



October 26, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaints filed on January 28, 2011, and March 28, 2011, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the Amalgamated Transit Union (ATU) Division 1070, AFL-CIO, on December 2, 2010.

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

You alleged that the union improperly ruled you ineligible to run as a candidate for president. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office subject to "reasonable qualifications uniformly imposed." It would ordinarily be reasonable for a local union to require a candidate to have been a member of the union for a reasonable period of time not exceeding two years. *See* 29 C.F.R. § 452.37. Section 14.2 of the ATU Constitution and General Laws (CGL) states that in order to be eligible to run for office of a local union, a candidate must be a member in good standing for a period of two years preceding the date of the nominations meeting where the local union has been in existence for that period or longer. The investigation disclosed that at the time of the election you had been a member for less than two years. The union's qualification on candidacy is reasonable. You did not meet that qualification. There was no violation.

You alleged that the union improperly allowed incumbent officers to perform functions that should have been performed by an unbiased election committee, including the printing of the ballots. Section 401(c) of the LMRDA requires that a labor organization

provide adequate safeguards to ensure a fair election. "Pursuant to this provision, a labor organization's wide range of discretion regarding the conduct of the election is circumscribed by a general rule of fairness." *See* 29 C.F.R. § 452.110. Section 7.2 of Local 1070's bylaws provides that the financial secretary shall be responsible for the preparation of the ballots. The investigation found that the union conducted the election in accordance with its bylaws and the past practice of allowing the financial secretary to oversee the election. Financial Secretary Mike Hale, who was unopposed for election, conducted the majority of the election work on his own, including printing the ballots. The tally was conducted by four election officials who were not incumbent officers. The investigation did not reveal any evidence of any ballot tampering. There was no violation.

You alleged that the nomination notice did not specify the offices to be filled, the time of nominations, the place of nominations, the method of nominations, and the candidate eligibility requirements. Section 401(e) of the LMRDA provides that a reasonable opportunity must be given for the nomination of candidates. Under the LMRDA, a union must give timely notice of nominations that is "reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations." *See* 29 C.F.R. § 452.56. Posting of a nomination notice may satisfy the requirement if the posting is reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice.

The investigation disclosed that a combined nomination and election notice was mailed to all members on November 4, 2010. The mailed notice stated that nominations would be held at the union's "November 16 and 17 2010 Union Meetings," but it did not note the times or locations of the meetings. The investigation revealed that membership meeting times were posted on union bulletin boards throughout the union's only worksite. Also, the investigation established that the rules for making nominations and the candidate requirements are listed in the ATU CGL, and that all membership meetings have been held at the same location for more than 20 years. The meetings have been held at the same times for at least the last few years.

Given the mailed notice and posted meeting announcements, it could be said that members were reasonably informed of the time and place of the nomination meetings. However, it cannot be said that the mailed notice and the postings informed members of officer positions to be filled, methods for submitting nominations, and candidate eligibility requirements. The notice did not meet the requirements of the LMRDA. While the union's deficient notice of nominations constitutes a violation of Section

401(e) of the LMRDA, there is no evidence that this violation may have affected the outcome of the election, because neither you nor the investigation revealed anyone who did not participate in the nominations process because s/he was unaware of the officer positions, eligibility requirements, meeting times, meeting location, or the method of submitting nominations.

You alleged that the union made the vice president an alternate delegate by virtue of office even though the union's constitution and bylaws do not give the vice president this authority. Under the LMRDA, elected officers may serve as delegates by virtue of their election to office if the constitution and bylaws of the labor organization so provide. *See* 29 C.F.R. § 452.120. Local 1070's bylaws refer only to the president and financial secretary as delegates by virtue of their office. While the investigation revealed that the union's decision to list the vice president as an alternate delegate on the 2010 ballot constitutes a violation of the LMRDA, you could not identify anyone who was harmed, and the investigation uncovered no evidence that the decision to declare the vice president an alternate delegate by virtue of office may have affected the December 2, 2010 election of officers.

You alleged that the union used an outdated membership mailing list; consequently, the union did not mail election notices to 21 new drivers who joined the union in November 2010. Section 401(e) of the LMRDA requires that notice of election be mailed to every member at his/her last known address not less than 15 days prior to the election. The investigation did not substantiate this allegation. The investigation found that the union initiated 21 members on October 1, 2010. No new members were initiated in November 2010. The combined nomination and election notice was mailed on November 4, 2010 to all members listed on the membership list dated October 1, 2010. There was no violation.

You alleged that members were denied a reasonable opportunity to nominate and vote because candidates for executive board positions could only be nominated and elected by members who worked within the department that the executive board member would represent. You specifically protested the fact that [REDACTED] was not allowed to nominate [REDACTED] for the mechanics executive board position because [REDACTED] is not a member of the mechanics department. The investigation revealed that the union's constitution provides that "[executive board members] shall have jurisdiction over the members in their respective departments." The union has interpreted this provision as providing that nominating and voting for executive board members would be restricted along department lines because executive board members represent their own departments. Pursuant to the Department's regulations, the interpretation consistently

placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable. *See* C.F.R. § 452.3.

