



December 20, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to your complaints received by the Department of Labor on October 7, 2021, and October 12, 2021, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers for Local 1575 (Local), Amalgamated Transit Union (ATU, or International), conducted on June 16, 2021, and concluded by runoff election on June 30, 2021.

The Department of Labor 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 Local permitted ineligible members to vote. Specifically, you alleged that retirees were ineligible to vote because they had not paid any dues and therefore were not in good standing. 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 right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization. 29 C.F.R. § 452.93. Section 401(e) further provides that unions conduct their elections in accordance with their constitutions and bylaws, insofar as they are not inconsistent with the LMRDA. The Department will accept the interpretation consistently placed on a union's interpretation of its constitution and bylaws by the responsible union official or governing body unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3.

Section 21.13 of the International Constitution provides that "[m]embers retiring on pension from the active service and who continue in good standing will be entitled to the following rights and benefits: They will have a voice but no vote on any matters affecting the [local union (LU)], except that they shall be permitted to vote in the election of all LU officers and delegates to Conventions elected by the entire membership of the LU, but not in the election of any other officers and delegates." Section 18.1(a)(3) provides that "[t]he per capita tax payable by each LU for each

pensioned member shall not be subject to annual adjustment and shall be the sum of two dollars (\$2.00) per pensioned member retired prior to January 1, 1993, and four dollars (\$4.00) per pensioned member transferred to pension status on or after January 1, 1993. Pensioned members are those members who have retired on pension and/or social security or railroad retirement and are not employed in our industry . . . .” The Local 1575 bylaws are silent on the issue of retirees and their good standing.

Although Section 21.6 of the International Constitution requires active members to pay dues to maintain good standing, that provision does not apply to retirees.<sup>1</sup> Rather, the International has interpreted section 21.13 of its constitution to mean that retirees who pay their per capita tax on a monthly basis retain their good standing and are eligible to vote for Local officers. The Department accepts the international’s interpretation of Section 21.13 of its constitution because it is reasonable. The Local properly permitted retired members who paid their per capita taxes to vote in the election. There was no violation.

You alleged that the Local failed to provide candidates the right to inspect its membership list. Section 401(c) provides in relevant part that every bona fide candidate shall have the right, once within 30 days of the election, to inspect the membership list containing the names and last known home addresses of members. 29 U.S.C. § 481(c). Although you readily admitted you made no request to inspect the membership list, the Local nevertheless honored your request for a targeted mailing to retirees by providing you with labels for 312 active retirees. There was no violation.

You alleged incumbent president Shane Weinstein made targeted campaign mailings, one to active members and the other to retirees. Section 401(c) prohibits discriminatory treatment towards any candidate with respect to a union’s membership list. 29 U.S.C. § 481(c). The investigation revealed no such discriminatory treatment. You readily admitted you knew you had a similar option to make a targeted mailing and you did make a targeted mailing to retirees. You also assisted other candidates in their targeted mailing. There was no violation.

You alleged an unopposed candidate’s name was on the ballot, in violation of the constitution and bylaws. Section 401(e) provides that unions conduct their elections in accordance with their constitutions and bylaws, insofar as they are not inconsistent with the LMRDA. 29 U.S.C. § 481(e). The investigation confirmed that the name of David Herrera, unopposed candidate for secretary-treasurer, was on the ballot. Nothing in the International Constitution nor the Local bylaws prohibited an unopposed candidate’s name from being listed on the ballot. The ATU Convention Training on Conducting

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<sup>1</sup> Section 21.6 of the International Constitution requires active members to either have paid dues and initiation fees in whole or in part or have authorized payroll deductions in order to be in good standing.

Local Union Elections recommends against it and provides “[a]ny uncontested offices should not appear on the ballot.” This is a non-mandatory pronouncement that did not require the Local to comply with the advisement. The Local was free to adhere to its 15-year past practice of printing the names of candidates running for uncontested offices. There was no violation.

You alleged retirees were permitted to vote for four executive board members, in violation of the constitution and bylaws. You believe that although retirees are permitted to vote for all officer positions, they may not vote for executive board positions because those positions are not listed in the Local bylaws. Section 401(e) provides in relevant part that members in good standing shall have the right to vote for the candidates of their choice. 29 U.S.C. § 481(e). Section 401(e) also provides that elections must be conducted in accordance with the union’s constitution and bylaws, insofar as they are not inconsistent with Title IV.

Section 21.13 of the International Constitution provides that “[m]embers retiring on pension from active service will be entitled to the following rights and benefits: They will have a voice but no vote on any matters affecting the LU, except that they shall be permitted to vote in the election of all LU officers and delegates to Conventions elected by the entire membership of the LU, but not in the election of any other officers or delegates.” Section 13.6 of the International Constitution provides that the officers of a local union shall consist of a President-Business Agent, Vice-President, Recording Secretary, Financial Secretary, Treasurer, and an Executive Board composed of not less than two (2) other members in addition to the executive officers. Section 3 of the Local bylaws similarly lists those offices. Section 4 of the Local bylaws provides that “the Executive Board shall consist of the President, Vice-President, Financial Secretary-Recording Secretary, and four (4) elected members in good standing.” Under the clear terms of the International Constitution and the Local bylaws, retirees in good standing have the right to vote for all general offices, including executive board members. There was no violation.

You alleged the Local failed to provide adequate safeguards when it posted to the Local’s Facebook page photographs of voted ballots taken at the ballot tally. You believed the voting member’s identity would be disclosed with the enlargement of those photographs. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Section 401(b) provides that every local shall conduct its election by secret ballot. 29 U.S.C. § 481(b). The investigation disclosed no pictures of voted ballots on the union’s Facebook page. Instead, the photos at issue were of secret ballot envelopes taken during the preparation of the ballots before the mailing of the blank ballots to members. There was no writing on the secret ballot envelopes. There was no violation.

