



October 7, 2021



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on September 28, 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 Delaware County Prison Employees Independent Union (DCPEIU), which was completed on June 15, 2020.

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

You alleged that the union failed to provide members adequate notice of nominations. Specifically, you alleged that members who were not working due to COVID-19 were not made aware of the nomination of officers. Section 401(e) of the LMRDA requires that members have a reasonable opportunity to nominate candidates prior to an election. 29 U.S.C. § 481(e). The Department's regulations provide that nomination notices "may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice." 29 C.F.R. § 452.56. The LMRDA does not require that a union use multiple methods to provide notice of nominations nor does the LMRDA prescribe particular forms of nomination procedures.

The Department's investigation found that the nomination period in the June 2020 election was open from April 15 until April 20. The union's notice of nominations was posted on two union bulletin boards at the workplace from April 7, 2020 through April 14, 2020, and informed members that the procedure for nominations was being changed to written submissions, rather than a nomination meeting, in response to the COVID-19 pandemic. One of these notices was posted at the only employee entrance to the worksite. While the union's records show that 51 members took leave related to COVID-19 between April 7 and June 15, these member were not on leave at the same time. Furthermore, the nominations notice was also posted on the union's official Facebook page. Approximately 136 of the approximately 265 union members are also members of the DCPEIU Facebook page. Collectively, the union's efforts were

reasonably calculated to reach all members. In fact, despite going on leave before the notice of nominations was posted at the prison, you were aware of the nominations process and successfully submitted your written self-nomination. Additionally, the investigation found that, on March 28, 2020, the union disseminated a text message to the 191 union members who have a phone number on file with the union alerting members that nominations would be opening soon. Accordingly, there was no violation.

You also alleged that members did not have a reasonable opportunity to participate in the nominations process, and that the union failed to follow its constitution and bylaws with respect to the procedure for nominations. Specifically, you alleged that the bylaws require nominations to be conducted at a membership meeting, but that the election committee instead conducted nominations through written submissions. You claim that members who were not working due to COVID-19 were unable to participate in this written process. Specifically, you stated that you wanted to nominate Annette Ford but were unable to because you were out sick, and that John Daniels was similarly not able to make a nomination despite wanting to do so. You further claimed that candidates for office were not notified in writing of their nomination. As stated above, Section 401(e) of the LMRDA requires that members have a reasonable opportunity to nominate candidates prior to an election. Section 401(e) also requires that elections be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. 29 U.S.C. § 481(e).

Article VI, Section 4 of the DCPEIU Bylaws provides that nominations shall be made at membership meetings. The Department's investigation determined that, in response to the COVID-19 pandemic, the union conducted nominations via written submission, rather than through a membership meeting. This process was inconsistent with the union's bylaws. Section 402(c)(2) of the LMRDA provides, however, that an election will only be overturned where a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). While this alternative procedure was not in accordance with Art. VI, Section 4 of the bylaws, it did not affect the outcome of the election. The change in procedure was noted in the nominations notice and the notice invited any member that opposed the temporary change in procedure to notify the board before April 14, 2020. No members opposed the process during this window. Additionally, while you claimed that you and ██████████ were deprived of an opportunity to nominate candidates, the Department's investigation determined that ██████████ was successfully nominated for Treasurer but chose not to accept, and that ██████████ did not, in fact, wish to nominate anyone for office. Furthermore, of the approximately 42 members who participated in the nomination process as either a nominator or as a seconder, at least 6 members were on leave during the nomination process; and of the 15 candidates on the ballot for the positions of president, vice president, secretary, treasurer, and executive board member, 7 candidates, including you, were on leave during the election cycle due to COVID-19. Thus, while the nomination procedures did

not conform to the requirements of the Bylaws, members were provided with a reasonable opportunity to nominate candidates. Accordingly, this violation did not affect the outcome of the election.

With respect to notifying nominees of their nomination, the union posted the list of nominees at the entrance to the worksite. Acceptance procedures were also posted on the union's two bulletin boards and on the Facebook page. Interested nominees had seven days to formally accept their nominations in writing. There was no requirement that the Election Committee notify all nominees of their nomination in writing. If a nominee was out of work and unable to submit their acceptance form, the nominee could have called the election committee for assistance. The investigation did not uncover any evidence that a nominee who was on leave was unable to submit their acceptance form. Indeed, despite being on leave, you were able to successfully submit your written acceptance form. As discussed further below, you identified two nominees who did not appear on the ballot for failure to submit a nomination acceptance form; neither of these candidates, however, were on leave during the nominations period and would have seen the posting at the entrance to the worksite. There was no violation.

