



June 11, 2021

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on March 17, 2020. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), occurred in connection with the election of officers of the International Brotherhood of Teamsters (IBT) Local Union 542 (union), which was completed on December 9, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that, with respect to each of your allegations, no violation occurred which may have affected the outcome of the election.

You alleged that incumbent officers running for reelection on the Paving the Way (PTW) slate campaigned at the United Parcel Service (UPS) facility in El Centro, California, on November 19, 2019, while on union time. You also believed that the PTW slate should not have been handing out flyers to UPS truck drivers who were exiting the parking lot. You stated that you did not personally witness this but you were informed by other members of your slate and supporters.

Section 401(g) of the LMRDA prohibits the use of union funds "to promote the candidacy of any person in any election subject to the provisions of this subchapter." 29 U.S.C. § 481(g). OLMS investigators found that on November 19, 2019, Local 542 President [REDACTED], Recording Secretary [REDACTED], and Business Agent [REDACTED] campaigned at the UPS package center in El Centro. They campaigned outside the employer's gate in the parking lot, the same location where members of your slate campaigned. As part of their campaign, they handed out flyers to UPS truck drivers exiting the parking lot in UPS trucks. OLMS investigators reviewed records which showed that [REDACTED] all properly requested vacation time to campaign. They were not campaigning in a location or to a group of people that was unavailable to the opposing slate. There was no violation.

You also alleged that the union failed to mail ballots to at least 65 members. Additionally, you stated that the election vendor reported 407 undeliverable ballot packages while the printing company that distributed your election flyers reported 317 undeliverable flyers. You believed those numbers should have been identical if both companies were given the same mailing list. Section 401(e) of the LMRDA requires the union to provide every member with a reasonable opportunity to vote. 29 U.S.C. § 481(e). In a mail ballot election, this means that the union has a duty to maintain an accurate mailing list of its members and take reasonable steps to ensure that all members who are eligible to vote are mailed a ballot. This includes the duty to take reasonable steps to find correct addresses for undeliverable ballots.

Upon investigating the records of the election, OLMS found that 45 of the 65 members you identified as not having received a ballot were on the union's mailing list and were mailed a ballot: some of those were returned as undeliverable and re-mailed when a new address was found, while some were returned as undeliverable and no new address could be found. Of the remaining 19 people you identified who were not on the original mailing list, 17 were either added to the list later and mailed a ballot or were not eligible to vote. Two people you identified could not be found in the union's database. Investigators also found that there were 82 other names on the union's mailing list that did not have an address. The union found addresses for 22 of those members and mailed them a ballot, leaving 60 members for whom the union could not find an address. Investigators found that of the over 9,000 ballot packages mailed to members, 469 of the ballot packages were undeliverable. The union found updated addresses for 99 of the undeliverable ballots. Seventy (70) of the undeliverable ballots were forwarded to a new address by the postal service.

The union provided details of the steps it took to update its mailing list and process undeliverable ballots. The union regularly reminded members at meetings to keep their contact information up to date, posted reminders on Facebook and work site union bulletin boards, called members for whom it needed an updated address if it had a phone number for that member, reached out to members' employers to request updated contact information, and asked business representatives assigned to facilities where members worked to get in touch with members for whom the union needed an updated address. The union provided a spreadsheet that it maintained to track the process of updating members' contact information. Finally, investigators found that the printing company that mailed your campaign materials used the same mailing list as the election vendor had a different system for eliminating missing or incomplete addresses from the list. There was no violation.

You next alleged that the union's phone line that members were instructed to call in order to request a replacement ballot had an inoperable voicemail system. You stated that you spoke with members who attempted to call after 5:00 p.m. and were unable to

leave a message. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Section 4 of the Teamsters Local 542 Election Rules stated, “[n]otices will be posted on the Union bulletin boards advising members that if they do not receive a ballot by Monday, December 2, 2019, they should immediately telephone to request a duplicate ballot at the main office of Teamsters Local 542 (619) 582-0542. . . Members may call for a duplicate ballot 24/7 up until midnight on Monday, December 2, 2019.” These rules were provided to the candidates after nominations and were not widely distributed to the membership. The union confirmed that the voicemail system did not allow callers to leave a message when calling the main office number during the election period. Investigators found that 25 duplicate ballots were mailed to members who called the Local 542 office to request a ballot. No member was identified who was unable to request a duplicate ballot. There was no violation.