The investigation found that the union has consistently interpreted its constitution as allowing for nomination and voting by those members whom the executive board member would represent. This has been the past practice of the union and has been consistently enforced. It is not an unreasonable interpretation of the bylaws and does not offend the LMRDA's requirement that the union provide a reasonable opportunity for nomination and election of candidates, *see* 29 U.S.C. § 481(e), to restrict nominations and voting in this manner. Thus, inasmuch as [REDACTED] is not a member of the mechanics department, he was properly ruled ineligible to nominate [REDACTED] for the mechanics executive board position. There was no violation.

You alleged that members were not allowed to nominate more than one candidate per office and that members were not given enough time to make nominations. Section 401(e) of the LMRDA requires that members be given a reasonable opportunity to nominate candidates. Section 14.4 of the ATU CGL states that, "any member in good standing in the L.U. may appear and place in nomination for any office any member of the L.U. who is qualified under this Constitution and L.U. bylaws governing nominations and elections." The investigation found no evidence to substantiate either allegation. The investigation did not reveal any evidence that members were told that they could only submit one nomination per office or that members were not given enough time to make nominations. To the contrary, the investigation found that after each nomination, a motion was made and seconded to close nominations for each office before moving to the next position. There was no violation.

You alleged that no written nominations were allowed which denied members unable to attend the nomination meetings a reasonable opportunity to nominate. Section 401(e) of the LMRDA requires that members be given a reasonable opportunity to nominate candidates. A requirement that members must be present at the nomination meeting in order to nominate may be unreasonable if there is no alternative method for someone who is unavoidably absent. *See* 29 C.F.R. § 452.59. The investigation disclosed that there were two nomination meetings, which were scheduled to accommodate as many members as possible. Additionally, members were able to nominate other members who were absent from either nomination meeting. The investigation did not reveal any evidence that the local provided any other method for nominations. Thus, the local's failure to provide an alternative method for nominations for members unable to attend the nomination meetings violated Section 401(e) of the LMRDA. This violation, however, had no effect on the outcome of the election because the

investigation did not reveal any evidence of anyone who wanted to make a nomination but was unable to do so.

You alleged that members were discouraged from nominating members who could not attend the nomination meetings because nominees who were not present at the meetings were required to accept nominations within 24 hours of the meeting where they were nominated. Section 7.2 of the local bylaws states that each candidate must notify the financial secretary of his/her acceptance of a nomination within 24 hours. The investigation revealed that all 24 candidates accepted their nominations within the 24 hour time frame. The investigation did not reveal anyone who wanted to make a nomination but was deterred by the fact that the nominee was required to accept within 24 hours. There was no violation.

You alleged that the polling site was too small and that the booths and partitions were inadequate to ensure voter secrecy. Specifically, you alleged that the local used a corner of the driver's room at IndyGo as a polling site and that it was so crowded that you were forced to share a voting booth. Section 401(b) of the LMRDA requires that officers of local unions be elected by secret ballot. You acknowledged that you were unaware if anyone other than yourself was forced to share a voting booth. The investigation revealed no evidence, based on interviews with members and union and election officials, that any member was forced to share a voting booth or that anyone waiting in line was close enough to see how a member voted. The investigation did not disclose evidence that the union facilities did not allow for secret ballot voting. Voluntarily choosing to not vote in secret is not the same as the union facilities being so lacking as not to allow for casting a secret ballot vote. There was no violation.

You alleged that campaigning was permitted inside the polls during polling hours. The Department's regulations prohibit campaigning within a polling place. *See* 29 C.F.R. § 452.111. The investigation did not substantiate this allegation. The Department's investigation found that candidates periodically were in the driver's room during the election, but there was no evidence that any candidate did any campaigning during the election. There was no violation.

Lastly, you alleged voters were not required to sign the voter register before receiving their ballots. Section 401(c) of the LMRDA requires that a labor organization provide adequate safeguards to ensure a fair election. "Pursuant to this provision, a labor organization's wide range of discretion regarding the conduct of the election is circumscribed by a general rule of fairness." *See* 29 C.F.R. § 452.110. The LMRDA does not restrict how ballots are distributed, only that each eligible voter receives one blank ballot. *See* 29 C.F.R. § 452.115. The investigation found that the union used two

membership rosters to verify voter eligibility. The election committee officials highlighted names from the eligibility list after they verified everyone's identity by checking either a driver's license or work badge. The investigation did not reveal that ineligible voters were allowed to participate in the election. 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,

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Chief, Division of Enforcement

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