You alleged that candidate qualifications were improperly applied, in that two candidates – [REDACTED] and [REDACTED] – were nominated but improperly disqualified from running for office, while two ineligible candidates – [REDACTED] and [REDACTED] – were permitted to run for office. Specifically, you alleged that [REDACTED] and [REDACTED] were ineligible to vote at the time of the election and therefore should not have been permitted to run for office. Section 401(e) of the LMRDA provides that every member of a union is eligible to run for union office, subject to "reasonable qualifications uniformly imposed." 29 U.S.C. § 481(e).

The Department's investigation determined that [REDACTED] and [REDACTED] were properly excluded from the ballot because they failed to submit nomination acceptance forms. Article VI, Section 4 of the DCPEIU Bylaws states that a "nomination is only valid if it is...accepted by the Nominee in writing." The nomination notice also states that nominees were required to accept their nomination in writing. As stated above, interested nominees had seven days from the date the nominations were posted to formally accept their nominations in writing. Acceptance procedures were also posted on the union's two bulletin boards and on the Facebook page. All other candidates that appeared on the ballot submitted a written acceptance form. There was no violation.

With respect to [REDACTED] appearing on the ballot, you alleged that [REDACTED] was ineligible to run because he was on administrative leave and was not paying dues and therefore not in good standing. However, the Department's investigation determined that [REDACTED] leave did not begin until May 15, 2020, which was after the nominations period. [REDACTED] was current in his dues at the time of nominations and appeared on the voter eligibility list. He was therefore eligible to run. There was no violation.

With respect to [REDACTED] appearing on the ballot, the Department's investigation confirmed that [REDACTED] was also current in her dues and on the voter eligibility list. Accordingly, she was eligible to run for office. The Department's investigation revealed, however, that although [REDACTED] was listed on the ballot as running for the position of secretary, [REDACTED] written acceptance form indicated that she had accepted a nomination for the position of executive board member. [REDACTED] had been nominated for the position of secretary, not executive board member. Nonetheless, [REDACTED] arguably should not have been permitted to run for secretary because she did not submit a nomination acceptance form for the position of secretary. While this error constituted a technical violation, [REDACTED] lost the race for secretary. Therefore, this violation did not affect the outcome of the election.

You also alleged that you were not afforded the right to inspect the membership list, but that this right was afforded to your opponent, [REDACTED], and that [REDACTED] used the membership list, including members' phone numbers, to campaign. Section 401(c) of the LMRDA provides that every candidate "shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement..." 29 U.S.C. § 481(c). Section 401(c) also prohibits unions from discriminating in favor of or against any candidate with respect to the use of lists of members.

With respect to your allegation that you were denied the ability to inspect the membership list, you stated that the membership list was only made available three days before the election, and that this did not provide enough time to review the list. You emailed the election committee on May 29, requesting the membership list. Election Chair [REDACTED] stated that she offered to show you the membership list on June 2, but that you declined to inspect it. You explained that you wanted to inspect the list in order to identify the members who were not present at work during the election process and convince the election committee of the need for absentee ballots. Thus, the investigation did not reveal evidence that the union denied your request to inspect the membership list. Even if you had been denied an opportunity to inspect the membership list prior to June 2, this would not have affected the outcome of the election because, as discussed further below, the union was not required to use absentee ballots. Furthermore, the Department's investigation here did not find any evidence that any ineligible members voted in the election. Therefore, to the extent there was a violation, it would not have affected the outcome of the election.

With respect to your allegation that [REDACTED] used the membership list to campaign, the only member you identified as having received a campaign call from [REDACTED] was [REDACTED]. However, [REDACTED] stated that she received a call from [REDACTED] on her work phone, not on her personal cell phone. The Department did not uncover any evidence

that [REDACTED] was using members' personal phone numbers for campaign purposes. There was no violation.

You alleged that [REDACTED] improperly used employer resources to campaign when he or his supporters made photocopies of campaign literature on the employer printer, and when [REDACTED] campaigned at the worksite. Specifically, you alleged that [REDACTED] campaigned during the overnight shift from June 13-14, 2020, and in the lobby and parking lot on the day of the election. Section 401(g) of the LMRDA prohibits the use of employer resources to promote any candidate for union office. 29 U.S.C. § 481(g).

With respect to your allegation that [REDACTED] team used the employer's printer for campaign purposes, the Department's investigation did not uncover any evidence to support this claim. You listed [REDACTED] as a witness in support of this allegation, but [REDACTED] stated that he did not see the literature printed on the employer copy machine and simply assumed that it was printed on that machine. [REDACTED] explained that he printed the literature at home and brought it to the worksite. The Department's investigation confirmed that [REDACTED] did campaign on employer time during the overnight shift from June 13-14, 2020. During this shift, [REDACTED] called employees using the employer's phones. The effect of the violation is offset, however, as the investigation revealed that you engaged in similar activity. The evidence reviewed during the investigation indicated that you and your supporters were also verbally campaigning while working on the clock and that campaigning while on the clock was a widespread occurrence at the worksite. Accordingly, there was no violation affecting the outcome of the election.

