



September 15, 2015

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your December 18, 2014, complaint filed with the United States Department of Labor alleging that the International Union of Operating Engineers, Local 917 ("Local") violated Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), in connection with the August 30, 2014 election for the offices of President and Business Manager.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each specific allegation, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that John Holliday III, the incumbent candidate for President and Business Manager, drove members, including election committee chairperson [REDACTED], to and from nomination meetings in a Local 917 vehicle and purchased these members' meals using Local 917 funds. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an election of union officers. The investigation disclosed that no member was denied or provided a ride to such meetings based on the member's affiliation with a particular candidate for union office. Further, the investigation revealed that no campaigning occurred during the drive to and from the meetings. Holliday did not solicit members' votes during the drives. There was no violation of the LMRDA.

You alleged that Local 917 gave keychain flashlights and license plates to members during the election period and during Local meetings. You alleged that this merchandise was purchased by the Local and was used to promote the candidacy of John Holliday III. Section 401(g) of the LMRDA provides that a labor organization may not use its funds to promote the candidacy of any person in an election of union officers. The investigation disclosed that keychain flashlights and license plates were purchased with union funds but they were not procured for the election nor used to promote any candidate. The investigation revealed that the items were routinely purchased by the union and given out year-round. The items were not promotional in

nature and did not constitute union endorsement of the incumbent officers. There was no electioneering accompanying the distribution of the items. There was no violation of the LMRDA.

You alleged that you were subject to disparate treatment because John Holliday III had a list of Local 917 members' telephone numbers while you requested the telephone list, and the Local denied your request. Section 401(c) of the LMRDA provides that a union must refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use union lists in any way other than the right of inspection granted by the LMRDA, it must inform all candidates of the availability of the list for that purpose and accord that same privilege to all candidates who request it. 29 C.F.R. § 452.71.

The investigation revealed that Business Agent David Rhea, compiled a list containing the telephone numbers of 69 members. Rhea compiled the list while carrying out his official duties as a former local steward. Lists compiled in the course of official union duties are considered union lists. Thus, the Local was required to inform all candidates of the list and provide it to any candidate who requested it. Rhea used the union list to phone eight members who voted in the election. No information concerning the list was provided to the candidates, and no other candidates used the list to campaign. The Local's failure to inform candidates of the list and to make it available to any candidate who requested it violated section 401(c) of the LMRDA. However, the investigation revealed that this violation did not affect the outcome of the election. Rhea won the election for Vice President by a margin of 187 votes and won the election for Treasurer by a margin of 172 votes. John Holliday III won the election for President by a margin of 150 votes and the election for Business Manager by a margin of 182 votes. The eight votes affected by the use of a union list did not affect the outcome of the election. The investigation did not yield any evidence of the use of any other list to campaign. Office Manager Cathie Cox stated during the investigation that the Local's phone list is password protected and that Holliday did not have access to it. With respect to David Rhea's calls, you alleged that he made campaign calls on a cellphone he may have purchased with Local funds. The investigation disclosed that David Rhea purchased the cell phone he used to make campaign calls with personal funds.

You also alleged that John Holliday III, David Rhea, and Brenda Bunch made campaign telephone calls during the Local's business hours. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. Thus, union facilities, equipment, stationary, etc., may not be used to assist candidates in their campaign efforts. 29 C.F.R. § 452.76. There is conflicting evidence as to whether Rhea made the campaign calls mentioned above while on union time. In any event, the Department's review of Rhea's cell phone records showed that during the election he made eight personal phone calls during regular union hours to

individuals who voted in the election. Rhea won the election for Vice President by a margin of 187 votes and won the election for Treasurer by a margin of 172 votes. The investigation revealed that John Holliday III, won the election for President by a margin of 150 votes and the election for Business Manager by a margin of 182 votes. Thus, to the extent that David Rhea made eight campaign calls while he was being paid by the union, this number of calls would not have affected the outcome of the election.

