



July 26, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint to the Department of Labor, received February 24, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the October 8, 2015 election of union officers held by Local 1235 (local or Local 1235), International Longshoremens' Association (International).

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 incumbent President Richard Suarez appointed Jose Reyes to the office of secretary-treasurer and [REDACTED] to the office of Delegate to the NYC District Council, which offices were vacated by retirements shortly before the officer election, and postponed the election from September 11 to October 8 in order to give those two officers the advantage of incumbency in the election. The Department of Labor investigation did not substantiate your allegations. The Department of Labor investigation revealed that in June 2015, the incumbent secretary-treasurer announced to the local president his intention to retire, effective September 1, 2015. The secretary-treasurer is the officer responsible for providing an updated voter eligibility list. The investigation substantiated that the incumbent secretary-treasurer, due to concerns about his retirement benefits, was not amenable to postponing his retirement to accommodate a September or October 2015 election. Filling that position was critical to the election for purposes of creating an up-to-date voter eligibility list. The investigation also substantiated that in July or August 2015, [REDACTED], New York City district council delegate, resigned to care for his ailing wife. The district council delegate is a member of the local's executive board and is therefore an officer position whose election is governed by Title IV. *See* 29 C.F.R. § 452.21.

The Local 1235 Bylaws address situations in which a vacancy for any office occurs. Article III, section 6 of the local Bylaws provides that “[s]hould a vacancy occur in an elected office by resignation or otherwise, the President with the approval of the Executive Board and membership, shall appoint a member in good standing to fill the un-expired term.” The investigation revealed that the local president appointed two members to fill these vacancies. The investigation further revealed that in a special meeting held on August 28, 2015, the local executive board approved the appointments. The president properly exercised his authority to fill vacancies that occurred between elections. The investigation showed no evidence that the appointments were made to give appointees an advantage in the October 2015 election or that the appointees even received such an advantage. In fact, the appointee for district council delegate lost his position in the October election. Although the appointed secretary treasurer won the election for that office, it is too speculative to conclude that a mere month in office provided him with a clear advantage over the other two candidates.

The investigation also revealed that as early as June 2015, the local, in consultation with the election company it hired to conduct its election and an independent election consultant, decided to postpone the election until October to increase the voter franchise. Approximately 70 percent of the local’s membership consists of members who vacation throughout the summer in their countries of origin, returning to the U.S. in late summer, after the conclusion of the nominations period. Further, the election company representative advised that her election calendar was full for September, making it very difficult for her to conduct the local’s election during that month. There was no evidence that the decision to postpone was politically motivated or made to advantage recently appointed officers. There was no violation of the Act with respect to your allegations.

However, section 401(b) of the LMRDA requires local unions to hold their elections not less often than once every three years. Article III, section 1 of Local 1235 Bylaws mirrors the LMRDA’s three-year provision. The local violated section 401(b) referenced above and section 401(e), which requires unions to conduct elections in accordance with their constitution and bylaws, by holding the election in October 2015, one month beyond the three-year period since the last election. The last election was held in September of 2012. The investigation revealed that these violations did not affect the outcome of the election.

The investigation revealed that the local’s current election cycle, every-three-years in September, is at odds with the local bylaws which provide for an every-three-years in February election cycle. However, the investigation revealed that the local emerged from trusteeship through an election held in September 2009, which altered the three-year, February election timeframe contained in the union’s constitution and bylaws. The local’s officers were elected to full three-year terms, ending in September 2012, and

the election at issue here was scheduled for September 11, 2015, but was postponed until October 8, 2015. Any violation of the union's constitution and bylaws, thereby any violation of section 401(e) of the Act, did not affect the outcome of the election.

You also alleged that the voting instructions were unclear and confusing because of a slate voting feature on the ballot. Specifically, you asserted that the voting instructions printed on the ballot itself did not make clear that voting for two independent candidates in the same race would void both votes, whereas voting for the slate would override any votes for independent candidates. The investigation revealed that the ballot was designed as a table with four columns. The first column listed the offices for election; the second column listed the "A Team" slate members, with the heading containing a box that allowed a voter to select the entire slate by marking that box; the remaining two columns were captioned "independent candidate(s)" and listed the independent candidates corresponding to the office for which the person was running. Voting instructions were printed on every ballot, above the columns described above. Voting Instruction Number 2 stated: "You are not required to vote for a Full Slate. If you choose to vote for a Full Slate, place an 'X' mark in the large box on top of the full slate you wish to vote for. If you vote for a full slate, no other mark on the ballot will be counted." Voting Instruction Number 3 stated: "Voting for individual candidates - place an 'X' mark in the box next to the name of the candidate(s) of your choice. No other marks should be used. Do not vote for more candidates than are authorized for each office. Only the ballot section for that office will be VOID if you vote for more candidates than are authorized for that office."

Contrary to your assertion, the instructions were clear. The design allowed any member to select either an entire slate by marking the large square in the heading captioned "A Team" slate, or to vote for individual candidates from among slate members and independent candidates. Voters were on notice that if they selected the full slate as well as an independent candidate, their votes would be considered a vote for the entire slate, as made clear by Voting Instruction 2. Further, Voting Instruction 3 similarly made it clear that voting for more candidates for the same office than authorized, i.e. voting for two independent candidates where the position says "vote for one," would void the member's vote for that office. In any event, the investigation disclosed that only one ballot had been marked for both the slate and independent candidates. There was no violation.

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

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: Harold J. Daggett, President
International Longshoremen's Association, AFL-CIO
5000 West Side Avenue
North Bergen, NJ 07047

Richard Suarez, President
ILA Local 1235
30 Hennessey Street, 2nd Floor
Newark, NJ 07105

Francine Foer, Esq.
Hyderally & Associates, PC
33 Plymouth Street, Suite 202
Montclair, New Jersey 07042

Beverly Dankowitz, Associate Solicitor
Civil Rights and Labor-Management Division