

**Determination Certifying Election Results of**  
**Amalgamated Transit Union Local 1001's**  
**December 7, 2016 Supervised Election**

The Department of Labor's (Department) Office of Labor-Management Standards (OLMS) supervised an election of officers of the Amalgamated Transit Union Local 1001 (ATU Local 1001 or "the union"), which was completed on December 7, 2016, pursuant to an August 29, 2016 Memorandum of Understanding (MOU) filed in the District Court of Colorado in Civil Action No. 1:14-cv-2286 (attached). This supervised election included the positions of President, Vice President, Financial Secretary-Treasurer, Recording Secretary and Correspondent, Chief Steward – Platte Transportation, Chief Steward – Platte Maintenance, Chief Steward – East Metro Transportation, Chief Steward – East Metro Maintenance, Chief Steward – Boulder Transportation, Chief Steward – Boulder Maintenance, Chief Steward – Light Rail Transportation, Chief Steward – Light Rail Maintenance, Chief Steward – District Shops/Blake Street, Chief Steward – First Transit Longmont, Chief Steward – First Transit Denver, and Chief Steward – First Transit Commerce City.

Pursuant to paragraph 10 of the MOU, this Determination certifies the names of the individuals elected in the supervised election, certifies that the supervised election was conducted in accordance with Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA" or the "Act"), and, insofar as was lawful and practicable, that the supervised election was conducted in accordance with the Local 1001 Constitution and Bylaws. This Determination also summarizes the protests received by OLMS in connection with the supervised election, and OLMS's resolution of those protests.

1. [REDACTED] *Post-Election Complaint Dated December 9, 2016*

[REDACTED] alleged that there were "irregularities" and "confusion" during the election at the RTD Boulder polling site. Specifically, [REDACTED] alleged that members were given the wrong ballots resulting in ineligible votes being tallied, eligible voters not voting, and voters being allowed to vote twice. [REDACTED] stated that members [REDACTED] and [REDACTED], who are Maintenance Craft employees, were initially handed Transportation Craft ballots. [REDACTED] also stated that [REDACTED] was allowed to vote two ballots (Maintenance and Transportation), and finally, alleged that the union handed out ballots without requiring that members sign the polling site sign-in log. Section 401(e) of the LMRDA requires that each member in good standing is entitled to vote in the election. More generally, section 401(c) of the LMRDA requires that the union provide adequate safeguards to insure a fair election. This provision has been interpreted as imposing a "general rule of fairness" that circumscribes a labor organization's wide range of discretion regarding the conduct of elections, 41 C.F.R. §

452.110(a). Adequate safeguards as contemplated by the LMRDA refer to the mechanical, procedural aspects of running an election.

The Department investigated [REDACTED] allegations and found no violations of the LMRDA. As background, there were two types of ballots at the Boulder polling place: members in the Maintenance Craft voted tan ballots and members in the Transportation Craft voted white ballots. Regarding [REDACTED], the Department's investigation revealed that [REDACTED] was initially given the wrong ballot (not containing the Boulder Maintenance Chief Steward race), but the election teller realized his error and took immediate steps to correct it. [REDACTED] received the correct ballot and voted a ballot that contained the Boulder Maintenance Chief Steward race. Regarding [REDACTED], the Department's investigation found that he was permitted to vote challenged ballots (one tan and one white ballot), while it was determined which ballot he was entitled to cast. Ultimately, the union determined that [REDACTED] was eligible to cast a Maintenance Craft ballot. The union only counted [REDACTED] Maintenance Craft ballot, leaving his Transportation craft ballot unopened and in the election records. Accordingly, the union properly handled both [REDACTED] ballots, and there was no violation of the adequate safeguards provision.

Addressing [REDACTED] allegation that the union handed out ballots without requiring members to sign in at the polling place, there was no violation. The Department examined the Boulder polling place eligibility list and found that two voters [REDACTED] did not sign-in on the roster. However, both members were accounted for and crossed off on the eligibility list, which is the controlling election record. The union's maintenance of an accurate eligibility list at the polling place conforms to the requirements of the LMRDA. There was no adequate safeguards violation.

2. [REDACTED] *Post-Election Complaint Dated December 15, 2016*

[REDACTED] alleged that at least 16 members at the District Shops/Blake Street ("District Shops") polling place received an incorrect ballot that did not include the Chief Steward race. [REDACTED] alleged that the union's failure to hand out correct ballots violated the union's obligation to provide adequate safeguards to insure a fair election, as required by section 401(c) of the LMRDA, and also denied eligible members the opportunity to vote for all offices in the election, in violation of section 401(e) of the LMRDA. During the Department's investigation, [REDACTED] could only provide the name of one member ([REDACTED]) who he alleged incorrectly received an at-large ballot that did not include the Chief Steward's race.

