

U.S. Department of Labor

Office of Labor-Management Standards
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August 6, 2021



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint to the Department of Labor (Department) received on January 30, 2020, 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 S-6, (local or Local S6), International Association of Machinists & Aerospace Workers (International), conducted on October 10, 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 the International representative and the local's executive board did not have the authority to waive specific candidacy qualifications of the local bylaws and International constitution. Section 401(e) requires unions to conduct their elections in accordance with their constitutions and bylaws, insofar as consistent with the LMRDA. The Department will accept the interpretation consistently placed on a union's constitution by the responsible union official or governing body unless the interpretation is clearly unreasonable. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 453.3. Article VI, section 5, of the International constitution authorizes the International President to grant special dispensation to waive or reduce, among other things, dues and per capita tax for such periods of time as the International president may determine. The International relies on this provision to assert the International President's authority to waive constitutional provisions.

In order to qualify for office in the challenged election, members had to meet the union's candidacy qualifications. Article B, section 3, of the International constitution permits locals, through their bylaws and upon approval of the International President (IP), to impose a meeting attendance requirement of 50% of membership meetings held within 12 months prior to the nominations date. Article III, section 1, of the local bylaws adopts such a requirement.

The investigation disclosed that the International appointed [REDACTED] (International representative) to monitor the local's election. [REDACTED] invited the Department to provide election training to the election tellers. At a September 12, 2019 meeting, the Department informed [REDACTED] that the union's meeting attendance rule might violate section 401(e) of the LMRDA, which mandates that every member in good standing shall be eligible to be a candidate, among other things. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 452.38. The Department's regulations state that a case-by-case evaluation is necessary to determine the reasonableness of a meeting attendance requirement, including how many members the rule disqualifies, whether all or most members have the opportunity to attend meetings, the frequency of meetings, the number of meetings required for candidate eligibility, the relevant time period, and the availability of excuse provisions. 29 C.F.R. § 452.38. In response to the Department's concerns, the union examined its records and determined that the attendance requirement would disqualify approximately 97% of the local's 4,500 members from running for office. [REDACTED] therefore requested that the IP waive the meeting attendance rule. On September 17, 2019, the IP waived the rule and the local executive board also voted to approve the waiver.

In addition, the membership was informed of the waiver. The local posted an addendum to the nominations/election notice captioned "candidate reminder." Stewards and trustees posted the addendum notice on every bulletin board located in the employer facility, and the union included electronic postings on the local's Facebook page and its website page. Those postings remained in place until the day of nominations.

The IP had the authority to waive the meeting attendance rule. Although Article VI, section 5, of the International constitution does not specifically address waiver of the meeting attendance rule, the International has interpreted this provision more broadly to include waiver of the meeting attendance rule in this instance. The Department accepts the IP's interpretation of the International constitution because it is not clearly unreasonable. The circumstances of this case support the IP's decision. A meeting attendance requirement that disqualifies 97% of the members has a large antidemocratic effect which alone may be sufficient to render it unreasonable. 29 C.F.R. § 452.38(a) at n.25; *see also* 29 C.F.R. § 452.36(b). Had the local applied the meeting attendance rule, there is a high probability that the election would have violated the LMRDA. Further, the International representative took necessary precautions to inform the membership of the waiver, providing sufficient notice. There was no violation.

Conversely, you alleged the waiver of the meeting attendance rule should have also been applied to the election for chief steward. The LMRDA requires a local union to elect "its officers" pursuant to Title IV. 29 U.S.C. § 481(b). Section 3(n) of the LMRDA defines "officers" to include constitutional officers, members of the executive board and

those positions that perform executive functions. 29 U.S.C. 402(n). Article IV, section 17(a), of the local bylaws states that chief stewards shall be nominated and elected “in the same manner as provided for” the local officers. Chief stewards, however, are not officers or members of the executive board under Article C of the International constitution or Articles IV and V of the local bylaws. Nor do they perform executive functions. The investigation revealed that chief stewards handle member grievances and provide reports of all grievance and arbitration activity at membership and executive board meetings. Chief stewards do not vote in local executive board meetings. Therefore, Local S6 chief stewards do not meet the definition of “officers” and the election of chief stewards is not subject to the provisions of Title IV of the LMRDA. Consequently, that allegation is dismissed because the Department has no jurisdiction to address allegations unrelated to the LMRDA.

You alleged that candidates were not given an opportunity to be present at the drawing conducted to determine how candidate names would be positioned on the ballot, in violation of the local bylaws. Although Title IV does not prescribe standards for positioning candidate names on the ballot, section 401(c) does require unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). In addition, as noted above, section 401(e) requires unions to conduct their elections in accordance with their governing documents. 29 U.S.C. § 481(e). Article IV, section 4(e) of the local bylaws provides that candidates’ names shall be positioned on the ballot for each office by a drawing conducted by the local recording secretary and that candidates will have the opportunity to be present at the drawing. The investigation disclosed that on September 23, 2019, at approximately 9 a.m., local recording secretary Andrew James texted all candidates, including you, that the ballot drawing would take place around noon. You admitted that you did not attend because you had lunch plans. You were given the opportunity to attend the ballot drawing but chose not to attend. There was no violation.

