



September 14, 2015

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint received by the Department of Labor on September 24, 2014, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Local 1749 (Local 1749 or local), International Brotherhood of Electrical Workers (International or IBEW), conducted on June 27, 2014, by mail ballot.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged that the local failed to count the ballots on June 9, 2014, the date stated in the nominations notice mailed to members on April 5, 2014. Section 401(c) contains a general mandate that adequate safeguards to insure a fair election shall be provided. 29 U.S.C. § 481(c). Thus, a union's wide range of discretion in conducting its elections is circumscribed by a general rule of fairness, which includes clarity in its election procedures to avoid confusion to union members. *See* 29 C.F.R. § 452.110. The investigation disclosed that all local executive board members agreed to change the date of the election from June 9, 2014 to June 27, 2014, and immediately informed all candidates, including you of the decision. In addition, the local posted on its website the date of the election. Further, in its voting instructions, enclosed in the ballot packages mailed to all members on May 19, 2014, the local announced June 27th as the date by which all ballots must be received. The local provided sufficient notice of the date of the election change so as to avoid member confusion. There was no violation.

You alleged that the voting instructions were inadequate because they did not include sufficient information for returning voted ballots and did not provide any guidance for obtaining a duplicate ballot. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election, which includes the requirement that unions provide

voters with adequate voting instructions. 29 C.F.R. § 452.110. The investigation disclosed that the voting instructions contained in the ballot package included five numbered sentences that detailed usage of the double envelope system and the procedure for returning the voted ballots. No members stated that they did not understand how to return the ballot. Additionally, the investigation revealed that the union did provide guidance for receiving a duplicate ballot. The instructions were posted on the local's website. There was no violation.

In a related allegation, you asserted that the local failed to provide duplicate ballots to dozens of requestors. This allegation was not substantiated. Instructions for obtaining a duplicate ballot were posted on the local's website. The investigation disclosed that the local mailed a duplicate ballot to the three members who requested one; two of those three members voted. The investigation did not reveal that there were others who requested a duplicate ballot, but did not receive one. There was no violation.

You alleged that the election committee did not comply with your reasonable request for a campaign mailing when it refused to meet with you at the union hall to mail your campaign material and charged you \$100 for a set of mailing labels you never received. Section 401(c) requires unions to comply with any candidate's reasonable request for the distribution of campaign material. 29 U.S.C. § 481(c). To avoid charges of disparity of treatment of candidates, unions should inform all candidates in advance of the conditions under which campaign literature distribution will be made. 29 C.F.R. § 452.67.

The investigation revealed that the election committee informed all candidates in advance that mail ballot packages would be assembled on May 19, 2014 at the employer's premises, and invited all candidates to bring their campaign material for labeling and mailing. You were the only candidate who requested a campaign mailing and, on May 19, the local brought to the employer's premises a set of labels for your use. You refused to bring your campaign material to the designated location. In fact, you acknowledged that your campaign material was not even ready for distribution on May 19. Despite your refusal, the local secretary treasurer nevertheless accommodated you by meeting you at the union office, allowing you to compare a list of members that you had with the local's list. By your actions, you chose to use your own personal membership list rather than the one made available to you at the employer's premises where the election committee chose to convene. With respect to your allegation concerning the \$100 charge, the act provides for distribution of campaign literature at the candidate's expense. There was a \$100 fee for compiling a set of mailing labels for any candidate. The union did not discriminate with respect to the fee. All candidates knew of the charge. There was no violation.

You alleged that two members of the five-member election committee were ineligible to serve on that committee because they were union officers and were prohibited from serving under Local 1749 Bylaws. Nothing in the local bylaws prohibits local officers from serving on the election committee. The investigation did not disclose and you did not allege that any of the election committee members acted in a manner inconsistent with the constitution and bylaws or the requirements of the Act. Moreover, the investigation disclosed that observers were present at every juncture of the election process, and no observer or official reported any evidence of wrong doing. There was no violation.

You alleged that the membership mailing list was inaccurate and that eligible members may not have received ballots and may have been denied the right to vote. Section 401(e) provides, in relevant part, that every member in good standing shall be eligible to vote. 29 U.S.C. § 481(e). The investigation disclosed that the union took reasonable steps to update its mailing list. The investigation revealed that upon the return of 29 undeliverable nominations notices, the local took affirmative steps to find current addresses for those members for mailing the notice of election and the ballots. The local was unable to find current addresses for fourteen members, one of whom voted. The thirteen members who did not receive nominations notice and for whom the local was unable to find a more current address constituted only 3.6% of the local's 360 members. This small percentage is indicative of the union's adequately updating its mailing list. The union fulfilled its duty with respect to maintenance of the mailing list. There was no violation that may have affected the outcome of the election for any office.

You alleged that the local failed to rent two post office boxes, one to receive undeliverable ballot packages and the other to hold voted ballot packages. As the union did not pick up the mail until time for the election tally, the union was unaware of and did not take steps to get better addresses for the undeliverable ballot packages. You state that this may have resulted in eligible members being denied the right to vote. Section 401(e) provides, in relevant part, that every member in good standing shall be eligible to vote. 29 U.S.C. § 481(e). The International Election Guide requires locals to arrange with postal officials for a second post office box for undeliverable ballot packages. Election Guide, p. 5. The local failed to rent a separate post office box to hold undeliverables. As a result, nineteen undeliverable ballot packages were in the post office box with the returned, voted ballots. The post office box was not opened until June 27th, the day of the tally. However, the investigation revealed that the local had already contacted nine of those members to obtain their current addresses after the local received their nominations notice, returned as undeliverable. This means that ten members who were entitled to vote did not receive a ballot package and had not been contacted by the local for an address update. You ran for president, losing by 65 votes; the addition of those ten votes, even if all ten members had voted in your favor, would not have affected the outcome for president. The only other contested office was for

executive board, for which six candidates ran for five offices, with the sixth candidate losing by a one-vote margin. The addition of those ten votes would have affected the outcome of this race. However, any violation has been remedied. Because of the sudden death of one of the newly elected executive board members, the candidate with the next highest number of votes, the sixth place candidate, became the winning candidate for the fifth executive board position, thereby nullifying the effect on the election for executive board. No new election supervised by the Department is necessary.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Acting Chief, Division of Enforcement

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