



June 4, 2014

[REDACTED]

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on November 13, 2013, 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 the International Brotherhood of Electrical Workers (IBEW) Local 24 on June 29, 2013.

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 that may have affected the outcome of the election.

Complainant [REDACTED] alleged that candidates Gary Griffin, [REDACTED], and [REDACTED] each held management positions with their employers, and thus were improperly allowed to run in the election. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed, and that the election shall be conducted in accordance with the constitution and bylaws of the union insofar as they are not inconsistent with the provisions of the LMRDA.

Article XV, Section 5 of the IBEW Constitution provides that no local union shall allow any member who becomes an electrical employer, a partner in an electrical employing concern, a general manager, or other managerial position, to hold office in the local union or attend any of its meetings, or vote in any election of a local union.

The investigation determined that Griffin, [REDACTED], and [REDACTED] did not have sufficient authority or independence to be considered management. Rather, each of their employers classified them as either foremen or general foremen and confirmed that their duties and authority were not the same as a superintendent or project manager. None of them could hire or fire employees, bid on contracts, or make significant independent decisions regarding company funds. Based on these facts, Griffin, [REDACTED], and [REDACTED] were eligible to run for office under IBEW's Constitution. There was no violation of the LMRDA.

Complainant [REDACTED] alleged that union funds were used on June 10, 2013, when Business Manager candidate Griffin spoke at a Joint Apprenticeship and Training Committee (JATC) conduit bending class at Griffin's employer, Gill Simpson, Inc. Specifically, Complainant [REDACTED] alleged that Griffin told the class to "make sure you vote" while wearing his own campaign t-shirt. Section 401(g) prohibits the use of union or employer funds to promote any candidate for union office.

The Department's investigation revealed that Griffin was laid off from Gill-Simpson, Inc. prior to the JATC class. Although Griffin spoke to apprentices outside of the building and in the hallway encouraging them to vote, he did not mention anyone's candidacy. Furthermore, the instructor of the class confirmed that Griffin never addressed the class in session and corroborated that he only observed Griffin speak to apprentices outside of the Gill-Simpson, Inc. loading dock. Accordingly, there was no violation of the LMRDA.

Complainants [REDACTED] and [REDACTED] alleged that employer funds were used when employer Gill-Simpson, Inc. sent a letter to all union members on June 24, 2013 at Griffin's request, which was included in 243 members' paychecks. Section 401(g) prohibits the use of union or employer funds to promote any candidate for union office.

The Department's investigation found that Local 24 Financial Secretary Tom Benjamin sent a letter to all of the union members concerning the local's Electrical Industry Advancement Program (EIAP). The letter expressed concerns about misappropriation of union money, and identified Gill-Simpson, Inc. as the main beneficiary. In response, Gill-Simpson, Inc.'s [REDACTED] sent a letter to all employees to defend the company's reputation. Both Griffin and [REDACTED] denied that Griffin asked [REDACTED] to send the letter. The investigation did not find any evidence that Gill-Simpson, Inc. used the letter as part of an effort to influence the vote of its employees in Local 24's election. The letter did not mention, promote, or discredit any candidate. Instead, the letter informed employees that an audit of the company's involvement in the EIAP would not occur until after the election. There was no violation of the LMRDA.

Complainant [REDACTED] alleged that employer funds were used when candidates [REDACTED] and [REDACTED] each drove company vehicles with the company name on it and parked next to the JATC on four occasions. Section 401(g) prohibits the use of union or employer funds to promote any candidate for union office.

The investigation disclosed that the JATC is across the street from the union hall, but election rules prohibit campaigning within 100 feet of the JATC. Local 24 Election Judge [REDACTED] stated, however, that it was not a violation of the election rules for candidates to drive employer-owned vehicles and campaign in the union parking lot. Furthermore, Gill-Simpson, Inc. [REDACTED] and [REDACTED] confirmed that they allowed employees to use company vehicles for limited personal business.

The investigation showed that the candidates stood in the Local 24 parking lot campaigning. There was no evidence that either [REDACTED] or [REDACTED] used a company vehicle for any purpose other than to travel to the union hall. They did not pass out campaign literature from their

vehicles and the candidates were in the union parking lot when they campaigned. Any use of the company vehicles was incidental. Therefore, there was no violation of the LMRDA.

