



June 25, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your February 25, 2015 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 Office and Professional Employees International Union Local 109 in October 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.

The majority of your allegations relate to the claim that the election did not conform to the procedures set forth in the Local's 2006 Constitution. You claim that the 2006 Constitution, and not the Constitution adopted by Trustee Steven Rush in September 2014, governed this election, because the September 2014 Constitution was not ratified by the membership.

As you are aware, in May 2012, the Executive Board of the Local requested that the OPEIU International President place the Local under trusteeship. On May 31, 2012, the International President did so, and appointed Steven Rush to serve as trustee. The LMRDA requires that trusteeships be administered "in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body." 29 U.S.C. § 462.

Article X, Section 11 of the International Constitution authorizes the International President to appoint a trustee to "assume control over the affairs, operations, books, funds, records, assets, and property" of a local union. The Constitution does not require the trustee to seek approval from the membership in exercising control of the affairs and operations of the local union. Indeed, such a requirement would be contrary to the very nature of a trusteeship, which "suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws." 29 U.S.C. § 402(h). As courts

have explained, the creation of a trusteeship suspends members' rights to vote on many governance issues. See, e.g., *Farrell v. Int'l Bhd. of Teamsters, Chauffeurs, Warehouseman & Helpers of Am.*, 888 F.2d 459, 462 (6th Cir. 1989); *Branch v. Vickers, Inc.*, 209 F. Supp. 518, 522 (E.D. Mich. 1962).

Accordingly, Trustee Rush was not required to seek approval of the local membership before initiating changes to the structure of the local, and thus the September 2014 Constitution and Bylaws supplanted the 2006 Constitution for the October 2014 election. Any failure to abide by the 2006 Constitution is not a violation of the LMRDA.

You have also made a number of allegations about specific practices which you claim violated the LMRDA. First, you challenge the Trustee's failure to appoint an election board to conduct various tasks related to the election. The election was conducted while the Local remained in trusteeship. The trusteeship of a local union acts to suspend the local's constitution, bylaws and procedures. 29 U.S.C. § 402(h). Thus Trustee Rush was free to elect not to appoint an election board. In addition, there is no evidence that the failure to appoint an election board had any impact on the election, which was administered by the Trustee and an independent third-party contractor.

Next, you alleged that the Local was required to elect 12 officers to its executive board. This allegation rests on your assertion that the 2006 Constitution governs. As noted above, it does not, and thus there was no violation.

You also alleged that the imposition of a requirement that candidates be nominated by two members other than themselves was a violation of the law. Title IV of the LMRDA allows labor organizations to condition candidate eligibility on "reasonable qualifications uniformly imposed." 29 U.S.C. § 481(e). The requirement that a candidate receive two outside nominations to run for office did not deprive members of a reasonable opportunity to run for office, as demonstrated by the fact that 22 nominees met this requirement, which was higher than the number of nominees in the 2009 election. There is no requirement that self-nomination be allowed. The two-nomination requirement was not a violation of the LMRDA.

You also made several allegations challenging the sufficiency of notice given to members as to the amendments to the Constitution and Bylaws, and to the sufficiency of the elections notice. Our investigation revealed that members were informed of the amendments to the Local Constitution and Bylaws and of the upcoming nomination and election via email to their work email addresses on September 5, 2014. A second notice, with details of the nomination process, was emailed on September 6, 2014, and a third notice was sent by U.S. mail to members' last known home address on September 8, 2014. These materials plainly set forth the positions for which elections would be held, and which positions would be on the Executive Board. While members were not required to provide email addresses to the union, the Trustee obtained email and home addresses from the employer, and also appointed five regional stewards to obtain additional addresses. These efforts were reasonably calculated to ensure delivery to all

eligible voters. The Department's investigation did not produce evidence that these notices failed to provide candidates with enough time to comply with the amended election requirements, or that there were any problems with the notices reaching members. The three communications provided members with adequate notice of the amendments to the Constitution and Bylaws and of the nomination and elections, and thus did not violate the LMRDA.

In your complaint, you also alleged some members were provided with advance notice of the changes to the Constitution and Bylaws, and of the election procedures. The investigation did not substantiate this allegation, and thus we cannot conclude that any violation of the LMRDA occurred. Moreover, there is no evidence that any advance notice to potential candidates had an effect on the outcome of the election.

You also alleged that certain candidates were favored by the manner in which their names were placed on the ballot and the Local's website. Our investigation revealed that the order on both the ballot and website was the result of a blind draw by third-party contractor Ballot Point. There is thus no evidence of disparate treatment, and no violation of the LMRDA.

You alleged that your observer was not present when the membership roster was reviewed. The investigation revealed that you were sent a letter informing you of your right to have an observer present at all stages of the election, including the preparation and mailing of ballots and the ballot count. Your observer did not seek to observe at that time. As you were not denied the opportunity to have an observer at any stage of the election, there was no violation.

You alleged that the dissemination of your campaign material was improperly delayed. You were running for the office of Trustee, which is no longer an executive board position, and thus not an "officer" position covered by section 402(n) of the LMRDA. Since there is no allegation that a delay in the dissemination of campaign material had an effect on the outcome of an LMRDA-covered race, there is no violation of the LMRDA.

Finally, you raised additional allegations that were not included in your internal protest and, in certain instances, would not be violations of the LMRDA. These allegations have not been considered by the Department.

For the reasons set forth above, it is concluded that no violation of Title IV of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox

Chief, Division of Enforcement

cc: Carl Michael Goodwin, International President
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