



June 10, 2021

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on March 16, 2020. Your complaint alleges that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the December 4, 2019 election of officers for the United Emergency Medical Professionals of Arizona (UEMPA), Local I-60 of the International Association of Fire Fighters (IAFF), AFL-CIO.

The Department of Labor conducted an investigation into your allegations. As a result of the investigation, the Department concluded, with respect to your allegations, that there were no violations of the LMRDA that may have affected the outcome of the election.

You alleged that the Local did not maintain an accurate membership and address list. As support, you noted that you were told different numbers in response to your inquiries about the union's total membership and that the postal service returned 19 of your campaign mailings as undeliverable due to incorrect addresses. Section 401(e) of the LMRDA provides that notice of an election must be mailed to each member at his last known home address. 29 U.S.C. § 481(e). Additionally, section 401(e) of the LMRDA states, "every member in good standing . . . shall have the right to vote for . . . the candidate or candidates of his choice." *Id.* Therefore, every eligible member must be afforded a reasonable opportunity to vote. *See* 29 C.F.R. § 452.94. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). As a part of these statutory duties, a union must make reasonable efforts to keep its membership list current.

The investigation confirmed that you asked the Local's President, Election Committee, and Secretary for the total membership of the union on November 6, 2019. Although you were given different numbers for the total membership, it was because the union officials provided you with estimates before they were able to determine the exact number of current members. On November 6, 2019, the Secretary told you she believed

the union's member count was "[i]n the neighborhood of 590." She gave you an estimated number because she was not in the office and did not have access to the membership information at that moment, and she thought you needed it right away to prepare your campaign mailings. She decided it was better to estimate on the high side of the range of possible members so that you would not come up short when preparing your campaign mailings.

On November 6, 2019, the President told you that he was waiting for information from employers in order to obtain the most up to date membership total, but he gave you an estimate of 527 members based on the membership at the last meeting. He noted that the number did not include new members that had been added the previous day. The next day, based on the information received from the employers, the Election Committee reported to all candidates that the membership was 550 and explained this number was up to date as of October 28, 2019. On November 15, 2019, you were given 547 mailing labels for your campaign literature by the Assistant to the President, which was fewer members than previously reported because of the termination of three employees from the bargaining units.

The evidence showed that the Local took reasonable efforts to maintain a current mailing list. The Local requested employer documents showing current membership enrollment and cross-checked the list with the Local's list. The Local also posted a reminder on the election website about the need to update mailing addresses prior to the election. Additionally, the Local contacted those individuals whose notices of nominations were returned as undeliverable about the need to provide an updated address. There was no violation of the LMRDA.

You alleged that the Local failed to provide a reasonable amount of time for candidates to campaign. As support, you stated that there was less than a month between the nominations meeting and when ballots needed to be mailed back to be received by the tally. Additionally, you stated that the union failed to provide timely guidance about how to distribute campaign literature. Under section 401(c) of the LMRDA, the union has a duty to comply with the reasonable requests of any candidate to distribute campaign literature to the membership at his or her expense. 29 U.S.C. § 481(c). The union also must provide a reasonable period prior to the election during which candidates may engage in the campaigning that the LMRDA guarantees, including the right to distribute campaign literature. *See* 29 C.F.R. § 452.79. Additionally, section 401(e) of the LMRDA provides that elections shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the LMRDA. *See* 29 U.S.C. § 481(e).

The investigation revealed that the election timeline was appropriate and did not restrict candidates' ability to campaign. The Local's Constitution and Bylaws provide that nominations are to be held during the November general meeting and that

elections are held in December. Consistent with this timeframe, candidate nominations were held during the Local's meeting on November 5, 2019, and the tally of mail ballots was conducted on December 4, 2019. Candidates were not required to wait until the nominations meeting to campaign or send out literature to members.