You alleged Weinstein used his cell phone, the bill for which is paid by the Local, to send text blasts to retirees in April 2021, asking them to sign up for further communications. Section 401(g) provides, in relevant part, that no union moneys will be applied to promote any candidate's candidacy. 29 U.S.C. § 481(g). Union officers may campaign in an election as long as such campaigning does not involve the expenditure of union funds. 29 C.F.R. § 452.76. The investigation revealed no evidence that Weinstein campaigned on union time or using union resources. The union did use text messages to communicate generally with retirees about the election and contract negotiations. These texts did not promote or disparage any candidate. In terms of campaigning, Weinstein stated he used his personal cell phone to text a message on May 21, 2021, to four close friends. The investigation disclosed that Weinstein's cell phone belongs to him with the Local paying him a small monthly stipend for the portion of his telephone bill attributable to union business. Further, two of the four people Weinstein identified as close friends confirmed their longstanding friendship; the other two people did not respond to the Department's messages. The investigation did not support that Weinstein campaigned using a union resource. There was no violation.

You alleged Weinstein used confidential information obtained from the pension office to campaign against one of his two opponents for president. Specifically, you believed Weinstein, by virtue of his office, obtained information about his opponent's retirement plans from Zenith American, the company that administers the Local's pension plan, to campaign against candidate [REDACTED]. The investigation disclosed that on March 29, 2021, [REDACTED] recorded and posted a video on his Facebook page he entitled "Ready to Retire." [REDACTED] disclosed his own retirement on his Facebook platform. Further, a representative from Zenith American denied informing Weinstein about [REDACTED] impending retirement. There was no violation.

You alleged the union used its Facebook page to campaign for candidates [REDACTED] and [REDACTED] when, on May 14, 2021, Local 1575 posted the names of these candidates on its website showing them as having attended the International's training for shop stewards and new executive board members. You believed Local 1575 promoted these two candidates' candidacies when the Local posted their photos on its Facebook page. Section 401(g) requires, in relevant part, that union funds not be applied to promote the candidacy of any candidate. 29 U.S.C. § 481(g). The investigation disclosed that in April 2021, Weinstein assigned [REDACTED] and [REDACTED] to attend the International's 2-day training program for executive board members and chief stewards scheduled for May 2021. The photos at issue were taken of [REDACTED] and [REDACTED] while they were attending the training and later posted to the Local's Facebook page. The photos did not promote the candidacy of either candidate. Rather, the photos were newsworthy and of interest to the membership because they showed a resumption of training after a 2-year shutdown of that program due to COVID.

Further, even if the posting were a violation, there was no effect on the outcome of the election because the post was removed the following day in response to your protest. There was no violation.

You alleged Weinstein had an advantage over other candidates in mailing his campaign literature because he knew the date ballots would be mailed to members and timed the mailing of his campaign material one day before that date. Section 401(c) imposes a duty on unions to not discriminate against any candidate in the use of membership lists regarding the distribution of any candidate's campaign material. 29 U.S.C. 481(c); 29 C.F.R. § 452.67 (to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and of any changes in those conditions.) Although the Local did not inform candidates of the date the ballots would be mailed, it posted on union bulletin boards a notice, dated May 8, 2021, listing nominees' names. At the bottom of that list, the notice stated: The Ballot Committee, made up of [REDACTED], [REDACTED], and [REDACTED], will begin to prepare and mail ballots.

The investigation disclosed that you contacted the Local's secretary-treasurer and informed him you and [REDACTED] would be at the union office on May 17, 2021, to make a campaign mailing. On May 17, you arrived and assisted others in their campaign mailings. You chose not to make a mailing. On May 19, Weinstein mailed his campaign material to retirees and active members after being prompted to do so by a supporter who had received campaign material from one of Weinstein's opponents. The ballots were mailed on May 21, 2021. The investigation disclosed all but three candidates made a campaign mailing on or before the ballots were mailed. One candidate ([REDACTED]) underestimated the number of campaign literature pieces he needed and had to re-order more campaign material while the other two candidates ([REDACTED] and [REDACTED]) failed to request a campaign mailing earlier, with [REDACTED] readily admitting he was "behind the eight ball." All candidates were treated equally. There was no violation.

You alleged that the Local failed to follow the bylaws when the executive board appointed three members to the election committee instead of permitting members to elect an election committee at the nominations meeting. Section 401(e) requires unions to conduct their elections in accordance with their constitution and bylaws. 29 U.S.C. § 481(e). Section 24 of Local 1575 Bylaws states, in part, that "[a]n Election Committee of three (3) members in good standing shall be elected at the nomination meeting from members not running for office." The investigation disclosed that the Local suspended membership meetings on the advice of the International which provided guidance on how best to manage union affairs during the COVID crisis. Although the Local did not hold an in-person nominations meeting, it did hold three consecutive nominations meetings via Zoom from May 5 through May 7, 2021. The Local believed that because

membership meetings were cancelled due to COVID, it would be in compliance with the International's guidance by appointing election committee members at the Local executive board meeting because no in-person nominations meeting was held. Accordingly, the Local appointed three members to serve on the election committee, designating [REDACTED], who had served in that capacity in three previous elections, as election committee chair. Local 1575 violated its bylaws and consequently section 401(e) when it failed to elect election committee members at any of the three virtual nominations meetings. That violation, however, had no effect on the outcome of the election because the election committee conducted its duties in an unbiased manner.

For the reasons set forth above, your administrative complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,

[REDACTED]

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Chief, Division of Enforcement

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