You also alleged that the Election Chairman should not have had a key to the P.O. Box for returned voted ballots. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The Local 542 Election Rules stated: “The Post Master shall be provided with a letter advising that the post office box shall be sealed and that no one shall have access to that box until 10:00 a.m. on Monday, December 9, 2019 when California Elections Company shall present their credentials to secure the ballot envelopes, accompanied by the candidate observers.” Election Chairman [REDACTED] was responsible for ballot control and was given two keys to the P.O. Boxes the union rented for the election. The union provided a letter to the post office instructing that no one should have access to the box for returned voted ballots until 10:00 a.m. on December 9, 2019. Investigators found no evidence that the P.O. Box was accessed prior to the designated time. There was no violation.

Additionally, you alleged that the incumbent candidate slate passed out campaign literature which contained an incorrect phone number for duplicate ballot requests. You believed this was done intentionally to deter members from voting. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Incumbent candidate [REDACTED] confirmed that the phone number on the campaign flyers ended in “0582” when it should have been “0542.” He stated that he did not notice this mistake until after the flyers had been handed out and denied doing it on purpose. Investigators found that the union mailed duplicate ballots to 25 members who called the union office to request a duplicate. No member was identified who was unable to request a duplicate ballot because of the error on this campaign flyer or otherwise. There was no violation.

You also alleged that the election vendor printed 13 sample ballots that were not included in the official ballot count. Section 401(c) of the LMRDA requires a union to

provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The election vendor explained that the 13 ballots which were marked "Sample" were used to demonstrate the integrity of the voting machines. These sample ballots were not taken from the ballots printed for the election and were not listed on the official ballot statement for the election. Investigators' review of the ballot card account statement showed that 10,000 ballots were printed for the election. Of those 10,000 approximately 9,092 were mailed, 296 re-mailed, 22 used to remake damaged ballots, and 590 unused ballots were left over. There was no violation.

Next, you alleged that you and members of your slate were prevented from campaigning on public sidewalks outside of a public county work facility in El Centro, California, by security at the facility. Members of your slate were later permitted to campaign there when they returned and told security that the police department would not be responding to any calls about union campaigning on the public sidewalk. You believed that members of the incumbent slate were permitted to campaign at that location because of their positions as union officers. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, including equal treatment of all candidates. 29 U.S.C. § 481(c). Investigators spoke with Secretary Treasurer [REDACTED] who stated that he was not aware of any instance of incumbent officers campaigning at any location where opposing candidates were not permitted to campaign. Investigators did not find evidence that the union took any action that treated one slate of candidates different from another with regard to campaigning. There was no violation.

Finally, you alleged that some eligible members were denied the right to vote and some ineligible members were permitted to vote. Specifically, you alleged that the union improperly disqualified [REDACTED] vote for delinquent dues. You also alleged that several seasonal employees at UPS should not have had their ballots counted because they had not paid the required dues or initiation fees. Section 401(e) of the LMRDA states that "[e]ach member in good standing shall be entitled to one vote." 29 U.S.C. § 481(e). OLMS reviewed the records of the election and found that a total of 1,788 voted ballot packages were returned for the December 9, 2019 election. A total of 1,467 of those ballots were from members found on the union's eligibility list. Of the ballots from members not on the eligibility list, 236 were challenged and correctly found to be eligible, while 85 were challenged and correctly found to be ineligible. Additionally, 84 of the members who had their ballots counted had not fully paid their initiation fee at the time of the election.

IBT Legal Director [REDACTED] advised OLMS that a member who is on dues check-off but had not paid the full initiation fee is still eligible to vote and that the union may waive the initiation fee. [REDACTED] explained that the executive board will often waive full payment of the initiation fee and allow members to pay it over the first few months

of membership. The executive board may also waive the fee for units it is attempting to organize or for members who claim financial hardship. Article 17, Section B of the Local 542 Bylaws permits the union "to waive or reduce, on a non-discriminatory basis, the payment of delinquent dues, assessments and/or re-initiation fees." Investigators found no evidence of unequal application of the waiver provision. The investigation also found that the union properly excluded Otis McGhee's vote from the tally for delinquent dues. There was no violation.

Your additional allegations were determined to be either not properly exhausted or not covered by the LMRDA.

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

Sincerely,



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Chief, Division of Enforcement

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