



May 27, 2022

Shawn Edwards
[REDACTED]

Dear Mr. Edwards:

This Statement of Reasons is in response to your complaint filed on January 22, 2020, with the Department of Labor (Department) alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the election of officers conducted by the International Brotherhood of Electrical Workers, (IBEW) Local 412, on November 8, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that IBEW Local 412 failed to mail runoff ballot packages to some members of the Local. Section 401(e) of the LMRDA provides that every member in good standing is entitled to vote in elections required under Title IV. 29 U.S.C. § 481(e). You identified those members as [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. You also alleged that one member on active duty did not receive a ballot for the runoff election. The Department's investigation revealed that both [REDACTED] and [REDACTED] were mailed runoff ballots to the correct addresses. When interviewed, [REDACTED] stated that his initial ballot arrived late, but he did not contact the Local when the runoff ballot did not arrive. [REDACTED] stated that he received a ballot and voted in the initial election and heard from another member that there would be a runoff but did not contact the Local when his runoff ballot did not arrive. [REDACTED] stated that she received a runoff ballot, but did not vote. The Department was unable to contact [REDACTED], who did not appear on the mailing list, but was identified as a "work permit" member without voting rights. Finally, the Department confirmed that a member on active duty received a ballot and voted in the election.

The Department's investigation revealed that Local 412 updated the mailing and eligibility list throughout the election process. When a member updated their address with the employer, an email was automatically sent to the union notifying them of the

new address. Similarly, when a member moved during the election, the member's address was updated on the eligibility list. Local 412 updated bad addresses from undeliverable mailings that were returned to the union after the mailing of the nomination and election notice and the initial election ballot packages. Local 412 reported that they did not receive any undeliverable ballots during the runoff election. Furthermore, there were no requests for duplicate ballots during the runoff election. There was no violation.

You alleged that you were denied the right to have an observer at the election. Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). The IBEW Local Union Election Guide states that locals should inform all candidates of the date, time, and place of the ballot preparation and mailing, as well as their right to have an observer present. Local 412 sent a letter to all candidates informing them of the election rules, including their right to have an observer at the tally. However, Local 412's election letter to all candidates did not inform the candidates that they could observe the preparation and mailing of ballots. Even though the Election Committee failed to inform the candidates that they could observe the preparation and mailing of ballots, you could have requested the opportunity to do so. You made no such request. As stated in the previous paragraph, Local 412 did not receive any undeliverable ballots and there was no evidence that ballots were not mailed to every member. There was no violation.

You alleged that IBEW Local 412 failed to provide proper notice of the runoff election. Section 401(e) of the LMRDA provides that in a mail ballot election, the ballots must be mailed to each member at his last known home address no later than fifteen days prior to the date when they must be mailed back in order to be counted. 29 U.S.C. § 481(e). The fifteen-day notice period applies to any runoff election. However, a separate notice would not be necessary if the election notice for the first election advises the members of the possibility of a runoff election and specifies such details as the time and place of such runoff election as may be necessary. 29 CFR § 452.103. The Department's investigation revealed that Local 412 mailed a combined election notice to the membership on August 20, 2019. The notice stated: "If a runoff election is necessary, ballots shall be counted on November 8, 2019." The tally for the initial election was held on October 18, 2019 and the results were posted in the union hall. Ballots for the runoff election were mailed on October 23, 2019, and tallied on November 8, 2019, 16 days later. Local 412 Bylaws mandate that runoffs must be completed within 21 days of the initial election. The investigation revealed that the voter turnout for both elections were similar. Local 412 mailed 588 ballot packages for the initial election and 384 voted ballots were returned. Whereas, 586 ballot packages were mailed for the runoff and 372 voted ballots were returned. The investigation did not reveal any evidence that members were not aware of the date of the runoff election. There was no violation.

You alleged that when ballots for the runoff election were picked up from the post office on November 8, 2019, there were ballots from the initial election mixed in with

the runoff ballots. The investigation revealed that Local 412 closed the post office box for the initial election immediately after collecting the ballots. However, four return ballot envelopes from the initial election were received by the USPS after the post office box was closed. USPS placed these four ballot envelopes in the new post office box that Local 412 rented for the runoff election. These four envelopes were set aside and not counted in the runoff election. There was no violation.

You alleged that IBEW Local 412 failed to count voted ballots that were not returned in the secret ballot envelope. Section 401(b) of the LMRDA provides that every local labor organization shall elect its officers not less often than every three years by secret ballot among the members in good standing. 29 U.S.C. § 481(b). A secret ballot under the LMRDA is “the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice * * * cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. 29 CFR § 452.97(a). The secrecy of the vote may be assured by the use of a double envelope system for return of the voted ballots with the necessary voter identification appearing only on the outer envelope. *Id.*

The Department’s investigation revealed that the IBEW Local 412’s Election Guide states that secret ballot envelopes should be removed from the outer envelopes and mixed thoroughly before they are opened and the ballots removed and counted. The voting instructions provided with the ballot package state: “Ballot secrecy can be maintained only if you follow instructions and personally mark and mail your ballot. The ballot envelope will not be opened at the same time as the return envelope.” The ballots that were not placed in a secret ballot envelope were not removed from the ballot return envelope. The Election Chair, [REDACTED], made the decision that any ballots that were not returned in the secret ballot envelope would not be counted. Accordingly, they were not included in the tally. This rule was applied at both tallies. During the initial election, three ballots were set aside because the voters did not use a secret ballot envelope, and during the runoff election two ballots were set aside for the same reason. The LMRDA mandates that secrecy of the ballot must be maintained at all times. There was no violation.

You alleged that the voted ballots of some members were returned to them as undeliverable because the post office box had been closed. Section 401(e) provides that every member shall have the right to vote for or otherwise support the candidates of his choice. 29 U.S.C. § 481(e). The Department’s investigation revealed that the voting instructions included with the ballot package stated, “Mark and mail your ballot in time to arrive at the designated return address before 8:30 a.m. on November 8, 2019.” The post office box for the runoff election was closed after the ballots were collected at 8:30 a.m. on November 8, 2019. Any ballot return envelopes received after the box had been closed would have been returned to the member as undeliverable. The investigation did not reveal any evidence that voted ballots received on time were not collected for the runoff ballot tally. 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]

Tracy L. Shanker, Chief
Division of Enforcement

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