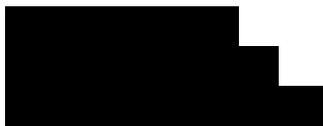




June 03, 2021



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on August 21, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the mail ballot election of union officers conducted by Local 759, International Brotherhood of Electrical Workers (IBEW), on June 4, 2020.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that Local 759's voter database was inaccurate and, as a result, several pieces of your campaign mailings were returned to you as undeliverable. You further alleged that Local 759 failed to provide you with updated addresses for the undeliverable campaign mailings. Section 401(c) of the LMRDA imposes a duty on a union to comply with candidates' reasonable requests to distribute campaign literature to all union members in good standing. 29 U.S.C. § 481(c); 29 C.F.R. § 452.67. This duty requires, at a minimum, that a union take reasonable steps to maintain current mailing addresses for its members.

The investigation found that, about two months prior to the May 8, 2020 election, the local conducted a referendum vote on its collective bargaining agreement. Only one member's ballot package was returned undeliverable for that vote. The local contacted that member, who resided in Hialeah, Florida, and obtained an updated address.

The investigation found that on May 8, 2020, the union emailed you mailing labels containing members' last known home addresses so that you could conduct your campaign mailings. The union generated the labels from the most recent monthly mailing list located in its voter database. The union also used these labels to conduct the May 8 ballot mailing and only one of the ballot packages was returned as

undeliverable. The investigation found that on May 11, 2020, you used the mailing labels that the union provided to you and conducted a campaign mailing to all 295 members in good standing.

The investigation disclosed that two of these mailings were returned to you as undeliverable. One of these two campaign mailings was for the member residing in Hialeah, Florida, whose referendum ballot had been returned undeliverable two months earlier. During the voting period, the union obtained a new address from the member and mailed a replacement ballot to that address. However, the replacement ballot also was returned as undeliverable. During the investigation, this member stated that he had moved during the course of the election and he had not provided Local 759 with his new home address.

You had sent the second undeliverable campaign mailing to a member's home address in Fort Lauderdale, Florida. During the investigation, this member stated that the address that the union used to mail his ballot was the same address you used to send a campaign mailing to him. The member confirmed the address was his current home address and that he had received an election ballot in the mail at this address. The member also stated that he had received several notices about the 2020 election at that address, and that he has lived at the address for the past 37 years. The member further stated that after he received his ballot package at his home address he tore it up and threw it in the trash because he was going out of town to Georgia and he did not want to vote.

Thus, although two of your campaign mailings were returned undeliverable, one member failed to provide Local 759 with his correct home address. Your campaign mailing for the other member was sent to the current home address but for an unknown reason was returned undeliverable. Notwithstanding these two situations, the investigation found that the union took reasonable steps to maintain current mailing addresses for its members and to ensure the accuracy of its mailing list. There was no violation of the LMRDA.

Next, you alleged that the voting instructions included with the ballot packages were confusing and that it was not clear from the instructions that voters were required to include a return address on the ballot return envelope in order for their ballots to be included in the vote tally. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. Thus, a union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards to insure a fair election. 29 C.F.R. § 452.110(b).

The investigation found that 35 voted ballots were returned in envelopes with no voter identifying information and, for that reason, the union voided those ballots and did not include them in the vote count. However, the union's voting instructions provided adequate instruction for properly casting ballots in the election. Specifically, the instructions included the following requirement in the middle of the instructions page: "Print your name and address legibly in the return address portion of the envelope and return it to the Election Judge via US Mail." At the bottom of the instructions, there is an admonishment typed in italics and bold font stating: "Note: failure to comply with the above instructions will result in the ballot being voided." Thus, voters were provided adequate notice that failure to comply with the voting instructions would result in their ballots being voided.

Further, only two of the seven members whom you stated found the voting instructions confusing corroborated your statement. However, these two members were unable to articulate their reasoning for such confusion. The remaining members stated that they did not carefully read the instructions, did not read them at all, or acknowledged that it was their fault that they failed to place their voter identifying information on the return ballot envelope. There was no violation of the LMRDA.

In addition, you alleged that during the election Local 759 used both the email system and the U.S. Postal Service to communicate with its members. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. The investigation disclosed that the union used the U.S. Postal Service to mail the combined nomination and election notice to the membership on April 6, 2020, and the ballot packages to members on May 8, 2020. After nominations, Local 759 emailed a letter to members who had email addresses on file with the union informing them of the names of those candidates who had accepted a nomination. The investigation found no evidence of any confusion or unfairness resulting from the union's dissemination of its election communications both by email and by the U.S. Postal Service. There was no violation of the LMRDA.

Also, you alleged that the candidate selection form did not instruct members to call the election judge if a member did not receive a ballot in the mail by a certain date. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. 29 U.S.C. § 481(e); 29 C.F.R. § 452.84. The investigation disclosed that the candidate selection form did not include instructions about how to obtain a replacement ballot if a member did not receive a ballot in the mail. However, the candidate selection letter, which was emailed to members' email addresses on file with the union and posted at the worksites, included the name and

telephone number of the election judge. Also, the election notice included the name and email addresses of the local's recording secretary and president.

Further, of the 295 ballots that were mailed to members, only one such ballot was returned as undeliverable. The election judge obtained a new address directly from the affected member and mailed a replacement ballot to him at that new address. There is no evidence of any confusion resulting from the omission of information on the candidate selection form regarding replacement ballots. There was no violation of the LMRDA.

Moreover, you alleged that the union failed to afford you an opportunity to review and proof the final ballot and ballot instructions. Section 401(e) of the LMRDA requires a union to conduct its election of union officers in accordance with its validly adopted constitution and bylaws insofar as they are not inconsistent with the provisions of the Act. 29 U.S.C. § 481(e); 29 C.F.R. § 452.2. The IBEW Constitution and Bylaws are silent regarding whether observers may review and proof the final ballot and the ballot instructions. In any event, you stated during the investigation that you did not request the election committee or any union officials to permit you to participate in the reviewing and proofing processes. There was no violation of the LMRDA.

Further, you alleged that the union failed to provide you with a detailed scheduling order prescribing the election and observer procedures, including the date, time, and place for the preparation and mailing of the ballots and the right of candidates to observe these election processes. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c). Thus, in any secret ballot election, which is conducted by mail, regardless of whether the ballots are returned by members to the labor organization office, to a mail box, or to an independent agency such as a firm of certified public accountants, candidates must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots. 29 C.F.R. § 452.107(c).

The investigation found, however, that you did not contact the election committee or any other union officials and inquire about the date, time, or place of the preparation and mailing of the ballots or regarding observer rights. Nor did you request that the union permit you or your observer to be present at these phases of the election. Further, the investigation did not disclose any evidence of ballot fraud or other election impropriety. There was no violation of the LMRDA.

Finally, you alleged that the election officials did not assign a sequential number to each member's name on the voter eligibility list and did not place that number on the voter's corresponding return ballot envelope before mailing the ballot packages. The IBEW

Constitution and Bylaws, the IBEW Election Guide, and the Local 759 Bylaws do not require the local to use any such numbering system. Thus, there was no violation of the provision in Section 401(e) of the LMRDA requiring a union to conduct its election of union officers in accordance with its constitution and bylaws. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 452.2.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

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

Timothy Haynick, President
IBEW Local 759
301 NE 1st St.
Pompano Beach, FL 33060

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