One group of members voting at the District Shops polling place was entitled to vote for at-large offices as well as for the District Shops Chief Steward. A second group of members was only entitled to vote for the at-large offices. Officials at the polling place

provided two ballots. White ballots contained all at-large offices, and tan ballots contained at-large offices and the additional office of District Shops Chief Steward. The union had two color-coded eligibility lists at the polling place. The tan eligibility list contained the names of members eligible to vote for the District Shops Chief Steward. As part of its investigation of this protest, OLMS reviewed the District Shops election records. OLMS found a discrepancy between the number of voters marked-off the tan eligibility list (159 members) and the number of tan ballots voted (158), indicating that one voter eligible to vote for District Shops Chief Steward was unable to vote in the Chief Steward race. Further, the District Shops election records supported the fact that 16 members voted a white ballot (only containing at-large offices) when the Department's review revealed that 15 members were ineligible to vote in the District Shops Chief Steward race (9 members worked at other locations, 4 members were trainees, and 2 members were retirees). Accordingly, it appears that there was a violation of the LMRDA in that one member eligible to vote for District Shops Chief Steward was given the white ballot containing only at-large offices, thus denied the opportunity to vote for the District Shops Chief Steward race. Because this violation was limited to one vote, and the Department's recount of the ballots confirmed the original tally: ██████████ defeated ██████████ by a 10-vote margin, the violation could not have affected the outcome of the Chief Steward race.

3. ██████████ *Post-Election Complaint Dated December 15, 2016*

██████████ alleged that candidates, including himself, ██████████ were not treated equally with respect to their abilities to distribute campaign literature. ██████████ specifically alleged that incumbent candidates knew the locations of union bulletin boards at all employer sites and insurgent candidates like ██████████ and ██████████ were not aware of these locations. During the Department's investigation, ██████████ (a candidate for President) stated that he was able to post his campaign literature on all union bulletin boards and did not believe he was disadvantaged. ██████████ stated that he contacted the union seeking the location of the union bulletin boards at all employer sites, but the union did not respond to his request for this information. ██████████ posted his campaign literature at all the locations known to him. He stated that he did not attempt to visit other employer sites. The Department's investigation revealed that the union did not have a list with the location of all union bulletin boards at employer sites.

██████████ contacted OLMS twice by email requesting the location of the union bulletin boards at all employer sites. Again, the union kept no list of union bulletin board locations that it could have distributed to candidates. The Act does not require the union to maintain this type of list nor does it require the union to create such a list upon request. Further, ██████████ ran as a candidate for RTD Platte Maintenance Chief Steward, a position that was only voted on at the Platte polling place. ██████████ worked at Platte and was very familiar with the employer's facilities and knew where the Platte union

bulletin boards were located. [REDACTED] posted his campaign literature on the bulletin boards at Platte. Regarding [REDACTED], the investigation revealed that he posted campaign literature at all bulletin board locations known to him. Based on the Department's findings, the union did not treat candidates [REDACTED] in a disparate manner and did not fail to comply with a reasonable request to send campaign literature. There is no violation of the LMRDA.

[REDACTED] also alleged that union funds were unlawfully used to promote the incumbent candidacies of [REDACTED] because their campaign flyers included photographs of the candidates wearing ATU Local 1001 polo shirts that were purchased using union funds. Section 401(g) prohibits the use of union funds to promote any candidate in a covered officer election. Neither the ATU Constitution nor the Local 1001 Bylaws have a provision prohibiting candidates from displaying the union logo in campaign postings. The Department's investigation revealed that the polo shirts were purchased using union funds and are typically provided to Executive Board members, as well as union members attending certain union functions. The polo shirts are not provided in connection with a campaign, as campaign material and do not promote particular candidates. Although the candidates wore t-shirts containing the union logo in their campaign posters, there was no rule prohibiting it, and the appearance of the union logo in no way appears to be the union's endorsement of these particular candidates. The incumbent candidates' actions do not constitute a violation of section 401(g) of the LMRDA.

In a related allegation, [REDACTED] stated that ATU Local 1001 funds were used to promote the incumbent candidacies of [REDACTED] because union flyers containing their photos and contact information were posted on union bulletin boards at employer worksites. [REDACTED] conceded that these posters were always on union bulletin boards so that members were aware of their representatives, but felt that the postings gave incumbents an unfair advantage during the election period. During the Department's investigation, the union reasonably explained that the flyers with union officers' pictures and contact information are always posted on union bulletin boards because it is the most effective means of letting members know who their representatives are and how they may be reached. The incumbent officers' photographs and contact information is also posted on the union's website. Finally, the flyers with the union officers' pictures and contact information contained no campaign material and did not reference the upcoming election. The union's actions are routine union business, rather than campaigning, and do not constitute a violation of section 401(g).

