



December 15, 2016

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on August 25, 2016, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act), occurred in connection with the election of officers of International Brotherhood of Electrical Workers Local 716 (Local 716 or Union), conducted on June 4, 2016.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the Act.

You alleged that Local 716 improperly aired radio and television advertisements that gave the incumbent business manager an advantage in campaigning. Section 401(c) of the LMRDA prohibits disparate treatment among candidates for union office. Additionally, section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in union officer elections. Courts have consistently held that the tone, content, and timing of union-promulgated material determines whether the material is in fact campaign material that falls within the section 401(g) prohibition. The overall timing, tone, and content must be evaluated to determine whether the material effectively supports or attacks a candidate in the election.

The Department's investigation determined that the union ran advertisements promoting the union during the course of the campaign. Although Business Manager [REDACTED] narrated and was featured in some of these ads – along with other IBEW members – none of the advertising content referenced the election or endorsed candidates. As for timing, the investigation disclosed that Local 716 has run radio ads since 2010 and television ads since 2014, and the frequency of these ads did not increase during the election campaign period. Thus, the radio and television advertisements did

not constitute campaign material and did not disparately provide the incumbent business manager an advantage in the election. There was no violation of the Act.

You additionally alleged that Local 716 treated candidates unequally when it permitted campaigning at the Texas Children's Hospital job site until an anti-█████ flyer was distributed there. The investigation determined that the employer, Mid-West Electric, had a no-solicitation policy that states, "Solicitation activity should not interfere with other employees and the normal conduct of business." On or about May 25, 2016, Mid-West Electrical Superintendent ██████ went to the job site to investigate whether an employer printer had been used to make an ██████ flyer, and spoke with Assistant Steward ██████ to reiterate the no-solicitation policy, including the rule about not campaigning on the job. The investigation disclosed that the Union's rules about campaigning were consistently applied to all candidates. There was no violation of the Act.

You further alleged that the election judge unlawfully failed to invite any candidates or observers to witness the "zeroing out" of voting machines prior to the start of the election. While waiting for the polls to open, candidate ██████ asked the election judge to show him the tapes so that he could verify that the machines were at zero. Section 401(c) of the LMRDA provides, in relevant part, that candidates have a right to have an observer at the polls and the counting of the ballots. Pursuant to this section a union must comply a candidates request to have an observer. The union does not have an affirmative duty to invite observers. There was no request to observe the process of "zeroing out" the machines. There is no requirement in the statute or in the Union's governing documents that the election judge must invite any candidates or observers to witness the "zeroing out" of voting machines before the election. Further, no observers requested to observe this stage of the election. There was no violation of the Act.

You also alleged that members were denied the opportunity to vote because the union used only one polling location. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of her choice. Section 401(e) also requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV of the LMRDA. Article III, Section 5(b) of the Union's bylaws states, "When voting machines are used, one shall be furnished for any area where one hundred fifty (150) or more members reside outside Harris County." The investigation revealed that the Union and the International have consistently interpreted the bylaw since the 1950's to mean that the polling place should have a sufficient number of voting booths. This interpretation is not clearly unreasonable given that, for at least 35 years, the Union has only used one polling location for its elections. Even if there was a violation of Article III, Section 5(b), there was no evidence of members who did not vote because they could not get to the polls at the union hall. Further, the Union's bylaws and the nominations and election notice provide an absentee ballot process for members who are unable to get to the polls; at

least 43 members voted by using an absentee ballot. Thus, there was no violation of the Act that affected the outcome of the election.

You additionally alleged that the Union improperly denied your request to observe the election certification on June 8, 2016. The investigation confirmed that candidates were not invited to the election certification meeting for previous elections. Only the executive board and election judge attended these meetings. Nothing in the Act, the nominations and election notice, election rules, or constitution and bylaws requires election certification meetings to be open to candidates. There was no violation of the Act.

Finally, you alleged that the Union unlawfully used union funds to purchase IBEW knives and belt buckles to be raffled off for campaign purposes, and improperly made raffle tickets only available to members who voted for Business Manager [REDACTED]. With respect to the knives and belt buckles, while section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of an officer, the evidence indicated that the belt buckles were donated by members, and that the knife was purchased with personal funds contributed by members. With respect to the raffle tickets, section 401(b) of the LMRDA requires local labor organizations to conduct their elections by secret ballot and the investigation did not uncover any evidence that the Union determined how members voted when distributing raffle tickets. There was no violation of the Act.

Your complaint also included allegations that, even if true, would not have constituted violations of Title IV of the LMRDA. As the Department does not have jurisdiction to consider these allegations, they were not investigated.

For the reasons set forth above, it is concluded that no violation of the Act affecting the outcome of the election occurred. Accordingly, I have closed the file on this matter.


Sincerely,

A large black rectangular redaction box covering the signature of Sharon Hanley.

Sharon Hanley
Chief, Division of Enforcement

cc: Lonnie R. Stephenson, International President
International Brotherhood of Electrical Workers
900 Seventh Street, N.W.
Washington, DC 20001

David Alley, President
IBEW Local 716
1475 North Loop West
Houston, Texas 77008

 P.C.
1225 North Loop West, Suite 1000
Houston, Texas 77008

Beverly Dankowitz
Associate Solicitor for Civil Rights and Labor-Management

