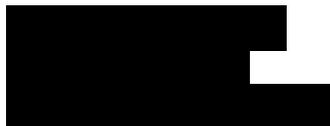




July 23, 2012



Dear [REDACTED]:

This Statement of Reasons is in response to your February 24, 2012 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the mail ballot election of officers of the Stage and Picture Operators Local 835 conducted on November 1, 2011.

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

You alleged that the local did not adequately secure ballots because the election judge had access to the post office box containing the returned and undeliverable ballots. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. As part of that requirement, ballots, including returned undeliverable ballots, must be adequately safeguarded to prevent ballot fraud or tampering.

The investigation revealed that the election judge was properly selected according to the local's bylaws and, in keeping with his duties, had the keys to the post office box. The investigation further revealed that he maintained possession of the keys throughout the election process. There was no evidence that he engaged in any fraudulent conduct. The Department review of the ballots revealed no evidence that any ballots were tampered with, substituted, or destroyed. Nor was there evidence that the election judge accessed the ballot box prior to the tally, except once, when observers, including you, were present. Therefore, no violation of the LMRDA occurred.

You also alleged multiple observer violations. You stated that as an observer you were prevented from fully witnessing the ballot tally. You specifically alleged that the ballots were counted too quickly, that the election committee was nonresponsive to your concerns, and that the election committee failed to allow you to keep your own tally. Section 401(e) of the LMRDA guarantees "the right of any candidate to have an

observer at the polls and at the counting of the ballots;" however, Department of Labor regulations specifically provide that "observers do not have the right to count the ballots." 29 C.F.R. § 452.107.

The investigation disclosed that the election committee did not impair your ability to view the ballot tally. You were able to ask questions, and the election committee was appropriately responsive. You did observe the ballot tally. The Local was under no obligation to allow you to conduct an independent tally of the ballots. Thus, there was no violation of the LMRDA.

You also alleged the election committee miscounted the ballots. Specifically, you alleged that five ballots returned without secret ballot envelopes were improperly included in the count and that the ballots of three eligible, dues-paying members were improperly excluded. Section 401(e) of the LMRDA provides, among other things, that eligible members be afforded the right to vote. Section 401(c) provides for a secret ballot vote and for adequate safeguards to ensure a fair election.

With respect to the five ballots not returned in secret ballot envelopes, the Department determined that the election committee preserved the secrecy of these ballots at the tally. The five ballots were removed from the manila return ballot envelopes, and then placed inside the ballot box to be mixed in with the other ballots. The committee was able to remove the five ballots without revealing the identity of the voter. Therefore, the election committee properly counted those five ballots in the tally.

With respect to the allegation that three members were improperly ruled ineligible, the Department found that these three local members lost membership as a result of dues delinquency. The investigation revealed that these three individuals did cure the delinquency sometime in mid-October; however, their membership had not been restored at the time of the election. The IATSE Constitution dictates that no local union shall reinstate membership without first submitting the reinstatement for approval to the International. *See* Article 21, Section 14. The local submitted the three individual names for reinstatement sometime in late October just prior to the November 1 election. However, there was no ruling from the International regarding their membership status and associated eligibility to vote prior to the election.

While it may be argued that the local did not diligently seek reinstatement for three dues paying members, the investigation revealed that the votes of these three persons would not have affected the outcome of the election. The smallest margin of victory was 31 votes.

The investigation included a recount of the ballots. The investigation revealed that the election committee made an initial tabulation error which it then corrected. The correct number was reflected in the local's vote totals. There was no discrepancy between the local's vote totals and the Department's recount. There was no violation.

You also alleged that on the day before the ballot tally, the election committee changed the designated time to pick up and count ballots which caused the tally to be "rushed." The investigation revealed the union informed you in advance that the time of pickup for ballots had been changed. The investigation also established that you were present as a candidate observer at the tally, despite the time change for ballot pickup. As explained above, the Department's ballot recount matched the Local's final vote count. This confirmation of the local's tally results indicates that the later start time for the tally did not cause any ballot counting errors. Thus, no violation of the LMRDA occurred.

You further alleged that [REDACTED] a candidate in the November election, was not given an opportunity to inspect the local's membership or mailing list to ensure the lists' accuracy, in violation of the LMRDA. Section 401(c) provides that once within 30 days prior to an election of officers, a candidate has the right to inspect a list of the names and addresses of "all members who are subject to a collective bargaining agreement requiring membership therein as a condition of employment." Consequently, this right is not applicable in Florida, a state that has "right to work" legislation. The union, therefore, did not violate the LMRDA by not providing [REDACTED] the opportunity to inspect the lists.

Regardless, [REDACTED] essentially inspected the list since the local provided her with mailing labels containing members' names and addresses. The local provided [REDACTED] and other candidates with the names and addresses of all its members when it gave them completed mailing labels to use for mailing campaign literature. Thus, in effect, [REDACTED] was able to view the membership list via the mailing labels. There was no violation of the LMRDA.

Finally, you alleged that the election committee demonstrated bias because an election committee member told you that if [REDACTED] won, the local would be placed into "administratorship." Section 401(c) of the LMRDA requires unions to refrain from discrimination in favor or against any candidate. The investigation found no evidence of bias or discrimination. The election committee member's statement, even if true, is not enough to demonstrate discrimination against [REDACTED] as a candidate in the election. Thus, no violation of the LMRDA occurred.

From the analysis set forth above, the Department concluded that the investigation failed to disclose any violation of the LMRDA which may have affected the outcome of the election. Accordingly, I am closing the file on this matter.

Sincerely,

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Division of Enforcement

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