



June 22, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on February 10, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by Local 704 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (UA) on December 9, 2015.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that with respect to two of the allegations, identified below, there was no violation of the LMRDA. The other allegation contained in your complaint to the Department may not be considered because you did not exhaust the union's internal protest procedures with regard to that allegation. The following is an explanation of these conclusions.

You alleged that union funds and materials were used for campaigning. Specifically, you alleged that the election notice letter that was mailed to members on December 1, 2015, constituted campaigning because it stated "Please come down and cast your vote" and was signed by Greg Herman, the incumbent business manager, who was running for reelection. Section 401(g) of the LMRDA prohibits the use of union funds to promote a candidacy. Courts consider the tone, content, and timing of a publication when determining whether it constitutes campaign material. With respect to content, section 401(g) prohibits any showing of preference by a union or its officers to criticize or praise any candidate. 29 C.F.R. § 452.75.

The investigation disclosed that the December 1 election notice letter was prepared by union officials, printed on union letterhead, and signed by Herman. A review of the letter established that the tone of the letter was neutral and its content was informative. The letter specified the date and time of the election and listed the offices to be filled in the election and the candidates' names. It contained no commentary attacking or praising any candidate for election. The letter was mailed close in time to the election, but that timing was necessary because the letter's purpose was to provide notice of the candidates' names. The investigation disclosed

that the election notices that Local 704 had published in the October 30, November 13, and November 27 editions of the union newsletter had omitted the candidates' names. Because it was the union's past practice to include candidates' names in the election notice, International Representative Gary Young directed Herman to mail a letter to the membership identifying the nominees for all offices. The December 1 election notice letter did not constitute campaign material. Because it did not constitute campaign material, its preparation and distribution did not constitute an improper use of union funds to campaign. There was no violation.

You also alleged that, on the day of the election, some of the candidates for office were barred from entering the union hall (except to vote) while two other candidates were allowed to be in the union hall. Specifically, you alleged that the training director, [REDACTED], who was a candidate for several positions, came in and out of the polling area to pass out hams to members, and you alleged that Herman, the business manager, stayed in the front office to conduct business while voting occurred. You alleged that the mere presence of candidates inside the union hall could be misconstrued as campaigning. Department of Labor regulations prohibit campaigning within polling places. 29 C.F.R. § 452.111. In addition, section 401(c) of the LMRDA prohibits disparate candidate treatment.

During the Department's investigation, you asserted that it was an "unofficial" rule that candidates are not supposed to be in the building during an election. You initially stated that Election Committee Chair [REDACTED] told you and fellow candidate [REDACTED] to stay outside during the election. However, you later stated that it was [REDACTED] who told you that candidates could not enter the hall, ostensibly based on what [REDACTED] had told him. You stated that no one else told you about any restrictions or rules concerning candidates' access to the union hall during the election and that you never asked anyone whether you could enter the union hall on the day of the election. You further acknowledged that you did not have any information indicating that any candidates were campaigning in the union hall on the day of the election.

The Department's investigation did not confirm that the union placed restrictions on candidates entering the building during the election. The Department's investigation did establish that the union prohibited all candidates from campaigning inside the union hall during the election (but permitted all candidates to campaign outside the building). When interviewed, [REDACTED] stated that [REDACTED] told him that candidates could not *campaign* inside the building on the day of the election. [REDACTED] confirmed that candidates were allowed to come into the hall to use the bathrooms and to vote, and he stated that he told you this. No member, whether running for office or not, was permitted to loiter in the polling area after voting. Both Herman and [REDACTED] stated that they entered the polling area only to vote and otherwise stayed in their offices during the election. The investigation further confirmed that members were required to vote before they received hams from [REDACTED] or visited Herman. The

Department's investigation uncovered no evidence that any candidate campaigned in the building or that the union subjected candidates to disparate treatment regarding access to the union hall on the day of the election. There was no violation.

You also alleged that the union permitted ineligible members to vote. The Department has determined that you did not timely exhaust the union's internal protest procedures with respect to this issue. Pursuant to Section 402(a) of the LMRDA, to file a complaint with the Department, a member must have followed internal union protest procedures and obtained a final decision from the union or must have invoked internal union protest procedures for three months without obtaining a final decision from the union.

The UA constitution sets forth the internal exhaustion provisions for the protest of local union elections. Section 125(a) of the constitution requires the protesting member to file his or her protest with the General President within five working days after the election. As you know, your timely and properly filed internal protest letter to the General President, dated December 14, 2015, did not include the allegation that ineligible members were permitted to vote. You did not raise this allegation until January 7, 2016. Therefore, you failed to timely exhaust internal union remedies with respect to this allegation, and the Secretary lacks the appropriate jurisdiction to investigate this allegation.

Additionally, the allegation concerning ineligible members being permitted to vote does not fall within the scope of those allegations that were, in fact, timely and properly filed internally with the union. The Department may file a complaint only on matters included in or within the legal scope of the member's internal protest. As stated previously, you did not timely include the allegation that ineligible members were permitted to vote in your internal union protest. Nor is the allegation within the scope of your properly filed allegations. An allegation has been found to be within the scope of a member's protest where the allegation is related to the election defects that were properly alleged or the allegation is one of which the complaining member could not have been aware.

The Department's investigation disclosed that you could have been aware, before you filed your internal protest on December 14, 2015, of the alleged violation regarding ineligible members being permitted to vote. You stated that you knew that only members in one-year continuous good standing could vote in local officer elections, and you confirmed that you saw a list of delinquent dues payers at the October 2015 membership meeting. You further confirmed that you saw some of the members from that list at the union hall on the day of the election. You asserted that you did not make any connection between the October delinquent dues payers list and ineligible members' being allowed to vote until after speaking with another member on approximately December 21, 2015. However, the standard is not whether the member was aware of the matter, but whether the member *could have*

been aware of the matter. Because you had enough information to be aware of the matter but did not raise the allegation in your internal protest, the Department does not have jurisdiction to file a complaint on the matter, even if a violation occurred.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA. Accordingly, I have closed the file on this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

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