



October 29, 2015

[REDACTED]

Dear [REDACTED]:

This letter responds to your July 20, 2015 inquiry concerning the dismissal of a complaint filed with the Department by your client [REDACTED]. [REDACTED] April 9, 2014 complaint alleged several violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) in connection with the election of officers conducted by the International Brotherhood of Teamsters (IBT), Local Union 118 (Local 118). After completing an investigation of each of his allegations, the Department determined that there was no violation of the LMRDA that may have affected the outcome of the election and issued a Statement of Reasons closing this matter on March 24, 2015.

First, you request that the Department clarify its basis for concluding that members of the Markwitz Slate did not have an illicit meeting with the trustees and the election supervisors on December 9, 2013. You claimed that [REDACTED] submitted "uncontroverted testimony" of [REDACTED] who allegedly observed an improper meeting in the local union's office conference room. As the Statement of Reasons explains, [REDACTED] statement was controverted. In addition to interviewing [REDACTED], the Department interviewed several individuals familiar with the events at issue. Based on these interviews, the Department found that two of the individuals [REDACTED] named were not in the union office the night of December 9, 2013. Statements from those interviewed provided further support that an illicit meeting with the Markwitz Slate did not occur. Union officials went to the union office to check on supplies after coming from the airport. Upon arriving at the union office that night, one candidate from the Markwitz Slate was there greeting people. Election officials interacting with a candidate does not constitute a violation of the LMRDA. [REDACTED] statement that an illicit meeting occurred was refuted by the union and election officials who were interviewed.

Second, you asked that the Department clarify its basis for rejecting the contention that there were no rules in place regarding the conduct of the election. The rules that governed this election were 1) IBT's Constitution; 2) Local 118's Bylaws; and 3) Local 118's Nomination/Election Notice. Although Local 118 may have issued a separate document entitled "Election Rules" in past elections, the LMRDA does not require unions to provide separate elections rules. Furthermore, it is clear that between the three documents, election rules did in fact exist. While your letter asserts that the Department's conclusions in this regard are inconsistent with its "prior holdings," you do not provide any specific support for this assertion and I am not aware of the Department taking a contrary position.

Third, you claimed that in the Statement of Reasons the Department disregarded [REDACTED] complaint regarding the lack of qualifications of the election supervisors and their impartiality. Although [REDACTED] raised these issues in his complaint to the Department, he failed to present these issues in his internal protest to the Teamsters Joint Council 46, dated December 13, 2013. As the Statement of Reasons explains, Section 402(a) of the LMRDA requires that a member must have "exhausted the remedies available under the constitution and bylaws" of their union in order to file a complaint with the Secretary of Labor. 29 U.S.C. § 482(a)(1). As the complaint on these issues did not satisfy this requirement, the allegations concerning the election supervisors' qualifications and impartiality were not properly before the Department. 29 C.F.R. § 452.136 (b-1).

Fourth, you raised a concern that in the Statement of Reasons the Department did not provide the "total number of ballots printed" in the election. You asserted that the total number of ballots printed in the election should be equal to the number that were: sent to members, returned as undeliverable, successfully resent to members, and never used in the election. Again, Section 402(a) of the LMRDA requires that a member must have "exhausted the remedies available under the constitution and bylaws" of their union in order to file a complaint with the Secretary of Labor. 29 U.S.C. § 482(a)(1). In neither [REDACTED] protest to the Teamsters Joint Council 46 nor in his complaint to the Department did he assert that the total number of ballots printed were not accounted for. Accordingly, that allegation was not investigated and was not properly before the Department.

Fifth, you expressed concern about the Department's survey of members who did not vote in the 2009 election, but did vote in 2013. Specifically, you claimed that the Statement of Reasons did not detail how the determination of who voted in the 2009 election was rendered and did not detail the size or scope to determine whether a statically significant sample was taken. The Department thoroughly investigated specific allegations and found that they were groundless. In particular, [REDACTED] alleged that two members named [REDACTED] typically did not vote in union elections, but that in this election a ballot was cast for one of them. As explained in the

Statement of Reasons, the Department reviewed Local 118's Election Control Roster (ECR) and determined that no ballot was returned by either member named [REDACTED]

To further corroborate its findings that no ballot tampering occurred, the Department compared a list of those who did not vote in 2009 but voted in 2013 and contacted those members randomly. Thirteen members confirmed receiving a ballot. One member stated he did not receive a ballot, although his mother, who assisted with the call because of the members' hearing issues, stated he did. Despite your concerns about the survey that the Department conducted, there is no requirement that the Department contact a statically significant number of members in an investigation. Moreover, the Department has discretion in its investigation to determine whether probable cause exists to support an enforcement action under the LMRDA. *See Solis v. Local 9477, United Steelworkers*, 798 F.Supp.2d 701, 706 (D. Md. 2011); *Donovan v. Local 6, Washington Teachers' Union*, 747 F.2d 711, 717-18 (D.C. Cir. 1984). The Department's ability to conduct surveys and interview witnesses falls within that discretion.

Finally, you mentioned an allegation that [REDACTED] used union resources (his union-provided motor-vehicle) while engaging in campaigning for union office. The Department found that this issue was not timely protested to Local 118, pursuant to Teamsters' pre-election protest rules. According to IBT's pre-election protest rules, this allegation should have been filed during the campaign period prior to the tally. Your client and his affiliated slate knew of the alleged improper use of the union vehicles during the campaign period. The testimony showed that this conduct allegedly occurred in October and November 2013. A pre-election protest should have been made within 48 hours of the occurrence giving rise to the protest. Thus, this allegation was not properly before the Department in accordance with Section 402(a) of the LMRDA and 29 U.S.C. § 482(a)(1).

For the foregoing reasons, the Department maintains its position that there was no violation of the LMRDA that may have affected the outcome of the election.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: [REDACTED]

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