



June 1, 2012

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U. S. Department of Labor on October 6, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by UNITE HERE Local 11 on June 22, 2011.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there were no violations of the LMRDA that may have affected the outcome of the election. A discussion of each of your allegations follows below.

You alleged that Local 11 failed to provide the membership with the election rules established by the Local 11 Election Committee, and that this failure violated the LMRDA. You further asserted that you made inquiries to the Election Chair, [REDACTED] but that the responses you received were unsatisfactory. As an initial matter, the LMRDA and its regulations do not require that unions provide copies of election rules to the general membership; rather, the LMRDA requires only that the membership be given timely notice of the election, including the offices to be filled and the time, place, and form for submitting nominations.

The investigation found that there is no requirement in the Local 11 Bylaws that the election rules must be disseminated to the entire membership. You did not ask Election Chair [REDACTED] for a copy of the election rules until June 29, 2011, after the election had concluded, and there was no evidence of any discriminatory treatment regarding access to the election rules. Accordingly, there was no violation of the LMRDA as to this allegation.

You further alleged that an election by secret ballot was compromised when numbered ballots were used in the election, which allowed the Election Committee or incumbent officers to know how members voted. The LMRDA requires that ballot secrecy be maintained throughout the course of the election.

Investigation confirmed that the ballots were numbered sequentially and distributed to each polling site. This was done to ensure that each site could track the ballots received and ensure that counterfeit ballots were not submitted. The investigation also confirmed that the voter registers did not document the ballot number that each member randomly received, and there was no other evidence that would suggest that election officials or other union members could connect a voter with his or her vote. Accordingly, there was no violation of the LMRDA.

You further alleged that Local 11 failed to provide adequate safeguards for a fair election when the notice of election was signed by the incumbent President and Secretary-Treasurer, rather than the Election Committee, which demonstrated that the incumbents rather than the Election Committee planned and administered the election. However, the Local 11 Bylaws specifically state that notice of elections sent out to the membership must bear the signatures of the Local 11 President and Secretary-Treasurer. Local 11 Bylaws, Art. V, §4. The union was merely following the requirements of its bylaws. Further, Election Committee Chair ██████ stated that all decisions related to the conduct of the election were made by the Election Committee rather than incumbent officers, and the Department found no evidence contradicting this assertion. Accordingly, there was no violation of the LMRDA.

You further alleged that the Election Committee cancelled a candidate's meeting to accommodate the schedules of the incumbents and never rescheduled the meeting, and that doing so demonstrated that the Election Committee was unfairly disposed to the incumbent officers. The investigation found that, at the end of the nominations meeting held on May 25, 2011, Election Chair ██████ scheduled a meeting for June 2, 2011, to allow the candidates the opportunity to review a draft of the ballot that would be used in the election. However, when members of the incumbent slate said they would not be able to attend, ██████ cancelled the meeting and instead called each slate on June 9, 2011, and told them to come to the union office to get a copy of the sample ballot for their review. Both slates came to the union office on June 10, 2011 and received a draft copy of the ballot. Accordingly, the cancellation of the original meeting had no discriminatory effect on any slate. Further, there is no requirement in the Local 11 Bylaws to have a formal "candidate's meeting." Accordingly, the Election Committee's actions were not in violation of the local's Bylaws or the LMRDA.

You alleged that Local 11 failed to properly count the ballots cast in the election when it failed to count the challenged ballots. The LMRDA and the Local 11 Bylaws require that all ballots cast by members be counted, with the results published separately. 29 U.S.C. § 481(e); Local 11 Bylaws, Art. V §9. The investigation found that challenged ballots were placed in pre-printed challenged ballot envelopes that were sealed and stored with the ballots by polling site. Election Committee Chair ██████ stated that she did not count the challenged ballots because there were far fewer challenged ballots

than the closest winning margin in any one race. The investigation found that there were 418 challenged ballots cast in the election, and the closest winning margin was 2,057 votes. Accordingly, the failure to count the challenged ballots could not have affected the outcome of the election, and thus the Department will not bring legal action to set aside the election results. 29 CFR §452.136(b).

You further alleged that supporters of the incumbent slate unlawfully interfered with the election by threatening and/or intimidating you and other union members at the voting site on the day of the election. Specifically, you asserted that incumbent supporters laughed loudly at you while you served as an election observer, and made comments and gave literature to voters instructing them on how to mark their ballot. The LMRDA ensures that union members have the right to vote without being subject to improper interference or reprisal by any member. 29 U.S.C. § 481(e); 29 CFR §452.105. At the same time, the LMRDA protects the rights of members to freely assemble and express their views, and unions generally may not censor the statements of members, even if such statements are derogatory. *See, e.g.*, 29 U.S.C. §411(a)(2); 29 CFR §452.70 (prohibiting union censorship of campaign literature).

