



August 31, 2021



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on August 18, 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 the American Postal Workers Union (APWU), Memphis Tennessee Area Local, Local 96, on May 9, 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 the election chairperson told you that 15 ballot packages were returned to the local as undeliverable and you alleged that at least 25 of your campaign mailings were returned undeliverable during the election. You asserted that members whose ballots were returned undeliverable were denied the right to vote. 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 their choice. 29 U.S.C. § 481(e); 29 C.F.R. §§ 452.84, 452.94. The statutory protection of the right to vote in a mail ballot election implies, at a minimum, that a union take reasonable steps to maintain current mailing addresses for its members and to distribute election ballots to all those entitled to vote.

The investigation found that Local 96 took reasonable steps to maintain current mailing addresses for its members and to ensure the accuracy of its mailing list. Specifically, the investigation found that the election committee used the undeliverables that it received from the March 16, 2020, election notice mailing to update the union's membership mailing list. On April 23, 2020, the election chairperson used the updated list to conduct your campaign mailing and to mail 856 ballots to members.

Prior to the ballot mailing, the election committee secured one post office box for the return of the voted ballots and a separate post office box for the return of undeliverable

ballots. During the voting period, the election committee chairperson periodically checked the post office box secured for the return of undeliverable ballots to ascertain whether there were undeliverables. The investigation found that 30 of the 856 ballots that were mailed to members were returned as undeliverable. The investigation further found that the union hand-delivered three of the undeliverable ballots to the respective members so that they could vote their ballots. The election committee chairperson attempted to obtain updated addresses for the remaining members by going to the members' work places, or by contacting them on Facebook or by email. The investigation showed that three of these members voted in the election.

Further, the investigation showed that the election committee instructed members to come to the union office and submit a duplicate ballot request form if they did not receive a ballot in the mail. A total of 28 members submitted such forms and were provided duplicate ballots. These members were permitted to mark their ballots in private at the union office and then deposit them in the postal mailbox located in front of the union office or permitted to take the ballots with them to fill out later. Under these circumstances, Local 96 afforded its members a reasonable opportunity to vote and made reasonable efforts to maintain current mailing addresses for its members. There was no violation of the LMRDA.

Next, you alleged that the union placed improper restrictions on observers by failing to afford observers the opportunity to view members' names on the return ballot envelopes during the ballot count. You also alleged that the union used the COVID-19 pandemic as an excuse to impose those restrictions. Section 401(c) of the LMRDA provides that a union must provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording and reporting of tally sheets. 29 U.S.C. § 481(c); 29 C.F.R. § 452.107. However, observers do not have the right to count ballots or compromise the secrecy of the ballots.

The investigation disclosed that due to social distancing restrictions observers were prevented from standing or sitting in close proximity to the election committee members while they were counting and tallying the ballots. However, the investigation found that the union afforded observers an opportunity to adequately observe the ballot counting and tallying process. Specifically, all observers, including you, were close enough to the election committee members while they were counting the ballots so that you could hear the voters' names as the election committee members read them from the return ballot envelopes. In addition, all observers were afforded an opportunity to challenge the eligibility of any voter and were permitted to record the name of each voter. In fact, you acknowledged during the investigation that several observers challenged ballots during the ballot count and tally. In addition, during the

investigation you provided the Department with a list containing the names of 358 voters that you wrote down during the ballot count and tally as the election committee members were reading these names from the return ballot envelopes and verifying voter eligibility.

Moreover, although you wanted to handle the return ballot envelopes containing the voted ballots so that you could see the name of the voter on the envelope, the LMRDA does not provide observers the right to handle ballots or to compromise the secrecy of such ballots. Further, the investigation found no evidence that the ballot of any ineligible voter was included in the vote tally. There was no violation of the LMRDA.

In addition, you alleged that members were denied the right to vote when the election committee members went to the post office to retrieve the voted ballots for counting but failed to ask the post office clerk for any ballots that may have been received earlier that morning. 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 their choice. 29 U.S.C. § 481(e); 29 C.F.R. §§ 452.84, 452.94.

The investigation disclosed that voters had to mail back their ballots in time to be received at the designated post office box by 9:00 a.m., on May 9, 2020, in order for the ballots to be included in the ballot count. The investigation found that the election committee members retrieved the ballots from the post office for counting on May 9 at 10:00 a.m. By the time the election committee members arrived at the post office to retrieve the ballots, post office personnel already had sorted all the mail that had come in earlier that morning, including any ballots. The investigation further found that, when the post office clerk gave the ballots to the election committee chairperson during the ballot retrieval, the clerk told the election committee chairperson that she had given him all of the ballots that were at the post office. There was no violation of the LMRDA.

You also alleged that the election committee chairperson informed candidates that the ballots would be retrieved from the post office for counting at 10:00 a.m. but that he arrived at the post office at 9:00 a.m. Section 401(c) of the LMRDA provides that a union must provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). During the investigation, the election committee chairperson acknowledged that he went to the post office at 9:00 a.m. on the morning of the ballot retrieval because there had been a COVID-19 scare at that location and he wanted to make sure he could pick up ballots that day. The election committee chairperson further stated that when he arrived at the post office at 9:00 a.m. it was still closed so he left and returned to the post office at 10:00 a.m., which is the time that the election committee chairperson informed candidates that the ballots would be retrieved from the post office for counting. There was no violation of the LMRDA.

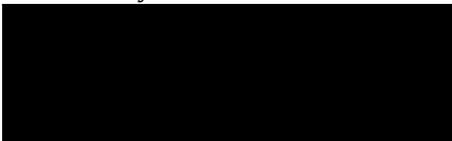
Finally, you raised allegations concerning certain voter identification requirements for the return ballot envelopes and the cost and accuracy of the mailing labels. Section 402 of the LMRDA provides that before a member may file an election complaint with the Secretary of Labor, such member must first exhaust the available remedies under the constitution and bylaws of the labor organization and of any parent body or must pursue such remedies for three calendar months without obtaining a final decision. 29 U.S.C. § 482(a).

Available remedies are prescribed in Article 12, Section 8, of the APWU National Constitution. This provision provides that any member who feels aggrieved in connection with the conduct of a local election may file a grievance with the election committee within seventy-two hours after such grievance arises. Appeals from the decision of the election committee may be made to the National Election Appeals Committee (NEAC) within five days from the receipt of the election committee's decision. The NEAC has the final authority to decide disputes arising out of an election of local union officers.

The investigation showed that you raised allegations with the union concerning certain voter identification requirements for the return ballot envelopes and the cost and accuracy of the mailing labels more than seventy-two hours after you became aware of these issues. Thus, you did not satisfy the seventy-two-hour rule prescribed in the APWU National Constitution for filing an internal union grievance. Therefore, you failed to comply with the requirements of section 402 of the LMRDA, 29 U.S.C. § 482(a). As a result, the allegations are not properly before the Secretary and are dismissed.

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,

A large black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker
Chief, Division of Enforcement

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