You also allege that four candidates engaged in campaigning on the union's official Facebook page. 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.

The Department's investigation revealed that Vice President [REDACTED] created the union Facebook page for union members to receive information from the union officials. The evidence reviewed during the investigation established that several members, including you, used the Facebook page for campaigning. The Department did not uncover any evidence that any members were prohibited from campaigning on the Facebook page. Thus, to the extent this was an improper use of union resources, the effect of the violation would be offset. There was no violation affecting the outcome of the election.

You alleged that members were denied the right to vote, and that the union failed to provide adequate safeguards to ensure a fair election. Specifically, you alleged that the election committee failed to prepare a complete, accurate voter eligibility list. You also claim that two members came to the worksite to vote but were deemed ineligible because they were not in good standing and there was no procedure in place for the

members to pay dues on the day of the election. You further alleged that members who were out of work due to the COVID-19 pandemic were denied the right to vote because there were no absentee ballot procedures in place. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e). This requires that members be given a reasonable opportunity to vote. 29 C.F.R. § 452.94. Section 401(c) further provides that adequate safeguards to ensure a fair election shall be provided.

The Department's investigation established that, in order to vote in the election, members had to be current in their dues through May 22, 2020. The union maintained an eligibility list indicating which members were current in their dues as of the May 2020 dues check off reports. The members whom you alleged were denied the opportunity to vote, including [REDACTED], [REDACTED], [REDACTED], and [REDACTED], were not in good standing on the day of the election, based on the May 2020 check off lists that were used to determine voter eligibility. Under Department regulations, a labor organization may condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership. 29 C.F.R. § 452.86. The Department did not uncover any evidence that this requirement was not uniformly applied. Member [REDACTED] was eligible to vote, but she cast her ballot by telephone, which, as discussed below, compromised the secrecy of her vote. There was no violation.

With respect to your allegation that members who were out due to the COVID-19 pandemic were denied the right to vote, the Department's investigation determined that 45 members who were eligible to vote were on leave at various points throughout the election, but not all of these members were on leave on the day of the election. Of those 45 eligible members, 35, or 78 percent, voted in-person. The union's records indicated that only four members who were eligible to vote in the election were on leave on the day of the election due to the pandemic, and two of those four did, in fact, vote in person. While offering members the option to vote by absentee ballot would have expanded members' opportunity to vote, in looking at the totality of circumstances, the Department of Labor's investigation determined that members were provided a reasonable opportunity to vote in the June 2020 election. There was no violation.

Finally, you allege that some members were permitted to vote by telephone in violation of ballot secrecy, and that members did not have privacy to mark their ballots in person because there were not sufficient partitions and the surveillance cameras in the prison lobby may have compromised voter secrecy. You also alleged that the election committee did not adequately safeguard ballots during voting because the ballot box was not in plain view of the election officials and someone could have stuffed the ballot box. Section 401(b) of the LMRDA provides that every local labor organization shall

elect its officers by secret ballot among the members in good standing. 29 U.S.C. § 481(b). As stated above, section 401(c) provides that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c)

The Department's investigation confirmed that the union permitted members to vote by phone. Members called the personal cell phone of an election committee member and verbally indicated the candidates of their choice; the election committee member would then record the member's vote on a blank ballot. Members who voted by phone were marked with an asterisk on the voter eligibility list. The Department identified seven members who cast their votes by phone in this manner. While this constitutes a violation of the LMRDA, under section 402(c)(2), an election will only be overturned where a violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Because the margin of victory in the race for the executive board position, which had the smallest margin of victory in the election, was eight votes, these seven votes would not have affected the outcome of the election. There was no violation affecting the outcome of the election.

With respect to your claim that the secrecy of in-person voting was also compromised, the Department's investigation did not substantiate this claim. While there were security cameras in the lobby, the investigation determined that voters were able to mark their ballots in secret. The investigation found, and your observer confirmed, that the union provided cardboard partitions at the polling site to ensure members were afforded privacy when marking their ballots. There was no violation.

With respect to your allegation that the union failed to adequately safeguard the ballots, the Department reviewed the union's election records and determined that a total of 191 ballots were counted in the election and a total of 191 voters were documented as voters in the election. The unused ballots were included in the union's election records. There was no evidence of ballot stuffing or tampering. There was no violation.

Your additional allegations were determined to be either not within the scope of the investigation 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,

A solid black rectangular redaction box covering the signature area.

Tracy L. Shanker  
Chief, Division of Enforcement

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