



December 13, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed 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 original election of officers of the National Association of Letter Carriers (NALC) Branch 36 (the Union) conducted on March 31, 2022. Your complaint included six in-scope allegations and one out-of-scope allegation.

The Department conducted an investigation of your allegations and 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 the Union did not follow the Branch 36 Bylaws when it hired a third-party vendor, Honest Ballot, to prepare, mail and receive voted ballots. Section 401(e) of the LMRDA requires that a union conduct its election in accordance with its constitution and bylaws. 29 U.S.C. § 481(e). During the Department's investigation, you conceded that the Branch 36 Bylaws give the Union the authority to hire a third party to certify the election and that this has been the past practice. Specifically, Article III, Section 3(A)(3) of the Bylaws states that the Union "shall retain a reputable non-partisan election agency to certify the results of the election." The Department's investigation also established that it is Branch 36's past practice to delegate the conduct of the election process to the vendor because of the size of the Union. Accordingly, the Department determined that the Union did not violate its Bylaws when it hired Honest Ballot to conduct their election. There is no violation of Title IV of the LMRDA.

You alleged that Honest Ballot and the Union failed to inform the candidates when the ballots would be prepared and mailed. Section 401(c) provides that candidates have the right to observe the election process. 29 U.S.C. § 481(c); *see also* 29 C.F.R. § 452.107. The evidence revealed that when you arrived at Honest Ballot on March 3, 2022, to observe the preparation and mailing of the ballots, the ballot packages were already stuffed and ready to be mailed. However, an Honest Ballot employee showed you the contents of

one of the ballot packages. You did not ask to check the remaining ballot packages, but you were able to observe the sealing of the ballot packages. The Department's investigation revealed that there were no meeting minutes from the candidates' meeting to determine whether the Election Committee or Honest Ballot communicated the date(s) that the preparation and mailing of the ballots would occur. But to the extent that the Union failed to notify candidates of the dates on which ballots would be prepared and mailed, the violation did not affect the election. The Department's investigation found that Honest Ballot did a sampling of the prepared ballot packages to ensure that they were accurate and also offered you the opportunity to check one of the prepared ballot packages. There was no evidence of inaccuracies or other errors related to the ballot preparation and mailing. Accordingly, any violation of your right to observe the election process did not have an effect on the outcome of the election.

You next alleged that Honest Ballot only allowed three people to physically attend the ballot tally. All others were permitted to view the tally by Zoom, which did not allow the candidates the ability to make a list of the names of voters, to verify voter eligibility, and keep their own tabulation of votes. In addition, you complained that duplicate ballots were separated from the secret ballot envelopes prior to beginning of the Zoom video. As discussed above, section 401(c) provides candidates with the opportunity to observe the election process. 29 U.S.C. § 481(c); *see also* 29 C.F.R. § 452.107. The Department's investigation revealed that the Union limited the number of in-person observers as a safety precaution due to the COVID pandemic. Each slate, including yours, had a slate member physically present for the tally and was able to view the process for sorting duplicate ballots. Further, the investigation found that Honest Ballot did not conduct eligibility checks on the day of the tally because ballots were only mailed to eligible voters. You were present at the ballot mailing and had the opportunity to review the ballots and raise any voter eligibility questions. The Department found that the Union did not deny candidates the right to observe the tally. There was no violation.

You also alleged that Honest Ballot mailed two ballots to each retired member, which created the potential for retirees to vote twice in the election. Section 401(c) requires that unions provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). During the investigation, Honest Ballot admitted to inadvertently mailing a second ballot to all retired members when they used two lists to mail ballots. The first list was composed of retirees only and the second list was to the entire membership (including retirees). The retirees' ballot return envelopes all had two different control numbers on them. The first list had control numbers from 1-1,565 and the second list had control numbers from 2,000 and above. On the day of the tally, Honest Ballot sorted the ballots by control number and checked off a list to ensure that they did not count more than one ballot per member.

During its investigation, the Department found that Honest Ballot did not have a consistent system for identifying which duplicate ballot to count. Honest Ballot advised the Department that they selected the “best” ballot to count, considering whether the member signed the signature line and other factors. The ballot that was to be counted was opened and included in the tally. The ballot identified as a duplicate was not opened and set aside. The Department found that 137 retired members returned more than one ballot. A review of the open return envelopes revealed that one retired member had two open envelopes which indicated that the member had two ballots counted in the tally. No other retired members were found to have voted twice. This is a violation of IV of the LMRDA; however, with only one vote affected and the closest margin of 20 votes, the violation could not affect the outcome of the election.

You alleged that business reply envelopes did not include a signature line for the members to sign before returning the voted ballot. Section 401(c) requires that a union provide adequate safeguards to ensure a fair election and section 401(e) provides that all members have the right to vote in a covered election. *See* 29 U.S.C. § 481(c), (e). Honest Ballot employee ██████ stated that they did not have enough reply envelopes with signature lines and had to use some without a signature line to complete the mailing. ██████ stated that there were only one or two envelopes without a signature line. Because ballots were only sent to members who were eligible to vote in the election, Honest Ballot and the Union determined that ballots from the envelopes without a signature line would be counted even if the member did not sign the envelope. In fact, the Department’s investigation found that the Union counted ballots that had been separated from unsigned returned envelopes, regardless of whether or not the return envelope included a signature line. There was no evidence that ballots were mailed to members ineligible to vote in the election or that nonmembers otherwise cast votes in the election. There was no violation.

You alleged that the incumbent candidate slate used the March 10, 2022, membership meeting at the Union Hall to campaign. You specifically alleged that President Heege presided over “a campaign meeting” where he allowed members of his slate to speak out in support of the slate and to speak against the challenging slate. Section 401(g) of the LMRDA prohibits the use of union or employer resources to support any candidate in a covered election. 29 U.S.C. § 481(g). The Department’s investigation revealed that the membership meeting included an internal hearing on embezzlement charges brought against several incumbent officers by the challenging candidates. The Department reviewed an audio recording of the meeting and found no evidence of campaigning, only responses to charges. There was no mention of the election, candidacies, or other election-related topics. There was no violation of 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 regarding this matter.

Sincerely,



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Chief, Division of Enforcement

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