[REDACTED] also alleged that on December 1, 2016, the employer (RTD) unlawfully restricted [REDACTED] (candidate for President) ability to campaign on its property while he was off from work on a work-related injury, when other candidates who were either out of work because of work-related injuries, or were simply on leave were permitted to

campaign on the employer property. Section 401(c) of the LMRDA prohibits disparate treatment among candidates for office. The Department found that other candidates were permitted to campaign on RTD non-public property. To the extent the employer's actions constitute unlawful disparate treatment of candidates; it could have only affected voting members at RTD District Shops, Boulder, and Blake Street - the three worksites to which [REDACTED] was denied entry. The Department found that 300 members voted at these three worksites. [REDACTED] lost the President's race by 471 votes. As such, any disparate treatment that occurred could not have affected the outcome of the election.

[REDACTED] also alleged that candidates [REDACTED] were unlawfully restricted from campaigning to members at RTD's East Metro facility during the morning of December 6, 2016. The Department's investigation revealed that on December 6, 2016, at approximately 12:15a.m., [REDACTED] visited RTD's East Metro Division and campaigned to custodians and mechanics. [REDACTED] were initially stopped by an RTD East Metro Maintenance Supervisor, [REDACTED], but after some discussion, [REDACTED] permitted [REDACTED] to campaign to the approximate 25 members at the location. These candidates were not restricted from campaigning. There is no violation of the LMRDA.

[REDACTED] also alleged that the union failed to accommodate candidate [REDACTED] request to distribute campaign literature via blast email to union members. Section 401(c) of the LMRDA requires that the union comply with all reasonable requests by a candidate to distribute campaign literature. Other than by mail, there is no prescribed manner in which unions must distribute campaign literature. Generally, if the candidate's request for an alternative method of distributing campaign literature is a reasonable one, the union is required to make the distribution. Accordingly, OLMS advises unions to comply with a candidate's reasonable request to distribute campaign literature to the membership through email if the union uses email to disseminate information to its members. If the union is concerned about confidentiality, then distribution should take place without revealing members' email addresses. The union is entitled to protect the confidentiality of members' names and email addresses. Widely available commercial applications permit distribution where no recipient can see the identity of the other recipients. Candidates must pay the cost of distribution. Thus, the union is entitled to charge the candidate for staff time required to send campaign messages, for expenses incurred in hiring temporary staff/contractors, or for any costs associated with the distribution of the campaign material.

During the Department's investigation, [REDACTED] explained that he wished to send a campaign mailing using the union's member email list. [REDACTED] made his request at 4 p.m. on December 5, 2016. The timing of the request allowed little more than one day to process and distribute his campaign mailing. The Department's investigation found that candidates had never sought distribution of campaign materials via email in the union's

prior elections. Accordingly, the union had not had the opportunity to put the required framework, rules, procedures, and safeguards in place to lawfully and expeditiously process this request. This included no adequate opportunity for the union to determine the cost for staff time required to send campaign messages, for expenses incurred in hiring temporary staff/contractors, or for any other costs associated with the distribution of the campaign material.

The Department has determined that the last-minute nature of the request, combined with the fact that the union had never received nor processed such a request and had no such procedures in place created administrative problems that could not be overcome even at the candidate's expense, making this an unreasonable request. Throughout the election, OLMS and the union processed candidates' requests to send campaign literature via mail in a consistent manner. Mail requests were directed to the union's Recording Secretary who could only work on campaign mailings after regular business hours. So in this case, if the union had procedures in place for processing requests to send campaign emails and the union determined that email requests would also be administered by the Recording Secretary, the earliest the Recording Secretary could have begun working on [REDACTED] request was on the evening of December 5<sup>th</sup> – one day before the election began. In addition to the requirement that the Recording Secretary only work on campaign mailings after regular business hours, [REDACTED] request for a blast email using the union's membership email list would have also required the expertise and time of the union's Website Administrator.

