



April 27, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the October 14, 2014 complaint you filed with the U.S. 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 Operative Plasterers & Cement Masons International Association, Local 630 conducted on June 28, 2014.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election.

You alleged that the union improperly permitted union representatives to campaign at various jobsites. Specifically, you alleged that then-Business Agent Peter Iriarte and Training Coordinator John Gervacio campaigned in support of Iriarte's candidacy for Financial Secretary-Treasurer/Business Manager while at the One Ala Moana construction site and while on union-paid time. You did not identify other specific jobsites where campaigning on union time may have occurred.

Section 401(g) of the LMRDA prohibits the use of labor organization funds to promote the candidacy of any person in union officer elections. The investigation disclosed that only ten (10) employees were at One Ala Moana. Consequently, even if the allegation were true, the violation would have affected a maximum of 10 votes. The closest margin of victory in the election was forty-six (46) votes. Any violation would not have affected the outcome of the election. The allegation does not provide a basis for litigation by the Department.

You also alleged that Iriarte campaigned using member phone numbers obtained through Quality General, and that the owner of an A-American jobsite campaigned for Iriarte via text messaging to employees. Section 401(g) prohibits the use of employer funds—including employer money, facilities, equipment or supplies—to promote the candidacy of any person in union officer elections. However, Quality General denied

giving Iriarte employee phone numbers. The investigation disclosed no other evidence that Iriarte obtained employee phone numbers through employers rather than through friends.

The investigation did reveal that an employer sent text messages encouraging employees at the A-American jobsite at Diamond Head to "Vote for Peter." However, the investigation also revealed that the employees who received the text message were members of Bricklayers Local 1. The members of Bricklayers Local 1 did not vote in this election. There was no violation of the LMRDA.

You next alleged that Gervacio obtained apprentices' phone numbers from the Hawaii Masons Training Office files which he then used to campaign. Section 401(g) of the LMRDA prohibits use of union or employer funds to promote candidacy. There was insufficient evidence that Gervacio copied phone numbers from union records. However, the investigation disclosed that even if the allegation were true, only fourteen (14) apprentices voted in the election. These 14 votes, even when added to the 10 votes possibly affected at the One Ala Moana construction site were fewer votes than the closest margin of victory in the election which was 46 votes. Therefore, there was no violation of the LMRDA affecting the outcome of the election.

Finally, you alleged that Iriarte and his supporters improperly campaigned at the Kalihi Waena School polling site. Department of Labor regulations provide that there must not be any campaigning within a polling place. 29 C.F.R. § 452.111. Additionally, the union's election rules state, "No campaigning will be permitted in the polling area or in any part of the meeting area on election day."

The investigation revealed that polling was conducted solely in the school cafeteria and that no campaigning was observed within the school cafeteria. There was no violation of the LMRDA.

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, I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Patrick D. Finley, General President
Operative Plasterers' and Cement Masons' International Association
11720 Beltsville Drive, Suite 700
Beltsville, MD 20705

Ricky Tamashiro, President
OPCMIA Local 630
2251 N. School Street
Honolulu, HI 96819

Charles Khim, Esq.
810 Richards Street, Suite 502
Honolulu, HI 96813

Christopher B. Wilkinson
Associate Solicitor for Civil Rights and Labor-Management