The evidence indicated that the distribution of your campaign literature late in the election cycle was due to the timing of your request. The investigation corroborated that you were contemplating running for Trustee in March 2019 and asked the Local about how to send campaign literature. The Secretary responded that she did not believe you could send campaign materials through the union until after nominations but that she would double check, but she did not later follow up with you. However, you ultimately decided not to run for the Trustee position. After deciding to run for the Treasurer position, you inquired again about campaign literature distribution in a September 7, 2019 email with 11 questions for the Election Committee. On September 16, 2019, the Election Committee provided answers to your questions, including an explanation of the process and costs for distributing campaign literature. You waited about two months after receiving this response to request distribution of campaign literature, and so your literature was mailed on November 15, 2019. The evidence therefore indicates that the timing of your campaign mailing was not due to any failure on the Local's part to timely share information about the distribution procedures. Therefore, there was no violation of the LMRDA depriving you of a reasonable opportunity to campaign for the position of Treasurer.

You alleged that other candidates were given a different membership list for campaigning purposes. As support, you noted that you did not receive a copy of a joint campaign mailing sent by your opponent for the position of Treasurer and a candidate for Secretary. Section 401(c) of the LMRDA requires a union and its officers to refrain from discrimination in favor of or against any candidate with respect to the use of union lists of members. 29 U.S.C. § 481(c); *see also* 29 C.F.R. § 452.71(b).

The investigation confirmed that the Local used the same membership list to prepare and print mailing labels for all of the candidates that requested distribution of campaign literature. There was no requirement that candidates send campaign literature to all members, and the Election Committee advised candidates the list could be segmented by employer or job classification if desired. Your opponent for the position of Treasurer and the candidate for Secretary decided to send their joint campaign mailing to only a subset of the membership and to exclude you from the mailing. There was no violation.

You alleged that the Local President used union resources to campaign for two other candidates and was biased in favor of the other candidates. Specifically, you referred to campaign literature from the President endorsing two other candidates, which you alleged was likely written while the President was on union time and was signed using

his union title. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); *see also* 29 C.F.R. § 452.73. Union officials and employees are free to campaign for the candidates of their choice so long as the campaigning does not involve the use of union resources.

The investigation revealed that the Local President worked on the campaign literature in question from November 15 to 17, 2019, when he was out of town attending a conference. The investigation confirmed that the President was not paid for his union position during the time he worked on the literature. The literature was signed using the President's union title, but the Local's Constitution and Bylaws did not prohibit officers from noting their official union titles on campaign literature. Further, an official union title is of no proprietary, pecuniary or other value to a union and, therefore, does not constitute use of a union resource in violation of the LMRDA. As such, there was no violation.

You alleged that the ballots were not mailed out with sufficient turnaround time for members to receive, vote, and return them. Relatedly, you alleged that the compressed timeline resulted in inadequate efforts to collect and re-mail undeliverable ballot packages. Specifically, you alleged the Election Committee checked the P.O. box only once and too early for the undeliverable ballot packages to have been returned.

Section 401(e) of the LMRDA requires that a notice of an election be mailed to each member "not less than fifteen days prior to the election." 29 U.S.C. § 481(e). In a mail ballot election, mailing the ballot to members' last known home addresses at least fifteen days prior to the election satisfies the LMRDA's election notice requirement. Section 401(e) also ensures a right to vote for all members in good standing. 29 U.S.C. § 481(e). As the Department's regulations explain, the statutory right to vote requires that unions provide members with a reasonable opportunity to vote. 29 C.F.R. § 452.94. Additionally, this section of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws as long as they are not inconsistent with the provisions of the LMRDA. 29 U.S.C. § 481(e). Article VII, section 6 of the Local's Constitution and Bylaws provide that members shall have fifteen days from the date of the mailing of the ballot packages to return their voted ballots.

The investigation confirmed that the mail ballot package was mailed out to members on November 19, 2019. Ballots had to be returned to the Local's election P.O. box by December 4, 2019. This timeline allotted fifteen days between the mailing and the election, which was consistent with the Local's Constitution and Bylaws. The investigation did not reveal problems with the ballot mailing or other circumstances that would have rendered the fifteen-day voting period unreasonable. The election timeline did not violate the LMRDA.

