



May 10, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your February 21, 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 election of officers conducted by Teamsters Local 249 on November 16, 2011.

The 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 of the LMRDA affecting the outcome of the election.

You alleged that Local 249 violated the LMRDA by failing to notify "249 Future Slate" candidates of the ballot printing, preparation, and mailing so they could have observers present. Section 401(c) of the LMRDA mandates that "[a]dequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots." The Department's interpretative regulations state that "candidates must be permitted to have an observer present at the preparation and mailing of the ballots," 29 CFR § 452.107(c). The LMRDA imposes no affirmative duty on the union to notify candidates of the ballot preparation and mailing. Candidates must request to have an observer present. The union violates observer rights if it refuses a candidate's request to have observers present.

The Department of Labor investigation revealed that the printer did not notify Local 249 of his intent to print the ballots on October 22, 2011, until the day prior, October 21, 2011. The printer left a voicemail to that effect for the election supervisor. However, the election supervisor was sick on October 21 and did not receive the voicemail until the ballots were already being printed on October 22. The election supervisor was unable to contact the printer to stop the printing until observers could arrive. The investigation determined that no Local 249 staff, candidates, observers, members, or election supervisors were present during the printing of the ballots, although a request to observe had been made.

With respect to the mailing of the ballots, on October 24 or 25, 2011, the printer informed the election supervisor that the ballots were to be mailed at 2:00 p.m. on October 26. However, on October 25, the printer brought the folded ballots and pre-addressed envelopes to Advertising Associates, a third-party mailing company, to stuff envelopes and mail the ballot packages by October 26. The printer did not direct Advertising Associates to wait until October 26 to mail them. Advertising Associates mailed the first 457 ballot packages it had prepared and sorted at 7:00 p.m. on October 25, and the remaining 2,874 ballot packages around 11:30 a.m. on October 26. No Local 249 staff, candidates, observers, members, or election supervisors were notified that the ballots had been packaged or mailed prior to the October 26 date established for the ballot mailing until some members began receiving ballots in the mail on October 26. Local 249 thus violated the adequate safeguards provisions of the LMRDA because observers were unable to view the printing, preparation, and mailing of the ballot packages.

However, the Department of Labor investigation did not reveal that the violation affected the outcome of the election. The Department of Labor reviewed the ballots for evidence of ballot fraud or tampering and for whether votes had been cast by members ineligible to vote. These are incidents which an observer might detect. The investigation revealed no improprieties or foul play in the preparation or mailing of the ballots. A Department-supervised rerun election is unnecessary despite a failure to allow observers in the balloting process when no evidence of fraud or tampering is discovered in the Department's investigation. *Alexander-Scott v. Fox*, 2009 WL 3380670, *2-3 (N.D. Ill. Oct. 20, 2009); *aff'd in relevant part, Corner v. Solis*, 380 Fed. Appx. 532, 536 (7th Cir. 2010) (Court declined to order a supervised election where right to observers was violated but Secretary found no evidence of fraud or tampering, and manually verified ballot count to confirm violation did not affect the outcome of the election). The review of the ballots did not reveal that ineligible voters were allowed to participate in the election. The investigation disclosed no evidence of an effect on outcome in connection with this allegation.

You alleged that Local 249 failed to provide adequate safeguards to ensure a fair election by failing to use a watermark on the printed ballots. Neither the LMRDA nor Local 249's Constitution & Bylaws or election rules require that ballots include a watermark. The Department's investigation disclosed that Election Supervisor [REDACTED] did ask the printer to place a watermark—a Teamster logo—on the ballot, but the printer forgot to include a watermark when printing the ballots. In any event, the investigation revealed no evidence of ballot tampering, duplication, substitution or other irregularities. There was no violation of the LMRDA.

You alleged that Local 249 failed to provide adequate safeguards to ensure a fair election by mailing ballots prior to October 26, 2011. The investigation revealed that the

September 12, 2011 "Notice of Nominations/Election of Local 249" that was distributed to members stated, "[i]t is *expected* that the ballots will be mailed to all members *on or about* October 26, 2011" (emphasis added). The investigation determined that the union actually mailed ballots on October 25, 2011, and on October 26, 2011. Except to the extent this affected observer rights as detailed above, the mailing prior to October 26 did not violate the LMRDA. Neither Local 249's Constitution & Bylaws nor its election rules require all ballots to be mailed on the same day or any specific date. Again, there was no evidence that any members eligible to vote failed to receive a ballot or duplicate ballot. Therefore, no violation occurred.

You alleged that the returned ballots were not adequately secured at the Sharpsburg, Pennsylvania Post Office. The investigation disclosed that the ballots were held in storage containers on the floor directly behind the open-backed Post Office boxes since the Post Office boxes themselves were not large enough to hold thousands of ballots. The investigation confirmed that the area where the ballots were held was not open to the public or any non-USPS employees such as contracted deliverymen. Further, the investigation which included a review of the ballots revealed no evidence of ballot tampering or irregularities; no violation occurred.

For the reasons set forth above, it is concluded that no violation of the LMRDA affecting the outcome of the election occurred. Accordingly, the office has closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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