



May 28, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on October 12, 2012, on behalf of the members of your slate,

[REDACTED]

[REDACTED], alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), occurred in connection with the mail ballot election of union officers conducted by Local 652, Laborers' International Union of North America, on June 4, 2012.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that your slate was not given access to a list of new members who transferred into Local 652 prior to the election. Section 401(c) of the LMRDA provides, in general, that each bona fide candidate for office has the 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 home addresses of all members of a labor organization. *See also* 29 C.F.R. § 452.71. The LMRDA does not give members further rights with respect to access to the list. However, section 401(c) of the LMRDA, requires a union to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use a list of members in any way other than the right of inspection, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it.

The investigation disclosed that Local 652's policy requires candidates who want to inspect the membership list to submit a request in writing to the Secretary-Treasurer. The investigation showed that none of the candidates, including those on your slate, requested in writing or orally that the union permit a candidate to inspect the membership list, including a list of new transferees. The investigation did not disclose

that other candidates were provided access to a list of new members. The LMRDA was not violated.

You alleged that ballot numbers were printed only on the ballot stubs and not on the ballots. Even if true, this allegation would not constitute a violation of the LMRDA. Section 401(e) of the LMRDA requires an election of local union officers to be held by secret ballot vote among the members in good standing. A secret ballot vote under the LMRDA is the expression of a choice by a ballot cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. *See* 29 C.F.R. § 452.97. Thus, a ballot must not contain any markings, including numbers, which upon examination would enable one to identify it with the voter. To include the ballot number on the ballot as you suggest could under certain circumstances compromise ballot secrecy. The LMRDA was not violated.

You alleged that the union paid retirees' dues and permitted retirees to reinstate their membership in exchange for their votes. Section 401(c) of the LMRDA, requires a union to provide adequate safeguards to insure a fair election. Thus, a union's wide range of discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The investigation showed that the union waives the dues of individuals with at least 50 years of membership in the union and that such individuals are eligible to vote. The investigation did not disclose any evidence that any such waiver was applied in a discriminatory manner. Further, Local 652's long standing policy permits retirees whose membership has lapsed to reinstate their membership by paying the current month's dues without the necessity of paying a reinstatement fee or a readmission fee. The investigation showed that the 8 retirees whose membership was reinstated during the election period and who voted in the election were current in their dues payments and, thus, were eligible voters. The investigation did not reveal that the union paid retirees dues nor did the investigation support the allegation that the union reinstated membership in exchange for votes. The LMRDA was not violated. Moreover, the votes of these 8 retirees would not have affected the election of any office as the smallest margin of victory in the election was 232 votes.

You alleged that the incumbents used the union's membership list to contact members at their homes. Section 401(c) of the LMRDA, requires a union to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use a list of members in any way other than the right of inspection granted under the LMRDA, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. In addition, section 401(g) of the LMRDA, prohibits the use of union funds to promote the candidacy of any person. Thus, the discriminatory

use of a union's list of members would constitute the unlawful application of a union resource to promote the candidacy of a person in violation of section 401(g) of the LMRDA.

The investigation showed that a business agent used a list containing 240 members' names to solicit votes. To determine whether the business agent's list was, in fact, a personal list or a union list and thereby an impermissible use of a union resource, the Department compared the business agent's list with the union's membership list to determine whether the lists shared an unusual number of common characteristics. The comparison showed that the list used by the business agent did not constitute a union list. Specifically, the 240 names on the business agent's list were compiled alphabetically by first name; the names on the union list were compiled alphabetically by last name. In addition, 85 names on the business agent's list were not on the union list. Thirty-eight names on the business agent's list contained no middle initials, while such names on the union list contained middle initials. Further, 46 names on the business agent's list had telephone numbers different from those listed on the union list, and 17 names on the business agent's list were variations of the names contained on the union list or had no designations (*e.g.*, Jr. , Sr., III), while the names listed on the union list contained such designations. Under these circumstances, there is not an adequate basis for concluding that the list used by the business agent to campaign constituted a union list.

You alleged that, prior to the election, union officials collected ballots from apprentices at work sites. Section 401(c) of the LMRDA, requires a union to provide adequate safeguards to insure a fair election.

The investigation did not reveal evidence supporting the allegation. Although, during the investigation you stated that a witness observed a business agent collecting ballots from apprentices at work sites, the witness did not come forward and the contact information provided during the investigation was incorrect such that the Department was unsuccessful in contacting this witness. No other evidence supporting the allegation was put forth by you or elicited by the investigation. The business agent denied that he collected ballots from apprentices. During the investigation one apprentice stated that an instructor stated that apprentices who had not voted their ballots should bring them to class so that he could explain the voting procedures and instruct them on how to vote properly. The apprentice stated, however, that the instructor did not attempt to collect ballots from apprentices or tell them to vote for any candidate.