Complainant [REDACTED] alleged unfair treatment when the Election Committee sent a second election notice on June 4, 2013, containing the nicknames of candidates at Griffin's request. In particular, Complainant [REDACTED] claimed that no other candidate was afforded the same opportunity. Section 401(c) of the Act requires unions to provide adequate safeguards to insure a fair election. Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

IBEW Local Union Election Guide on page 4 emphasizes the importance of consistency by the election judge, and provides as an example the use of nicknames on the ballot. "If any individual is allowed to put a nickname on the ballot, all candidates must be afforded the same right." The investigation found that the first election notice did not contain the candidates' names or nicknames. Some candidates, including Griffin, asked that the candidates' nicknames be included. Once Election Judge [REDACTED] asked other candidates if they wanted to use a nickname, he sent a second notice with all of the candidates' names and included their nicknames. Eleven candidates had nicknames, four of whom were on Complainant [REDACTED] slate. Thus, no candidate gained an unfair political advantage over other candidates because all candidates had the option of using a nickname. There was no violation of the LMRDA.

Complainants [REDACTED] and [REDACTED] alleged that they were denied the right to have an observer when an unscheduled pick-up of absentee ballot requests on June 21, 2013 occurred.

The local's business manager advised that on the night of nominations, Election [REDACTED] asked all the candidates to assemble and told everyone he was adding an extra day to the pick-up schedule. Complainant [REDACTED] denied hearing the announcement altogether, while his observer [REDACTED] claimed that [REDACTED] only stated that he "might" add an additional pick-up date.

A review of all requests for absentee ballots found that the union collected and processed requests for 5 absentee ballots on June 4; 39 on June 11; 69 on June 18; 26 on June 21 (the pick-up in question); and 32 on June 25. The Department concluded that the likely reason the number of requests collected on June 21 was lower than on other dates was because only three days passed between June 18 and June 21, while the other pick-up dates were seven days apart. Despite the conflicting testimony on whether an announcement was made, even if the complainants were unaware of the additional collection date, the investigation found no evidence that absentee ballot requests were ignored or thrown away without being processed. Therefore, there is not an adequate basis for finding that there was a violation that may have affected the election outcome.

Complainant [REDACTED] alleged that his supporters were prohibited from bringing sample ballots to the polling area. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election.

The investigation revealed that on the day of the election, Election [REDACTED] asked Teller [REDACTED] instruct voters not to leave anything behind when they voted. [REDACTED] misinterpreted [REDACTED] instruction to mean that voters were prohibited from bringing anything into the polls, thus telling all voters to discard all literature. [REDACTED] universally applied this rule. Once observers notified [REDACTED] of [REDACTED] actions, [REDACTED] clarified his instruction to [REDACTED] and told him that he should allow literature into the polling area. [REDACTED] made sure to remove any literature left behind by voters. The investigation determined that the ban on campaign literature and sample ballots in the polling area lasted for one hour. During that hour, the ban was applied uniformly and not just to one candidate or slate. There was no evidence that voters were unable to select the candidates of their choice. Accordingly, there was no violation of the LMRDA.

Complainant [REDACTED] alleged that the tally process was unorganized and poorly planned, resulting in interruption and relocation. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election.

The investigation found that the tally began in the union banquet hall, but Election [REDACTED] had to relocate the tally to a different room because of a scheduling conflict with a wedding reception. [REDACTED] placed all ballots into a box and permitted observers to ride with him in the elevator to the room where the Election Committee reviewed ballots for errors/void marks. During the investigation, Complainant [REDACTED] conceded that observers were present when the tellers boxed up the ballots and he admitted that he did not think there were any security issues despite the disruption. Once the ballots were in the correct room, the ballots were again scanned by the machine and an image of each ballot was projected onto a screen for everyone to review. The Department conducted a recount for all races and did not find any significant disparity in tallying the ballots or evidence of any irregularities by the Election Committee. There was no violation of the LMRDA.

Complainant [REDACTED] alleged that the union failed to properly count the ballots since many ballots were marked incorrectly using an “x” or checkmark instead of filling in the circle and some marks crossed into another candidate’s circle. Specifically, Complainant [REDACTED] claimed that the validity of about 50-60 ballots was determined arbitrarily or inconsistently by the tellers. Section 401(e) of the LMRDA requires, among other things, that votes cast by members shall be counted and the results published. 29 C.F.R. § 452.108.

The Department’s recount of all races did not find significant differences with Local 24’s tally. The highest variance with the union tally was 5 votes in the Recording Secretary race, increasing the winning margin by 1 vote. In the Executive Board race of six candidates, the vote variance was 1 vote, but the winning margin between [REDACTED] and [REDACTED] was unchanged at 2 votes. Thus, there was no violation affecting the outcome of the election.