The investigation confirmed that the Election Committee checked the election P.O. box for undeliverable ballots on November 26, 2019. The Election Committee chose a date in the middle of the ballot return period in order to allow sufficient time for the postal service to process the undeliverable ballot packages and return them to the P.O. box, and also sufficient time for voters to receive, vote, and return any packages re-mailed by the Election Committee. There were no undeliverable ballots in the P.O. box on November 26, 2019. When the Election Committee collected all returned ballots for the tally on December 4, 2019, there were ten undeliverable ballot packages in the P.O. box. The closest margin of victory in this election was 22 votes. Thus, even if it would have been prudent to conduct additional checks for undeliverable ballots, further efforts to re-mail the ten undeliverable ballot packages would not have affected the outcome of the election. The investigation uncovered no violation affecting the outcome of the election.

You alleged that the Local failed to safeguard the ballots while they were in the election P.O. box in that the Local did not secure a second post office box for ballots returned as undeliverable and that the Executive Board had access to the P.O. box. As noted earlier, section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election, including the right to observers. 29 U.S.C. § 481(c).

The Department determined that the security of the ballots and candidates' observer rights were not compromised. The investigation confirmed that, for the past seven to eight years, the Local has maintained two P.O. boxes. One was used for receipt of regular union mail and the other was used for elections. Prior to the election, the sole key to the election P.O. box was surrendered to the Election Committee, who maintained custody of it throughout. The Election Committee accessed the P.O. box in the presence of observers to check for undeliverable ballot packages and then to collect the ballots prior to the tally. There was no violation.

You also alleged that the union failed to provide adequate safeguards in that candidates were not given the opportunity to ride in the same vehicle as the voted ballot packages when they were transported from the P.O. box to the tally site.

The investigation confirmed that every candidate was allowed to observe the retrieval of the ballots from the election P.O. box. In the presence of observers, the ballots were placed into a cloth bag, the bag was zipped shut, and the zipper was secured using a cable tie. To provide assurance that the bag was not opened during the drive to the union office, the cable tie was marked with black ink and photographed. The observers were then invited to follow the Election Committee to the union office in their own vehicles. None of the observers requested to ride in the same car as the Election Committee and ballots. After arriving at the union office, those present compared the cable tie to the photograph to ensure it was a match. There was no violation.

You alleged that members were not notified that the Secretary and Treasurer would serve as delegates to the international convention by virtue of their positions. Elected officers may serve as delegates by virtue of their election to office if the constitution and bylaws of the labor organization so provide. *See* 29 C.F.R. § 452.120. The Local's Constitution and Bylaws provide that the President will serve as a delegate to the convention, and the Secretary and Treasurer will also serve as delegates should the Local be afforded more than one delegate.

The investigation confirmed your allegation that the election notice and ballot did not include information that certain officers would serve as ex officio delegates. The LMRDA has no requirement, however, that an officer serving as delegate must be so identified on the ballot. The Secretary's interpretive regulation speaks to this issue in non-mandatory terms, stating that it is advisable to have a statement on the ballot that identifies those officers who, by virtue of their election to office, serve as delegates to a convention. 29 C.F.R. § 452.120. Moreover, members were given notice in that the Local's Constitution and Bylaws clearly stated which officers would serve as delegates to the international convention. There was no violation.

You alleged that the election notice and ballot package did not include information on how to request a replacement ballot. As noted earlier, section 401(e) of the LMRDA requires that unions provide members with a reasonable opportunity to vote. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 452.94. Additionally, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair and democratic election, which includes the requirement that unions provide voters with adequate voting instructions. *See* 29 U.S.C. § 481(c); 29 C.F.R. § 452.110.

OLMS' investigation confirmed that members were provided with sufficient information to allow them to request a replacement ballot. Although the election notice and ballot package did not specifically include instructions about how to request a replacement ballot, it did provide an email address for members to contact in the event they "need[ed] assistance." Additionally, the nomination notice directed members to the election website for "additional and complete information" regarding the election, and the election website also included contact information for the Election Committee. There was no violation.

You alleged that the Local also failed to inform members that they could return their ballots by dropping them in a lockbox at the Local's headquarters in lieu of sending them by regular mail. Additionally, you protested that members could only access the lockbox during the limited hours the office was open. As noted earlier, a union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards to ensure a fair election. *See* 29 U.S.C. § 481(c); 29 C.F.R. § 452.110(b).