Also, in connection with the allegation concerning the collection of ballots, you provided the Department with the names of members who allegedly witnessed a retiree hand deliver 20-30 ballots to the union hall during the period of May 18-29, 2012.

During the investigation, one witness stated that he saw a retiree deliver what he believed to be ballots to the union hall. Another witness stated that he saw members in the union hall with envelopes in their back pockets. These incidents are alleged to have occurred during the election. However, these two witnesses stated during the investigation that they did not see the contents of these materials and were unable to provide a precise description of the materials. One such witness admitted during the investigation that he was standing about 30 feet away from the union hall at the time that he saw the retiree carrying what he believed to be ballots into the union hall. This witness further stated that he observed this incident while wearing a work mask over his face. During the investigation, a third witness stated that, while he was standing about 30 feet from the union hall, he observed the retiree carrying what appeared to be papers into the union hall but that he never saw the retiree carry ballots to the union hall. The retiree stated during the investigation that he visited the union hall only once during the election to follow up on plans for a personal party he intended to hold at the union hall. The retiree further stated that he did not deliver any ballots to the union hall and that he never had possession of any ballot other than his own ballot.

In any event, the investigation showed that the 2012 California State presidential primary was conducted at the same time that Local 652 was conducting its officer election. Retirees brought their ballots for the California State presidential primary to the union hall to obtain information on the presidential candidates. The investigation did not disclose any evidence that substantiated the charge that retirees or other members delivered voted ballots for the local's 2012 officer election to the union hall. In fact, a notice informing members that such ballots should be mailed to the designated post office box and that the union would not accept any ballots at the union hall was posted at the entrance to the union hall. The LMRDA was not violated.

You also alleged that prior to the election, a union official collected a ballot from a member while at the member's home. The incumbent business manager stated during the investigation that, while visiting a member's home, he suggested that the member contact the union office and request a ballot after the member told the incumbent business manager that neither he nor his son had received a ballot. The incumbent business manager stated during the investigation that he never attempted to collect the member's ballot. The member stated that although the business manager asked him for his ballot, he did not comply and mailed his voted ballot to the post office box used for the return of such ballots. Under these circumstances, there is not an adequate basis for finding that the LMRDA was violated.

You alleged that, while at the union hall preparing 3,100 campaign flyers for mailing, the union's secretary-treasurer stole 200 of the 3100 postage stamps that your slate had purchased and intended to use to mail the flyers. You stated that your slate had to purchase an additional 200 stamps after one of your supporters witnessed the secretary-

treasurer's theft. Section 401(c) of the LMRDA, requires a union to provide adequate safeguards to insure a fair election.

The investigation revealed evidence showing that 3,100 postage stamps were purchased on the morning of May 14, 2012. However, the investigation was not able to determine how many of the 3,100 stamps were on hand at the union hall upon your arrival around noon. In addition, when questioned by a Department investigator, the secretary-treasurer denied taking the stamps. Further, although a member of your slate provided the Department with the first name of the individual who allegedly witnessed the secretary-treasurer take the stamps, the member refused to provide the witness's contact information. In any event, the investigation showed that the union mailed ballots to a total of 3,076 eligible members from May 16-May 18, 2012. On May 14, 2012, your slate mailed campaign flyers to 3,064 such members. Thus, your campaign flyer was mailed to all but 12 eligible voters. The vote margins ranged from 385 votes to 232 votes, in favor of your opponents. Thus, even if a violation occurred, it could not have affected the outcome of the election. The evidence did not disclose an adequate basis for finding probable cause to believe that the LMRDA was violated.

You alleged that the number of votes cast for auditors and the executive board exceeded the number of ballots cast in the election. Section 401(c) of the LMRDA, requires a union to provide adequate safeguards to insure a fair election. The investigation disclosed that the ballots of 705 voters were included in the vote tally and that each voter was entitled to cast multiple votes for the auditor and the executive board races. Specifically, voters were entitled to vote for three of the four candidates for auditors and two of the four candidates for the executive board. Although you alleged balloting impropriety because there were fewer voters than the number of votes cast for these races, you did not take into account that each of the 705 voters was entitled to cast multiple votes for auditors (3) and multiple votes for the executive board (2), which resulted in the number of votes cast exceeding the number of voters who cast those votes. The LMRDA was not violated.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Terry O'Sullivan, General President
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