Further, the Department's examination of the personal cellphone records of Brenda Bunch and John Holliday III covering the election period revealed that there was no significant increase in their phone usage during the Local's business hours. Brenda Bunch stated during the investigation that she made three campaign phone calls, to people she knew, after work hours. John Holliday III stated that he did not make any campaign phone calls during the election. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that you were not afforded the same campaign opportunities as John Holliday III. In support of this allegation, you alleged that you were required to reimburse the Local \$147.93 for Office Manager Cathie Cox's assistance in preparing addresses for your campaign mailing. You claim that Holliday was not required to reimburse the Local for Cox's time. The investigation disclosed that on August 7, 2014, Office Manager Cathy Cox affixed mailing labels on the envelopes of John Holliday III's campaign materials and that John Holliday III provided the Local with a personal check for \$147.93 on August 9, 2014 to cover the expense of this service. There was no violation of the LMRDA.

You alleged that Holliday sent a campaign letter to members two days before Local members received the election ballots. A union must honor the reasonable request of any candidate to distribute campaign literature at the candidate's expense. 29 C.F.R. § 452.67. Further, a union may not prevent a member who is actively seeking office and is otherwise qualified, from having a campaign mailing at the candidate's expense. 29 C.F.R. § 452.80. There is no evidence that you requested but were prevented from doing a campaign mailing before the ballots were mailed out. You were aware through your duties as the Local Recording Corresponding Secretary that the ballots would be mailed on August 9, 2014. You had ample time to prepare and mail your campaign literature prior to the ballot mailing. There was no violation of the LMRDA.

You alleged that Holliday's campaign literature contained a "sample ballot," which instructed Local members how to vote and to return their ballots within two days. The LMRDA does not and unions may not regulate the contents of campaign literature that a candidate may wish to have distributed by the union. 29 C.F.R. § 452.70. There was no violation of the LMRDA.

You alleged that Holliday sent the above mentioned "sample ballots" to worksites and that the sample ballots were distributed along with paychecks at one worksite. Section 401(g) of the LMRDA provides that no monies of an employer may be used to promote the candidacy of any candidate in an election subject to the LMRDA. The investigation did not yield any evidence that paychecks were handed out along with Holliday's campaign literature. During the investigation one member stated that it was rumored that the sample ballots were handed out along with paychecks at one worksite. Such statement was based on mere speculation, and the member had no firsthand knowledge of the alleged incident. There was no violation of the LMRDA.

You alleged that you received a list of local members' addresses five days after John Holliday III sent his campaign mailing. Section 401(c) of the LMRDA imposes a duty on unions to comply with all reasonable requests of any candidate to distribute campaign literature by mail. The investigation revealed that the timing of the campaign literature mailings was based on the time the union received the mailing request. The investigation disclosed that you made a request for a campaign mailing on Saturday, August 9, 2014. Office Manager Cathie Cox responded to your request on Monday, August 11, 2014. Two days later, on August 13, 2014, you delivered your campaign materials to Cathie Cox for mailing. The investigation did not reveal any disparate treatment with respect to complying with requests to distribute campaign literature. The Local's response to your request was reasonable as Cox replied to you on the first business day after you emailed her your request. There was no violation of the LMRDA.

You alleged that John Holliday III met with the Election Committee to discuss the election process and that other candidates were not invited to that meeting. Section 401(c) of the LMRDA requires the Local to provide adequate safeguards to insure a fair election. The investigation revealed that the Election Committee never met with John Holliday III. Election Committee meeting notes confirm that John Holliday III was not present for any Election Committee meetings and Election Committee members attest to never having met with Holliday. To the extent that there were discussions between John Holliday III and the Election Committee, there is no evidence to suggest that those discussions exceeded the scope of the Business Manager's regular union duties outlined in the Local's bylaws. There was no violation of the LMRDA.

You alleged that the election committee allowed the Local Office Manager, Cathie Cox, to place address labels on the ballot envelopes without verifying the number of ballots and the validity of Local members' names and addresses. Section 401(c) of the LMRDA requires the Local to provide adequate safeguards to insure a fair election. The investigation established that Cathie Cox used a local roster of members who were current in dues payments to generate the envelope labels and that Cox then printed the envelope labels and affixed them to the ballot envelopes. The union also employed a

duplicate ballot procedure whereby any member who did not receive a ballot in the mail could request that another be sent. The Department's review of the election records did not show that ineligible members were allowed to vote. No members complained of not receiving a ballot because of address issues. There was no violation.