The investigation found that Election Chair ██████ sent you three letters – on July 1, July 12, and September 29, 2011 – asking you to identify the individuals who allegedly threatened voters and provide any supporting evidence, but you did not provide any names or descriptions. However, even assuming that all of your assertions were accurate, they would not constitute a violation of the LMRDA. The investigation determined that the incumbent supporters were in an area where campaigning was permitted, and there was no evidence that members were restricted in their ability to vote or that you were prevented from observing the election. Derogatory statements made by campaigners, if true, do not constitute a violation of the LMRDA. Accordingly, there was no violation.

You alleged that the incumbent slate improperly used union funds for campaign purposes when it used vans to transport members to and from the polling place in order to vote in the election. The LMRDA prohibits labor organizations from contributing or applying money or resources to promote the candidacy of any person in a union officer election. 29 U.S.C. §481(g). However, the investigation found no evidence that union funds were used in this way. The incumbent campaign manager stated that the campaign, not the union, rented the vans. The van drivers knew who to pick up by virtue of pledge cards that the incumbent campaign had collected from supporters which included their work location and whether they needed transportation to the polling place in order to vote. The Department reviewed copies of the receipts for the van rentals and bank records of the incumbent campaign's account. These records confirmed that the vans were paid for by campaign funds and were at the standard

market rate for van rentals in the area. Accordingly, there was no violation of the LMRDA

You alleged that not all Local 11 members received a nomination/election notice and submitted a list of 10 individuals who did not receive the notice. The LMRDA requires that the union mail an election notice to each member at his or her last known address at least 15 days prior to the election. 29 U.S.C. §481(e). The investigation determined that all but one of the members you listed were either inactive members or otherwise not on the union's membership list. The Department further confirmed that the one member name you provided that was in the union's records - [REDACTED] - was mailed a nomination/election notice to the last known address the union had on file for her. Accordingly, there was no violation of the LMRDA

You further alleged that [REDACTED] an International Representative, was not an eligible member and thus was incorrectly allowed to vote. A review of [REDACTED] membership record established that he has been a dues-paying member since 1990 and was entitled to vote in the election. Further, there is no Local 11 bylaw or other Constitutional provision preventing [REDACTED] from voting in union officer elections by virtue of his status as an International Representative. Accordingly, there was no violation of the LMRDA.

You further alleged that organizers associated with the incumbent slate used union funds when they made house visits and phone calls to members on union time, using cell phones alleged to have been paid for by the union, as well as renting a conference room at the Los Angeles Federation of Labor for campaign activities.

The LMRDA prohibits campaigning by union members while on paid union time. 29 U.S.C. §481(g); 29 CFR §452.76. However, campaigning that is incidental to regular union business is not a violation of the LMRDA. You alleged that several members, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], were contacted by or received visits from union organizers. However, in most cases these visits or calls did not concern the election at all, but rather were for union business - either to ask people to rejoin the union, pay money to retain their medical benefits, support the union in a strike, or to serve on a union committee. The investigation did find that, in a few instances, the election was discussed in the course of these visits, but that these discussions were initiated by the member and/or were incidental to union business. The incumbent slate also organized phone calls to members who had signed pledge cards but these calls were made with cell phones paid for privately or by the campaign, and there was no evidence indicating that such calls were made while on paid union time. The investigation found that the pledge cards were printed using campaign funds, and the database used to capture the information on the pledge cards was created and maintained without the use of union

funds. Finally, the investigation revealed that the incumbent slate leased the conference room at the going rate using campaign funds, as evidenced by invoices supplied to the Department. Accordingly, there was no violation of the LMRDA as to this allegation.

You alleged that members who had worked at the former Bel Air Hotel were inactive, yet they were improperly allowed to vote in the election. This allegation was based on information provided by your observer and running mate [REDACTED] who was at the Hyatt Century Plaza polling site and reported that former Bel Air Hotel employees were voting at the Hyatt Century Plaza polling site. During the investigation, you stated that [REDACTED] later said that there was actually only one former Bel Air Hotel employee, and that this person started working at another hotel. The Department reviewed the eligibility list of voters at the Hyatt Century Plaza, which included information on each member's place of work. None of the voters on the list, and none of the voters who voted at that location, were listed as employees of the Bel Air Hotel. Accordingly, there is no evidence that inactive members voted, and thus no evidence of a violation.

