



June 23, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the Department of Labor (Department) on September 17, 2015, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers that was conducted by the International Brotherhood of Electrical Workers (IBEW), Local 2321 on June 5, 2015.

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 LMRDA that may have affected the outcome of the election.

You alleged that a campaign email that chief steward [REDACTED] sent from her personal computer to members' personal email addresses was a prohibited union endorsement of the listed candidates. The investigation disclosed that the email message that [REDACTED] sent was not an endorsement by the union. The email sent to members on May 18, 2015, read in part, "The following are the 'Good of the Union' Selections," and then listed the names of those candidates that she endorsed. There was no mention of Local 2321 or statement indicating that Local 2321 had endorsed the listed candidates. Though chief steward, [REDACTED] is not the local's principal officer. The email did not give the appearance of an official Local 2321 endorsement of any candidates, but instead provided [REDACTED] personal endorsement of certain candidates in the election. There was no violation.

Though not a Local 2321 endorsement, the email did promote the election of certain individuals in the election. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); see also 29 C.F.R. § 452.73. Union officials and employees are free to campaign for the candidates of their choice so long as the campaigning does not involve the use of union resources. The investigation disclosed that the list of members' personal email addresses that [REDACTED] used to send the campaign email to members was compiled in the

course of her position as a union official. As such it was a union list. Any list of members compiled by a union officer or representative by virtue of his or her position with the union is deemed a list of union members and a union resource for purposes of the LMRDA.

In addition, section 401(c) of the LMRDA requires a union and its officers to refrain from discrimination in favor of or against any candidate with respect to the use of union lists of members. 29 U.S.C. § 481(c); see also 29 C.F.R. § 452.71(b). This prohibition against the discriminatory use of lists of members is not limited to a labor organization's official membership lists. Any list of members, including one compiled by a union officer or representative by virtue of his or her position with the union, is deemed a list of union members for purposes of the LMRDA. If a union permits the use of a list of members to campaign, all candidates must be informed of the availability of the list for that purpose and allowed that same privilege upon request. The investigation disclosed that neither ██████ nor Local 2321 informed the opposing candidates of the availability of the list or offered to permit other candidates to use the list to campaign.

To the extent that the issue concerning ██████ use of a union list to campaign was raised by you, and thus is considered to be within the scope of your complaint to the Department, ██████ use of this list, a union resource, violated section 401(g)'s prohibition against the use of a union resource to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); see also 29 C.F.R. § 452.73. Additionally, the use of the list violated section 401(c)'s prohibition against the discriminatory use of lists of members.

The violations of the LMRDA described above do not form the basis for litigation by the Secretary. Section 402(c) of the Act provides that an election will only be overturned where a violation may have affected the outcome of the election. Here, the investigation did not show that these violations may have affected the outcome of the election. Of the 47 members who were sent the campaign email, only 17 voted after the May 18 email was disseminated to members. Thus, the campaign email may only have affected the votes of these 17 members. The only race with a vote margin of 17 or fewer votes was the president's race, which had a vote margin of 5 votes. ██████ endorsed candidate for that office was defeated in the election. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

In addition, during the investigation you stated that you used a list of members' email addresses that you compiled in the course of your previous position as steward to disseminate a campaign email supportive of ██████, the opposing candidate for business manager, to the 47 recipients of ██████ email. Since this list was compiled by virtue of your union position, it constituted a union list for purposes of the LMRDA. Thus, Local 2321 was required to inform ██████ opponent of the availability of the list. The list was not made available or offered to the opponent, in violation of section 401(c). Your use of this list, a union resource, to support ██████ campaign also

violated 401(g)'s prohibition against union-financed campaigning. However, ██████ was defeated in the election. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You also alleged that incumbent business manager ██████ used his union position to have opposing candidate ██████ removed from a preferred work assignment at the Lowell Towers facility because ██████ had access to 75 percent of the members employed at that facility. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. A union's conduct of its election of officers is thus circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation did not substantiate this allegation. While the investigation showed that ██████ inquired about ██████ work assignment, the evidence did not show that ██████ requested that ██████ be reassigned. Rather the evidence showed that the employer assigned employees, like ██████, to different work locations based on business needs and the employees' skills. There was no violation of the LMRDA.

You also alleged that a union officer's official union title constitutes a union resource under section 401(g) of the LMRDA and, therefore, an officer is prohibited from noting the title on campaign literature. Although section 401(g) prohibits the use of a union resource to promote a person's candidacy, an official union title is of no proprietary, pecuniary or other value to a union and, therefore, does not constitute a union resource. Further, neither the LMRDA nor the union's constitution and bylaws prohibit officers from noting their official union titles on campaign literature. There was no violation of the LMRDA.

You also alleged that a candidate distributed misleading campaign literature to members. The LMRDA does not and unions may not regulate the contents of campaign literature, even though the literature may include misleading information or derogatory statements about other candidates. *See* 29 C.F.R. § 452.70. Thus, even if true, this allegation would not constitute a violation of the LMRDA.

Finally, you alleged that members were denied the right to vote because the official ballots and the outer ballot envelopes that the union used for the return of ballots contained conflicting voting instructions, the ballot mailing package did not contain the union's return address, and a union officer withheld information from candidates during the campaign period. However, during the Department's investigation you stated that you withdrew these allegations from your internal union protests and your complaint to the Department. Therefore, these allegations are dismissed.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

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

Mr. Lee Gitschier, President
IBEW Local 2321
1049 Turnpike Street
North Andover, MA 01845

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