You also alleged that insufficient measures were taken to ensure that John Holliday III's staff members did not place multiple ballots in envelopes and commit election fraud. After Cox prepared the ballot envelopes, the Election Committee, not union staff, assembled and mailed the ballot packages. The investigation showed that the Election Committee implemented and executed adequate safeguards during the ballot preparation, voter verification, and ballot mailing processes. The union did not refuse any requests to have observers at the ballot mailing. The election records did not reflect that individuals voted multiple ballots. You provided no evidence to the contrary. There was no violation of the LMRDA.

You alleged that extra ballots were shredded and were not kept for adequate control, counting, and safeguarding. Investigation disclosed that the extra ballots were shredded after the ballot mailing. Section 401(e) of the LMRDA requires election officials to maintain the ballots and election records for one year. However, the investigation did not disclose any evidence of ballot fraud, or tampering or other balloting impropriety. Thus, there is not probable cause to conclude that the violation may have affected the outcome of the election.

You alleged that the ballot box was not "sealed with tape, names, and dates per the instructions of the Office of Labor Management Standards regarding election compliance." Section 401(c) of the LMRDA requires the Local to provide adequate safeguards to insure a fair election. The investigation disclosed that at the completion of the election, the ballot box was secured with a padlock. The one key to that padlock was placed inside the ballot box before the padlock was locked. During the investigation, the Department investigator observed local officers who had to use bolt cutters to cut off the padlock that was securing the ballot box before they could gain access to the ballots. The investigator found the one key to the padlock inside the ballot box. The investigator's review of the ballot box prior to and after cutting the padlock off the box revealed no evidence that the box or its content had been tampered with or that the box had been opened since the August 30, 2014, ballot count, the date that the ballot box was sealed. There was no violation of the LMRDA.

You alleged that election procedures voted on at a prior Local meeting and passed by members were not followed during the election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. 29 C.F.R. § 452.107. The investigation disclosed that the new election procedures

prohibited observers at the vote tally and prevented observers from seeing the ballot count, in violation of section 401(c) of the LMRDA. The procedures also conflicted with certain requirements of the Local's bylaws and, thus, violated section 401(e) of the LMRDA. The union's failure to follow the procedures was consistent with the requirements of the Act. There was no violation.

You alleged that during the ballot counting a Local member who suspected election fraud stood in an area where he could view the ballot count and was told by the Election Committee chairman to "sit down." You also alleged that Election Committee Official [REDACTED] purposefully called out John Holliday III's name instead of your name in order to skew the election results. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. The investigation found that observers were required to stand behind a roped off area ten feet away from the Election Committee officials who were conducting the ballot count and tally. Observers told the Department that while they could hear the ballot call they could not see the ballots. The right to observe means the right to observe effectively. Because observers were unable to effectively observe the ballot count there was a violation of section 401(c) of the LMRDA. However, the investigation did not uncover any evidence of ballot fraud or other election improprieties as a result of this observer violation. Further, the investigation did not disclose that Election Committee Official [REDACTED] intentionally called out John Holliday III's name instead of your name during the ballot count and vote tally in order to skew the election results. In any event, the Department's recount of the ballots disclosed only minor differences between the Department's tally and the Election Committee's tally. These differences did not affect the outcome of the election for any race. Thus, there is not probable cause to conclude that the violation may have affected the outcome of the election.

Finally, you alleged that during the ballot counting, election committee member [REDACTED] turned to another election committee member and said "now it's going our way" and that he meant that incumbent Local President, John Holliday III, was winning. You further stated that [REDACTED] incorrectly called out votes in favor of Holliday. Section 401(c) of the LMRDA requires the Local to provide adequate safeguards to insure a fair election. The investigation disclosed that, when [REDACTED] made the alleged biased comment, voting was already completed and the ballot count was being conducted. Therefore, his comments could not have influenced voters. Additionally, the investigation did not uncover any evidence where [REDACTED] incorrectly called out votes in favor of Holliday. In any event, the Department's recount of the ballots did not uncover any evidence that the Election Committee intentionally miscounted ballots in an effort to influence the outcome of the election. There is no evidence of ballot fraud or other election improprieties. Further, any minor differences

between the Department's tally and the Election Committee's tally did not change the outcome of the election. There was no 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,

Stephen J. Willertz  
Acting Chief, Division of Enforcement

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