameron, Business Manager
IBEW Local 459
408-412 Broad Street
Johnstown, PA 15906-2717

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