



January 10, 2013



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on April 9, 2012, with the Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Alliance of Theatrical Stage Employees (IATSE), Local 33 on December 7, 2011.

The Department of Labor conducted an investigation of your allegations. As a result of our 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 Local 33 failed to inform all candidates of the procedures to follow for distributing their campaign literature. Under the provisions of section 401(c) of the LMRDA, the union has a duty to comply with the reasonable requests of any candidate to distribute campaign literature to the membership at his expense. *See* 29 C.F.R. § 452.67. The regulations further provide that in order to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and promptly advise them of any changes in those conditions. *See* 29 C.F.R. § 452.67. The LMRDA does not, however, require particular notice of the distribution procedures.

The investigation revealed that the union's only guidance regarding the process for distributing campaign literature is Article 4, Section 15 of the Local 33 Constitution and Bylaws, which provides that all candidates bring their campaign literature (along with sufficient money to cover expenses of mailing) to the office and coordinate such mailing with the Recording Secretary. However, the investigation did not reveal that the lack of more detailed guidance led to disparate treatment of candidates or any evidence that candidates were deprived of the opportunity to make a campaign mailing. There was no violation of the LMRDA.

You also alleged that Local 33 denied your request to distribute campaign literature by email, in violation of section 401(c) of the LMRDA. The investigation established that the union denied your request as well as [REDACTED] request to distribute campaign literature by email. While the investigation revealed that the incumbent president sent a campaign email from his home computer using addresses he obtained through personal correspondence, there was no evidence that he or any of the other candidates used the union's email list to distribute their campaign literature.

To the extent that the candidates' requests to distribute material by email may have been reasonable, and the union denial may thus have been a violation, there was no effect on the outcome of the election because all candidates who wanted to conduct a mail campaign were able to do so. See 29 U.S.C. § 482(c) (election only set aside where violation may have affected the outcome of the election); 29 C.F.R. 452.136(b).

You further alleged that Local 33 improperly refused the request of recording secretary candidate [REDACTED] to use a cheaper mailing house to distribute her campaign literature, in violation of section 401(c). The investigation revealed that the union informed [REDACTED] that the local's board of directors would consider her request at its next meeting, but the board was not scheduled to meet until after the mailing of the ballots. The investigation also established that the candidates were not required to use the local's postage meter for their campaign mailings. Rather, they were only required to pay the local for the addressing of their envelopes. [REDACTED] requested a mailing through the local and her request was honored. Because [REDACTED] request was never denied, she was able to distribute her campaign literature by mail. There was no violation.

You alleged that Local 33 failed to notify the candidates that they could examine the membership list. Under the provisions of section 401(c) of the LMRDA, each bona fide candidate for office has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization. See 29 C.F.R. § 452.71. The LMRDA does not, however, require the union to notify members of this right. No candidate requested the right to inspect the list. There was no violation.

You alleged that Local 33 failed to update its membership mailing list before the election. Under the provisions of section 401(e) of LMRDA, an election notice is required to be mailed to each member at his or her last known home address. As a part of this statutory duty to mail election notices to each member a union must make reasonable efforts to keep its membership list current. See *Chao v. Local 54, Hotel Employees and Restaurant Employees International Union*, 166 F. Supp.2d 109, 115 (D.N.J. 2001).

The investigation did not substantiate this allegation. The investigation found that the membership list was up-to-date. Of 1,465 ballot packages mailed to members, only four ballot packages were returned as undelivered for the general election. The evidence revealed that one package was returned because the member is deceased. The union was only able to provide a new address for one of the undelivered ballot packages and a new general election ballot package was re-mailed to the member. The union did not have addresses for the other two members whose packages were returned. The union was able to provide a new address for the run-off election for one of the members whose ballot package was returned as undelivered in the general election. There was no violation of the LMRDA.

You alleged that Local 33 failed to appoint an impartial election committee. Section 401(c) of the LMRDA provides that a labor organization provide adequate safeguards to insure 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 investigation revealed that an accounting firm was hired to administer the election. While the incumbent officers made some decisions about the election, the investigation did not reveal any evidence that the lack of an election committee presented any particular unfairness or had any effect on the election outcome. The investigation did not reveal any evidence of any ballot tampering. There was no violation.

There were two other issues raised during the investigation that were not investigated because they were not timely invoked and exhausted in accordance with the union election protest procedures, as required by section 402(a) of the LMRDA, 29 U.S.C. § 482(a). One concerned anonymous campaign literature mailed during the run-off election and the other concerned the use of union resources to promote the candidacy of [REDACTED]. The Secretary lacks the authority to consider the merits of these issues.

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 am closing our file regarding this matter.

Sincerely,

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Chief, Division of Enforcement

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