You further alleged that an organizer for the incumbent slate told several members to vote at a second polling place after they had already voted at their initial polling place. This allegation was based on information provided by your observer and running mate [REDACTED] who reported that an organizer at the Hyatt Century Plaza site told members to also vote at the Los Angeles main office site after they had voted at the Hyatt Century. The Department's investigation determined that each polling site had a roster of eligible members that was completely unique, and that if individuals had attempted to vote at two sites they would have had to vote a challenged ballot, none of which were counted. Accordingly, there is no evidence of a violation of the LMRDA.

You alleged that the union engaged in disparate candidate treatment when the lights went out at the Century Plaza Hotel polling site for 15-20 minutes while ballots were being counted, and that this was "insulting" to your slate because many members at that polling location were supporters of your slate. However, you further admitted that the count was done properly since observers made sure the boxes with the ballots in them were secure when the lights went out. The investigation found that the lights went out at midnight due to an automatic timer that controlled the lights, but that a lamp was turned on almost immediately and the building lights came back on soon thereafter. There was no evidence that the ballots were compromised, and thus no violation of the LMRDA.

You alleged that Local 11 did not provide enough time for the candidates to campaign. The LMRDA provides that labor organizations must allow a reasonable period of time to campaign in advance of an election. 29 U.S.C. §481(c); 29 CFR §452.79. What is a reasonable amount of time depends on the circumstances, including the method of

nomination and the size of the union, both in terms of the number of members and the geographic area in which it operates. The facts of this case demonstrate that Local 11 provided a reasonable amount of time in which to campaign. The investigation determined that Article V, Section 1 of the Local 11 Bylaws provide when every election must occur, and thus any candidate could have begun campaigning at any time prior to the June 2011 election. Even assuming campaigning could only begin when the nominations/election notice went out in May 2011, which is not the case, this still would have provided all candidates approximately one month to campaign for an election covering a relatively contained geographic area in Southern California. Accordingly, there is no violation of the LMRDA.

You alleged that that the incumbent slate received a copy of the ballot before you received it and unlawfully used a picture of the ballot in the campaign's promotional literature. As discussed previously, the investigation found that both campaigns received a copy of the ballot on the same day - June 10, 2011. The investigation further found that the incumbent slate emailed an electronic copy of the campaign flyer to the printer on June 16, 2011, corroborating the fact that they had not received it before June 10. Finally, neither the LMRDA nor the Local 11 Bylaws prohibit using the image of the ballot on campaign literature. Accordingly, there is no violation of the LMRDA.

You alleged that Local 11 failed to properly count the ballots at the Dodger Stadium voting location, because the number of individuals voting there was twice as much as the number of individuals who worked at that location. This allegation was based on information provided by member [REDACTED]. The Department's review of election records from the Dodger Stadium polling site found that there were 650 members who were eligible to vote, and a total of 312 members, or fewer than 50%, signed in at the polling place to vote. There was no evidence that ineligible members voted, or that eligible members voted more than once. Accordingly, there is no violation of the LMRDA.

You alleged that your observer at the Miramar Hotel polling site, [REDACTED] and your observer at the Maya Hotel polling site, [REDACTED] were initially barred from observing at their respective sites until you contacted the Election Committee to complain, and that this constituted a violation of the LMRDA. The LMRDA provides any candidate with the right to have an observer at the polls and at the counting of the ballots. 29 U.S.C. §482(c). The Department's investigation found that [REDACTED] arrived at the polling site at 7:00 a.m. and was initially denied entry because he was not on the list of designated observers. In the meantime, [REDACTED] wife, who was on the list of designated observers, was allowed into the polling place and observed the election. [REDACTED] returned to the polling site at 10:30 a.m., around which time he contacted you and, after a discussion with Election Chair [REDACTED] was allowed into the site to serve as an observer. The investigation found the list of authorized observers

you provided to the Election Committee did not include [REDACTED] which was why he was initially turned away. Because of this, and the fact that [REDACTED] wife was present as an observer at the polling location at all times that [REDACTED] was not permitted to enter, there is no violation.

Investigation disclosed that [REDACTED] tried to enter the polling site at the Maya Hotel at 7:00 a.m. but was told she was not on the list of authorized observers. The poll worker at the Maya Hotel made a phone call and received clearance to allow [REDACTED] as an observer. In all, [REDACTED] was only delayed from serving as an observer for approximately 10 minutes. Again, the investigation found that the list of authorized observers that you provided to the Election Committee did not initially include [REDACTED], which was why she was initially turned away. Further, the investigation found that no one entered to vote during this 10 minute period. Accordingly, there was no violation of the LMRDA.

For the reasons set forth above, it is concluded that no violations of the LMRDA occurred in the conduct of the June 22, 2011 election, that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

[REDACTED]

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Chief, Division of Enforcement

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