You alleged the local failed to mail the absentee ballot packages to voters within five days after the close of nominations. Section 401(e) provides every member in good standing the right to vote and that unions must conduct their elections in accordance with their constitutions and bylaws, insofar as consistent with the LMRDA. The Department will accept the interpretation consistently placed on a union’s constitution by the responsible union official or governing body unless the interpretation is clearly unreasonable. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 453.3. With respect to absentee ballots, section 401(e) requires unions to make available absentee ballots where a substantial number of members are unable to vote in person and must give its members notice of the availability of such absentee ballots. 29 C.F.R. § 452.95. The union’s governing documents specifically address the use of absentee ballots. Article B, section 4, of the International constitution provides, in relevant part, that the recording secretary and secretary treasurer shall, within 5 days of the close of nominations, mail the absentee ballot. The International interprets this provision to require the recording secretary to

“[m]ail ballot packets to members who have filed written requests within five (5) days of the close of nominations *or as soon thereafter as ballots are available,*” according to Article VII of the International’s Official Policy Regarding Local Lodge Elections (International’s Official Policy). (Emphasis added.)

Nominations closed at the end of the nominations meeting on Saturday, September 21, 2019. The investigation disclosed the local sent the finalized absentee ballot to its printer by September 23, 2019. The local paid the printer overtime to ensure the absentee ballot packages were ready for pick-up on Friday, September 27, 2019, because the printer was normally closed on Fridays. In addition, the local paid to deliver absentee ballot packages to voters by express mail. The Department’s review of the election records showed that 145 absentee ballots were mailed on Saturday, September 28, 2019. Three absentee ballot requests were not immediately fulfilled because of incorrect addresses. However, the local mailed those three absentee ballots on Monday, September 30, 2019, and those three members voted in the election. The local mailed absentee ballots as soon as the ballots were available, in compliance with the International’s Official Policy. Further, the local took proactive steps to ensure that members had sufficient time to return their voted absentee ballots by October 10, 2019, election day. The local received 120 voted absentee ballots that it included in the tally. There was no violation.

You also alleged that absentee ballots were not properly processed which may have resulted in multiple ballots mailed to the same member. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). There was no evidence that multiple absentee ballots were mailed to members or that the local failed to maintain an accurate membership list. The investigation disclosed that every day the election committee checked its post office box for absentee ballot request forms and collected any absentee ballot packages returned as undeliverable. The local fulfilled those absentee ballot requests and obtained new addresses for any undeliverable envelopes containing an absentee ballot. A review of the local’s election records disclosed three unopened absentee ballot request envelopes: two did not contain the sender’s name; the third was for a member who voted in the election. There was no violation.

You alleged the local’s rental of a smaller voting area resulted in fewer voting booths, longer lines and waiting periods to vote, all of which had the effect of discouraging two-thirds of the membership from voting. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). The investigation disclosed that the local has, in the past, rented the main hall of Bath Senior Center for union events. For this election, however, due to the unavailability of the main hall, the local rented a space in that facility large enough to accommodate twelve voting booths, as well as other election-related items.

You admitted you knew of no one who was unable to vote because of long lines but provided the name of your witness, head election teller [REDACTED]. [REDACTED] did not confirm your allegation. Rather, [REDACTED] stated there were no such long lines at any time during the voting process on election day. There was no evidence that anyone was denied the right to vote because of the size of the rented voting area. There was no violation.

You alleged the International representative appointed a head teller rather than allowing you, as the local president, to make such an appointment, in violation of the union's governing documents. Section 401(e) requires unions to conduct their elections in accordance with their constitution and bylaws. 29 U.S.C. § 481(e). The International constitution, Article B, section 4, provides that "the president shall, at least 60 days prior to the election, appoint at least three tellers to assist in conducting the election in a fair and impartial manner." Article IV, section 5(c), of the Local Bylaws requires the local president, in conjunction with the local recording secretary, to ensure that all election tellers are properly trained. The investigation disclosed that you authorized former recording secretary Andrew James to select three head tellers and 14 tellers. He followed your directive and selected three head tellers in August 2019. During the nominations meeting in September, one of the head election tellers was nominated for office, leaving a vacancy for head teller. James recommended [REDACTED] as head teller and International representative [REDACTED] affirmed his selection. You confronted James on this issue, and in protest, James resigned as local recording secretary. The remaining two head tellers resigned in solidarity with James. You then appointed three new head election tellers. You directly or indirectly authorized the selection of all head election tellers and 14 election tellers. There was no violation.

You alleged a member was permitted to accept nominations for more than one office, in violation of the local bylaws and International constitution. Article IV, section 4(d), of the local bylaws provides that no member shall be permitted to accept nominations for more than one office. Article B, Section 4, of the International constitution provides in relevant part that a member may only be nominated and run for one office and that no member shall be entitled to hold more than one local office at the same time.

