



June 24, 2015



Dear [REDACTED]:

This Statement of Reasons is in response to your October 19, 2014 complaint filed with the U.S. Department of Labor alleging that violations 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 Laborers International Union of North America Local 261 on June 18 and June 19, 2014.

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

You alleged that the Local violated members' right to vote by only allowing votes to be cast between the hours of 7:00 a.m. and 6:00 p.m. on a Wednesday and Thursday, at a location in downtown San Francisco. You maintained that your request for a variance to allow voting at multiple locations, including the Local's other office locations, and/or for voting by mail, was denied, and that the limited hours and location had the effect of excluding Local members who had formerly been affiliated with Locals 389 and 291, which were based in counties outside San Francisco and had recently been merged with Local 261. You claimed that these members' work schedules would make it difficult or impossible to come to San Francisco to vote in the election.

The LMRDA requires that members be given a reasonable opportunity to vote. Here, an examination of the various factors supports the conclusion that members were denied a reasonable opportunity to vote. Not only did the Local refuse to allow absentee or mail voting, but it only held voting at one location - a location convenient only to the members of pre-merger Local 261 - and for limited hours. This was done despite being informed in advance of the election that it would be difficult or impossible for members of the former Locals 389 and 291 to come into San Francisco to vote and work a full day. In light of these specific facts, this constituted a violation of the LMRDA.

Indeed, Department investigators found that some members were not able to exercise their right to vote as a result of the limited polling times and places. However, the investigation indicated that the number of members who were not able to vote was less than the margin of victory for any office, and thus, the violation of the LMRDA could not have affected the outcome of the election, as is required for enforcement action under section 402(c)(2) of the LMRDA. Accordingly, there is no basis to require a new election as a result of this violation.

You also alleged that incumbent officers used union resources for campaign purposes, in violation of section 401(g) of the LMRDA. Specifically, you alleged that union resources were used to draft and print campaign material. The Department's investigation did not substantiate this allegation. You also alleged that incumbent candidates used union-provided cellular phones and vehicles for campaign purposes.

The investigation revealed that the incumbents pay for the ability to use these phones and vehicles for personal use, and thus their use for campaign activity was permissible. Your claim that the candidates campaigned while on union time was also unsubstantiated.

Your complaint alleged that incumbent officers also improperly used the local union newsletter for campaign purposes. While the newsletters included pictures of the incumbents and made mention of their accomplishments, it was done in the context of recent, newsworthy action, and did not mention their candidacies. As the tone, content, and timing of the publication do not demonstrate an effective endorsement or promotion of any candidate, there was no violation of the LMRDA.

You next alleged that candidate [REDACTED] was wrongfully deemed eligible to run for office, based on your assertion that he had not paid dues until the first day of the third month after they were due – and thus was not a member in continuous good standing.

The investigation concluded that it was the Local's consistent, long-standing practice to allow members to pay dues on the first day of the third month after they were due and avoid suspension. Section 401(e) of the LMRDA allows labor organizations to subject candidates to "reasonable qualifications uniformly applied," and this policy is reasonable. Since there is no evidence that this policy was applied inconsistently, there was no violation of the LMRDA.

Your complaint alleged that certain candidates were not required to complete a candidate questionnaire, or to appear before the election judge, as required by the local constitution. The investigation did not substantiate this allegation, and found that all candidates submitted candidate questionnaires.

You also alleged that the secret ballot requirement of the LMRDA was violated when a Sergeant-at-Arms assisted certain members in tearing off the stubs on their ballots, and that he was checking to see how members voted.

While the investigation confirmed that the Sergeant-at-Arms assisted voters in tearing off the ballot stubs, there was no evidence that there was a breach of secrecy caused by him doing so. Further, after someone complained about this practice during the election, the practice was ceased. Accordingly, there was no violation of the secret ballot provision.

You complained that observers were wrongfully denied the opportunity to take notes and count the number of voters coming to vote at the polling place. While the investigation confirmed that this occurred, it also confirmed this situation was remedied approximately four hours into voting. Our investigation revealed no evidence that the inability to take notes in that period, even if a violation of the right to observe, had any effect on the outcome of the election.

You alleged that certain members were allowed to vote without any identification or membership cards, thus compromising the election. The investigation of this allegation determined that all voters were required to provide one piece of photo identification. In light of this consistent practice, there was no violation of the LMRDA.

You alleged that the Local's Secretary-Treasurer engaged in improper campaign activity while on union time by his presence in the polling area and his communications with voters outside the polling area.

The investigation revealed no evidence that the Secretary-Treasurer was engaged in campaign activity using union resources on the days of the election. Thus, there was no violation of the LMRDA.

Finally, you alleged that the resources of the City and County of San Francisco, an employer, were improperly used in the election, in violation of LMRDA section 401(g). Specifically, you alleged that City vehicles were used to bring members to the polling place, and City supervisors required each City employee to sign in outside the polling place – then provided the list for incumbents to use to call members who had not yet voted.

The investigation confirmed that City vehicles were used to transport members to the polls. This is not a violation of the LMRDA, as long as those vehicles were open to supporters of all candidates equally. There was no evidence of disparate treatment here. Further, our investigation found no evidence of lists present outside the polling place other than seniority lists that were unrelated to the election. This was not a violation of the LMRDA.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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