



November 3, 2021



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on June 21, 2021. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 481, occurred in connection with the March 2021 general election of officers and election of United Association (UA) convention delegates for Plumbers Local 1.

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.

First, you alleged that the election ballot did not contain separate slate buttons for the local officer election and the UA convention delegate election. The LMRDA does not prescribe a specific ballot form. 29 C.F.R. § 452.112. Under Section 401(e) of the LMRDA, union members are entitled to vote for the candidate of their choice. 29 U.S.C. § 481(e). Consistent with this right, voters must be able to choose among individual candidates if the voter does not wish to vote for an entire slate. 29 C.F.R. § 452.112. Additionally, Section 401(c) of the LMRDA requires that a union provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Under this provision, a union's wide range of discretion regarding the conduct of elections is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110(a). Accordingly, a union may permit slate balloting so long as such balloting is consistent with this fairness requirement. *Id.* § 452.112. To avoid misunderstanding, voting instructions should specifically inform voters that they need not vote for an entire slate. *Id.*

The investigation established that union members were provided an opportunity to vote for the individual candidate of their choice and that the single slate ballot button did not interfere with this opportunity. The union's counsel explained that UA locals commonly combine delegate and officer elections. In such elections, the locals retain discretion regarding the number of slate buttons included on the ballot. Here, the ballot contained one slate button, for both the individual officer and delegate positions, because the union viewed the combined delegate and officer election as a single election. The ballot displayed instructions for slate voting and individual delegate and officer selection. The notice accompanying the sample ballot also advised that members

could “cast individual votes or cast one vote for an entire slate.” Notably, the investigation did not identify any union members who were confused about the ballot layout. The slate balloting satisfied the LMRDA’s requirements because members were adequately instructed on slate voting and retained their right to vote for individual candidates. There was no violation.

Second, you alleged that the union did not release, upon request, the source codes, formulas, or program identities used to tabulate the election results. The adequate safeguards provision of Section 401(c) affords candidates the right to have an observer at every phase and level of the ballot tallying process. 29 U.S.C. § 481(c); 29 C.F.R. § 452.107(a). However, neither the LMRDA nor its implementing regulations provide a right to a voting machine’s tabulating program or codes.

The union did not violate the LMRDA by refusing to disclose the source codes, formulas, or program identities used to tabulate the election results. The investigation established that the local used electronic voting machines from Electec Election Services, Inc. for its March 2021 election, as it had for several prior election cycles. When interviewed, the Electec owner and president explained that this software is proprietary information and that Electec does not release the source codes to its clients. The investigation did not uncover any indication that the electronic tabulations lacked integrity. None of the machines had technical issues during the election process, and all machines were locked outside voting hours. Candidates inspected the electronic machines daily, at the open and close of voting, and observed the Electec technician monitoring the machines’ use. The OLMS recount concluded that the final vote tally was consistent with the number of votes recorded by both the Electec machine tape and cartridge. These circumstances satisfy Section 401(c)’s requirement that unions adequately safeguard elections. There was no violation.

Third, you alleged that the union did not mail an appropriately sized sample ballot. Specifically, you alleged that the font size on the first sample ballot mailed was too small because it was printed on an 8.5” x 11” sheet. You alleged that the union subsequently mailed a larger sample ballot but that this correction was not made quickly enough. Between the two union mailings, the Administration [REDACTED] mailed a larger sample on an 11” x 17” sheet.

Under the LMRDA, a sample ballot may serve to provide both notice and instruction to voting members. Section 401(e) of the LMRDA requires election notices to be mailed to each union member at his or her last known address. 29 U.S.C. § 481(e). Sample ballots will fulfill the LMRDA’s notice requirement if they include the time and place of election and offices to be filled, and if they are mailed fifteen days prior to the election. Sample ballots may also assist in instructing union voters on how to properly cast ballots, consistent with Section 401(c)’s adequate safeguards requirement. *See* 29 C.F.R. § 452.110(b).

There was no violation of the LMRDA regarding the mailing of the sample ballots. Neither the LMRDA nor the union's constitution required that a sample ballot be mailed. Nevertheless, Plumber's Local 1 has a longstanding practice of mailing sample ballots. The investigation confirmed that the union mailed a letter-sized sample ballot on February 26, 2021. Seven days later, the union mailed an 11" x 17" sample ballot, with a slightly larger font size that improved readability. Each sample ballot contained written instructions on slate and individual candidate voting. The larger sample ballot was displayed throughout the polling site, including at the two Electec demonstration voting booths. The investigation did not identify any union members who had difficulty understanding the voting procedures. The union provided sufficient voting instruction. Additionally, a letter explaining the method of voting, dates, times, and location for the election of the local's officers and UA convention delegates accompanied the first, smaller sample ballot, satisfying Section 401(e)'s adequate notice requirement. There was no violation.

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 regarding this matter.

Sincerely,

[REDACTED]

[REDACTED]

Chief, Division of Enforcement

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