The investigation disclosed that [REDACTED] submitted a written acceptance for the office of trustee prior to the September 21, 2019 nominations meeting. [REDACTED] also attended the nominations meeting, which you chaired. At that meeting, someone nominated [REDACTED] for local president and he accepted. During nominations for trustee, acceptance letters for that position were read, including [REDACTED]. At that point, prompted by the International representative, you directed [REDACTED] to choose his preferred office. [REDACTED] selected the trustee office. Accordingly, prior to the close of nominations, the union required [REDACTED] to select only one office for which he would be nominated and run for office. The union listed [REDACTED] on the ballot as a candidate for trustee but not as a candidate for president. There was no violation.

You alleged that the local accepted the nominations of two members, [REDACTED] and James Lavallee, after the close of nominations, in violation of the International rules set forth in Circular 869, part VI. Specifically, you alleged that these two members were not present at the nominations meeting and had not submitted acceptance letters in advance of the nominations meeting but were nevertheless permitted to accept nominations after the close of nominations. Section 401(e) requires unions to conduct their elections in accordance with their constitutions and bylaws, insofar as consistent with the LMRDA. The Department will accept the interpretation consistently placed on a union's constitution by the responsible union official or governing body unless the interpretation is clearly unreasonable. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 453.3. While Title IV does not prescribe procedures a union must follow for conducting its nominations process, section 401(e) provides, in relevant part, that a union must provide a reasonable opportunity for the nomination of candidates. 29 U.S.C. § 481(e). A reasonable opportunity to nominate must account for instances where a member is unavoidably absent from a nominations meeting. 29 C.F.R. § 452.59. Circular 869, part VI provides that members unable to attend the nominations meeting may submit nominations in writing to the recording secretary and need not be present to be nominated. The local bylaws provide, in relevant part, that any member nominated for office shall be present at the meeting when nominated "or give his or her consent in writing at the time of nomination."

The investigation disclosed that Lavallee did not attend the September 21 nominations meeting. Lavallee did, however, accept his nomination for trustee in writing prior to the nominations meeting by texting his acceptance to the recording secretary. The union was not sure that a text message met the constitutional requirement of an acceptance in writing and gave Lavallee 24 hours after the close of nominations to confirm his acceptance of his nomination for trustee, which he did. There was no violation.

Regarding [REDACTED], the investigation revealed that he was also absent from the nomination meeting but did not accept his nomination for secretary-treasurer in writing ahead of time. The union gave [REDACTED] 24 hours after the close of nominations to accept his nomination for secretary-treasurer, which he did. The local's decision regarding [REDACTED] was a violation of the bylaws, which required written consent at the time of nomination. Nevertheless, there was no effect on the election because [REDACTED] lost the race for secretary-treasurer.

You alleged that on October 7, 2019, election teller [REDACTED] and secretary treasurer [REDACTED] campaigned on Facebook while on time paid for by the local. Section 401(g) prohibits a union from using union funds to promote the candidacy of any person. 29 U.S.C. § 481(g). This includes the salaries of officers and office staff. *See* 29 C.F.R. § 452.76. The investigation disclosed that on October 7, 2019, [REDACTED] was working on

behalf of the local, and [REDACTED] was paid for eight hours of work for serving as an election teller. Both [REDACTED] and [REDACTED] posted a few comments in a Facebook forum that day. The investigation disclosed that both [REDACTED] and [REDACTED] used their own personal cell phones and made the posts while on lunch or morning break. The forum was not hosted or funded by the union and no union funds were expended when [REDACTED] and [REDACTED] posted to the forum. There was no violation.

You alleged that bona fide candidates were denied the opportunity to inspect the membership list 30 days prior to the election because the interval between the September 21, 2019 nominations meeting and the October 10, 2019 election was less than 30 days. Section 401(c) provides in relevant part that every bona fide candidate shall have the right once within 30 days prior to an election, to inspect a list containing the names and last known addresses of all members. The investigation disclosed that neither you nor any other bona fide candidate requested to inspect the local's membership list. Therefore, you were not denied the opportunity to inspect the membership list prior to the election. There was no violation.

You alleged that the local made numerous re-mailings of the nomination and election notices which evidenced the inaccuracy of the membership list. Section 401(e) 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). Section 401(e) further requires that not less than 15 days prior to the election the union must mail an election notice to its members' last known home addresses. *Id.* This duty requires, at a minimum, that a union take reasonable steps to maintain current mailing addresses for its members.

The investigation disclosed that the local re-mailed its election notice three times because of printing errors and factual omissions, and not because of any issues with the local's mailing list. The election notice, along with a form for requesting an absentee ballot, was mailed on July 11, 2019, to all members. On July 18, identical notices were re-mailed to retirees because of a labeling error affecting retirees only. The third mailing was made on August 9, 2019, after the International representative discovered that prior election notices did not contain a time frame for a run-off election, or a procedure for obtaining an absentee ballot, among other omissions. This third election notice mailing included a corrected absentee ballot request form that contained all permissible reasons for requesting an absentee ballot. The International representative obtained the approval of IAM Legal prior to mailing the third election notice. The third mailing was over 60 days before the October 10, 2019, election date, well in excess of the 15-day notice required by section 401(e). Thus, none of the re-mailings was related to the accuracy of the union's membership list. There was no violation.

Finally, 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 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]

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Chief, Division of Enforcement

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