OLMS' investigation confirmed that the Local's Constitution and Bylaws provided that members had the option of depositing their ballots in a lockbox at the Local's office or returning them by mail. Due to an oversight, the ballot package omitted information about the option to return voted ballots to the lockbox. The Election Committee decided to still make the lockbox available during the election, and members could have deposited their ballots during the Local's normal business hours. No ballots were deposited. The investigation revealed no evidence that a member was unable to vote because the voting instructions did not mention the option to return voted ballots to the lockbox. The ballot package included clear instructions about returning ballots by mail. No member reported lacking knowledge of the lockbox or that they were prevented from voting due to inadequate instructions. As such, the investigation uncovered no violation affecting the outcome of the election.

You alleged that the Local gave inadequate notice of the nominations meeting and election because notices were not posted at worksites or on the main union website. Section 401(e) of the LMRDA requires that a "reasonable opportunity . . . be given for the nomination of candidates." 29 U.S.C. § 481(e). Accordingly, notice must be "timely [and] reasonably calculated to inform" members of how and for which offices nominations will proceed. 29 C.F.R. § 452.56.

While no specific method of notice is prescribed, mailing the notice of nominations to each member's last known address within a reasonable time of the nomination meeting satisfies this requirement. Additionally, as noted earlier, section 401(e) of the LMRDA requires that a notice of an election be mailed to each member "not less than fifteen days prior to the election." 29 U.S.C. § 481(e).

The investigation found that nominations notices were mailed to members' last known home addresses on October 21, 2019, which was 15 days before the November 5, 2019 nominations meeting. As noted earlier, ballot packages were also mailed to members 15 days before the election. These mailings satisfied the Local's obligations to give notice of the nominations meeting and election, and no postings at job sites or online was necessary. The notice was, however, also posted to the Local's election website. There was no violation.

You alleged that the Local's President used union funds when he portrayed you in a bad light in an official union publication. Specifically, you pointed to the minutes from the September general membership meeting where it was explained that you were suing the Local's executive board. Section 401(g) of the LMRDA prohibits unions from expending union funds to promote any person's candidacy. 29 U.S.C. § 481(g). Thus, a union may not, through its publications, show preference by criticizing or praising any candidate. *See* 29 C.F.R. § 452.75. Excluded from this prohibition is the publication of articles that are of interest to members. In determining whether a union publication

contravenes section 401(g)'s prohibition against union-financed campaigning, courts evaluate timing, tone, and content of the communication.

The investigation established that the timing, tone, and content of the meeting minutes are not indicative of improper campaigning. You filed a lawsuit in federal court against the Local's Executive Board in August 2019. The President informed members of the lawsuit during the September 2019 general membership meeting, noting that the lawsuit covers many of the same allegations brought forward in the April 2019 meeting and that would be reviewed by a pre-Trial Review Board. The President had briefly reviewed the charges during the April 2019 meeting. The announcement's timing does not indicate improper campaigning as its impetus was the filing of your lawsuit rather than the election. The tone and content of the announcement merely indicate that the President was informing members of a newsworthy event impacting the union. There was no violation.

You alleged that the election committee failed to provide adequate time for candidates to prepare to have an observer present while the Local prepared the mail ballot packages. As noted earlier, the LMRDA's adequate safeguards provisions requires the union to allow any candidate to have an observer at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). The Department's regulations provide that, for mail ballot elections, the right to an observer encompasses the union's preparation and mailing of the ballots. 29 C.F.R. § 452.107(c).

The investigation revealed that the Election Committee notified candidates on November 15, 2019, that preparation of the ballot packages was scheduled for November 19, 2019. This allowed candidates four days to make arrangements to have an observer present, which was not unreasonably short notice given the circumstances. You were able to find someone to serve as your observer and informed the Election Committee of your choice on November 18, 2019. When your observer cancelled at the last minute, you were unable to find a replacement observer. There was no violation.

Your protest to the union included other matters which would not violate the LMRDA even if true and, consequently, were not investigated. For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA affecting the outcome of the election. I have closed the file regarding this matter.

Sincerely,

A solid black rectangular redaction box covering the signature area.

Tracy L. Shanker
Chief, Division of Enforcement

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