



February 18, 2014



Dear [REDACTED]

This Statement of Reasons is in response to your August 5, 2013 complaint to the Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of Local 357, International Brotherhood of Electrical Workers (IBEW) conducted on June 22, 2013.

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

You alleged that the local president re-opened nominations for the position of treasurer after nominations had been closed, in violation of the local constitution and bylaws. Section 401 of the LMRDA does not prescribe particular forms of nomination procedures, other than that the procedures employed be reasonable and conform to the provisions of the union's constitution and bylaws. 29 C.F.R. § 452.55. The International Constitution authorizes locals to decide the manner in which nominations and election shall be held. Article XVI, section 11. The only references to nominations in Local 357's Bylaws is a requirement that they be held in May of an election year and that there be 20 days' notice of the nominations meeting. Article II, section 7(a).

The investigation disclosed that at the nominations meeting held on May 17, 2013, the local president opened the floor for nominations for each position except for treasurer, after which point nominations closed. Realizing his mistake, the local president re-opened nominations to announce nominations for treasurer. Nothing in the local bylaws or International Constitution prohibits the re-opening of nominations in this circumstance. There was no violation.

You alleged that all candidates were not treated similarly when the incumbent business agent used the services of election tellers to address and mail his campaign literature but those services were not made available to you. Instead, the local informed you it

could not process your campaign mailing because its mailing processor was broken. As a result, your campaign material was mailed late.

Section 401(c) provides, in relevant part, that unions shall comply with all reasonable requests of any candidate to distribute campaign literature by mail or otherwise at the candidate's expense to all members in good standing. The investigation disclosed that you requested and paid for an e-mail distribution of your campaign material on May 20, 2013. You requested and paid for a second distribution, by mail, of your campaign material on May 23, 2013, the same day the ballots were mailed to all members. However, the local did not mail your campaign material until May 28, 2013, five days after the ballots were mailed, because its envelope addressing machine was not functioning. The investigation disclosed that the local provided staff to process your opponent's campaign material. The local failed to provide you with the requisite personnel to process and mail your campaign material, as it had your opponent's, in violation of section 401(c) of the LMRDA.

Section 402(c) of the LMRDA provides that an election may only be overturned where a violation "may have affected the outcome of the election." The Department examined the post office's records and determined that, of the 771 ballots cast, 198 were received by the post office on or before May 29th, before members could have received your mailed campaign material. Because you lost by 202 votes, even if all 198 members who did not receive your campaign material had voted in your favor, you would not have won office for Business Manager/Financial Secretary. Further, the content of your emailed and mailed campaign material was identical. The investigation disclosed that the local had the email address of 554 members of the 771 members who cast a vote in this election, which is 70 percent of the voters. Because 70 percent of the voters were sent your campaign material by email, it is likely that many of the 198 voters who did not get your mailing timely received your emailed campaign material prior to voting. This further reduces the effect of the violation on the election. There was no violation that may have affected the outcome of the election.

You alleged that the local failed to properly count the ballots when the election committee excluded from its tally ballots voided for over-votes, scribble marks, and lack of membership numbers on the outer envelopes. Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. Unions have the right to establish reasonable rules for determining the validity of ballots cast in an election. 29 C.F.R. § 452.116. Section 8 of Local 357's Bylaws provides that the executive board shall decide rules for balloting and that ballots shall not contain any number or other marks identifying the voter.

The voting package mailed to members contained voting instructions that stated, in relevant part, that in order for a ballot to be counted, a member must place his or her

name, address and union number on the upper left-hand corner of the return ballot envelope. The investigation disclosed that the local collected 903 ballots from the post office on election day. The election committee included 682 of those ballots in its tally, voiding 221 ballots for various reasons, including: failure to include address and/or union card number; ballots not returned in official return ballot envelope; marks on the envelopes; white-out on some of the ballots. The investigation confirmed that 140 of the 221 ballots were properly voided and not included in the tally because the voter failed to include information on the return ballot envelope to allow the local to determine the voter's eligibility to vote, among other legitimate reasons. However, the International, after conducting two recounts, determined that 81 ballots containing some markings, but none identifying the voter, should be included in the tally; the local agreed. After recounting all the ballots, including the 81 ballots the International added in its final recount, the Department determined that the International was correct in its recount and inclusion of those 81 ballots. The Department also determined that the International remedied the local's violation.

You alleged that the local compromised the secrecy of the ballot when it pointed a webcam towards the ballot tally area. Section 401(b) mandates, among other things, that local elections be conducted by secret ballot. A secret ballot is defined under section 3(k) to mean "the expression by ballot, voting machine, or otherwise . . . cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." The investigation disclosed that the election committee chair attached a webcam to his laptop computer at the front of the tally room. The images were patched to two television monitors inside the tally room, allowing members and observers to see the entire tally process, but not close enough to identify any member with his or her vote. The webcam allowed any member to view the election process, thereby promoting transparency in the election proceeding. There was no violation.

You alleged that improper restrictions were imposed on candidates and observers when observers were not able to view the process for disqualifying ballots or freely move about the small room where ballots were being tallied. Section 401(c) provides, in relevant part, that unions provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the counting of the ballots. For purposes of challenging a member's qualification to vote, observers must be so situated as to be able to hear and view the tally process, but not so close as to compromise secrecy of the ballot. *See* 29 C.F.R. § 452.107(a).

The investigation disclosed that there were twenty-one tellers in the tally room, with three tellers at each of seven tables. It was not possible for observers to view those tellers' actions or hear what was being said from the distance at which observers were standing. Several of the tellers reported that the noise in the small room made it difficult for observers to hear the ballot tally process. Observers' right to view the ballot

tally was violated because their view was obstructed and they could not hear the tellers. However, there was no effect on the outcome of the election, because the Department's recount took into account any defects that could have been detected by the observers.

You alleged that the local failed to follow its past practice of putting a motion on the floor, during the nominations meeting on whether to permit apprentices to vote in the upcoming election. Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. The Secretary's interpretive regulation permits unions to condition apprentices' right to vote upon completion of a bona fide program of apprenticeship training. 29 C.F.R. § 452.89. Article III, section 8(f) of Local 357 Bylaws provides, in relevant part, that all members in good standing and qualified shall be entitled to vote. With respect to apprentices, Local 357 Bylaws provide that apprentices may be accepted into membership at any time and must become members after one year. Local Bylaws Article XIII, sections 1 and 2.

Nothing in the bylaws requires a vote of the membership on whether to permit apprentices to vote in an upcoming election. According to [REDACTED], an International Representative of District 9 which has jurisdiction over this local, apprentices are considered members in good standing upon swearing in, and inherent in their status as members in good standing is the right to vote. The investigation disclosed no evidence that any apprentices who were not sworn in were permitted to vote. There was no violation.

For the reasons set forth above, your complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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