Complainants [REDACTED] and [REDACTED] alleged that members were denied the right to vote when Election Judge [REDACTED] voided the ballots of [REDACTED] and [REDACTED] claiming that they were ineligible to vote because they were owners of contracting companies. Complainants argued that this determination was incorrect, as neither [REDACTED] nor [REDACTED] had owned a company in the past five years. Section 401(e) of the LMRDA requires that a union give all

members in good standing a reasonable opportunity to vote. Unions are required to conduct an election of union officers in accordance with the requirements of their constitution and bylaws, insofar as they are not inconsistent with the provisions of the LMRDA.

The investigation found that [REDACTED] spoke with both [REDACTED] and [REDACTED] at the polls. [REDACTED] told [REDACTED] that although she did not have any employees, she owned a contracting company. The Department reviewed the Maryland Assessment & Taxation records, which indicates that [REDACTED] is listed as an owner of [REDACTED] and the company has an “active” status. Thus, [REDACTED] was ineligible to vote and Local 24 properly voided her ballot.

During a conversation with [REDACTED] at the polls, [REDACTED] asked [REDACTED] if he “owned a company” and [REDACTED] responded affirmatively. Based on [REDACTED] affirmative response, [REDACTED] advised [REDACTED] that he could vote, but that his ballot would be challenged. OLMS determined that [REDACTED] believed [REDACTED] question referred to the past rather than the present. [REDACTED] said he learned later that the company had gone out of business and [REDACTED] had sold his stock in [REDACTED] in 2008. The Department’s review of the Maryland Assessment & Taxation records found that [REDACTED] no longer owned stock in [REDACTED]-[REDACTED] and that [REDACTED] name had been removed from the company charter. Thus, although Local 24 made the correct decision to not count [REDACTED] ballot, the Local erred in not counting [REDACTED] ballot since he no longer had an ownership interest in his former company. This error alone did not have an effect on the outcome of the election.

Complainant [REDACTED] alleged that he was denied the right to have an observer when at the end of the tally, Election [REDACTED] [REDACTED] stated that there were 17 challenged ballots that had to be resolved, but Wiggins did not observe the process. Section 401(e) of the LMRDA requires that votes cast by members shall be counted and the results published. Section 401(c) provides that candidates have right to “have an observer at the polls and at the counting of the ballots.”

The investigation found that Local 24 had 20 challenged ballots. Sixteen challenged ballots were voided because they were cast by electrical company employers or supervisors; two were voided because although the members requested an absentee ballot, they nevertheless appeared at the polling site and voted in person without turning in their absentee ballots; one vote was voided because the member was a retiree; one was voided because the member was behind in his dues.

Article III, Section 4(e) of IBEW Local 24 Bylaws provides that no member who received an absentee ballot shall be permitted to vote in person at the election unless he or she first returned the absentee ballot unmarked to the election judge.

The Department concluded that three eligible members, whose ballots were challenged and not counted by the union, were denied the right to vote in violation of Section 401(e) of the LMRDA. Despite IBEW’s bylaw provision requiring the surrender of absentee ballots upon voting in person, the LMRDA requires that elections should be conducted in accordance with the constitution and bylaws of the union insofar as they are not inconsistent with the provisions of the LMRDA. Here, the two votes voided because the members did not turn in their absentee ballots were denied the right to vote because Local 24 could have determined whether these

members had voted their absentee ballots; instead, Local 24 voided their votes altogether. The Department also concluded that [REDACTED] vote, as mentioned above, should have been counted as well, because [REDACTED] no longer owned a company and was thus eligible to vote. The closest winning margin was two votes in the Executive Board race, a race for 5 positions. Out of 11 candidates, complainant [REDACTED] came in 6th place. To determine if the violations affected the outcome of the election, Local 24 agreed to have the Department open and count the three challenged ballots. Tallying the three challenged ballots remedied the violation, but resulted in a tie vote between [REDACTED] and the original 5th place finisher, [REDACTED] [REDACTED]. To resolve the tied race, Local 24 agreed to conduct a runoff election, which was conducted on March 29, 2014. Springham received 178 to [REDACTED] 104 votes. Thus, the union remedied the violation.

Complainant [REDACTED] also made two other allegations that even if true would not violate the requirements of Title IV of the LMRDA and were not included in the investigation: the use of paper balloting instead of voting machines and remarks in [REDACTED] campaign literature.

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,

Patricia Fox
Chief, Division of Enforcement

cc: Edwin Hill, President
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