In addition to the specific logistical hurdles mentioned above, there are additional administrative issues that a union must address when complying with a candidate's request to send a blast campaign email to the membership. For example, since this would have been the first time that members would have received a candidate's campaign mailing through the union's email list, the union has the right to draft disclaimer language putting members on notice that this is a campaign communication and is not an official union communication. Further, in order to avoid the perception that the union is endorsing a candidate, other unions that permit and regularly encounter campaigning via email typically use a third-party sender so that the email is not sent directly from the union's email address. Given these logistical and administrative considerations, and the fact that [REDACTED] made this novel request approximately 36 hours prior to the election, the Department found this to be an unreasonable request. The union's failure to accommodate his request does not constitute a violation of the LMRDA.

Additionally, [REDACTED] alleged that the union failed to provide adequate safeguards to insure a fair election when employer RTD permitted incumbent officers and stewards an unfair campaign advantage by having them in break rooms and available to answer members' questions during the "run board," or work assignment, vote. [REDACTED] alleged that union stewards were not present at prior run board votes and further alleged that

at least one steward at Platte, [REDACTED], was soliciting votes during the election period. The Department's investigation confirmed that this was the first time worksite Chief Stewards were present during the run board vote, which was held one week prior to the officer election. However, the Chief Stewards' presence was at the request of RTD, and the employer paid the Chief Stewards to attend these board votes. According to the employer, there were multiple last minute changes to routes, and this particular run board vote was complicated because members were required to vote for two schedules rather than one schedule. RTD was concerned that members would have questions and concerns and therefore requested that the Chief Stewards be present and available to answer such questions. The Department's investigation did not reveal any evidence that the Chief Stewards engaged in campaign activities while working the run board votes. The Chief Stewards were present for legitimate business reasons and did not violate the LMRDA.

[REDACTED] alleged that RTD managers unlawfully removed campaign materials from union bulletin boards and from mechanics' toolboxes. [REDACTED] conceded that this action occurred early in the election period, before the campaign rules were clarified. The Department became aware of this issue in late October 2016 and by November 3, 2016 had circulated campaign rules making it clear that candidates must be permitted to post campaign literature on union bulletin boards, but that candidates could not use their mechanics' toolboxes as a means of posting campaign materials because it created an unfair advantage for mechanics. OLMS communicated the election rules to the employer and at that point RTD understood that they could not remove campaign postings from union bulletin boards. [REDACTED] was notified of these campaign rules by November 3, 2016. He was invited to repost any material that had been removed. Given the Department's early intervention, any violation of the LMRDA was remedied in early November 2016 and had no effect on the outcome of the election.

[REDACTED] also alleged that on December 6, 2016, [REDACTED], the incumbent candidate for RTD Platte Maintenance Division Chief Steward, campaigned on employer time. Section 401(g) prohibits the use of employer funds to promote any candidate in a covered officer election. The Department's investigation confirmed that [REDACTED] campaigned to a group of members at a Platte Maintenance meeting, while these members were on employer time. While this constituted a violation of section 401(g) of the LMRDA, Yarbrough lost the Chief Steward race. Accordingly, this violation had no effect on the outcome of the election.

Finally, [REDACTED] alleged that the union failed to provide adequate safeguards to insure a fair election because it permitted incumbent President Julio Rivera to include a link from ATU Local 1001's official website to his personal Facebook page, where he was able to campaign for union office. As mentioned above, the LMRDA prohibits the use of union funds to promote any candidate for office in a covered election. The Department's investigation revealed that prior to the close of nominations, Rivera

linked his personal Facebook page titled "Julio Rivera's President's Page" to the union's official website. Up to the close of nominations, Rivera posted union-related information on his Facebook page. The Department's investigation confirmed that Rivera did not post campaign materials on his personal Facebook page until he unlinked the ATU Local 1001 official website. Because all of Rivera's campaigning occurred after the link to ATU Local 1001's website had been severed, there was no section 401(g) violation.

Based on its investigation of the above-mentioned election protests, the Department concludes that ATU Local 1001's December 7, 2016 election, conducted under the Department's supervision, complied with Title IV of the LMRDA and was conducted, insofar as lawful and practicable, in accordance with the ATU Local 1001's Constitution and Bylaws. The individuals on the attached list are certified as the officers of the labor organization.

Signed this 7th day of June, 2017.

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

Sharon Hanley  
Chief, Division of Enforcement

The following are certified as the newly-elected officers of ATU Local 1001:

**ATU Local 1001 Officer Election Results**

<b>OFFICE</b>	<b>WINNING CANDIDATE</b>	<b>MARGIN OF VICTORY</b>
President	Julio Rivera	165
Vice President	Chris Moralez	280
Financial Secretary-Treasurer	Mike Harvey	304
Recording Secretary and Correspondent	Angela Williams	50
Chief Steward - Platte Transportation	Dion Solano	7
Chief Steward - Platte Maintenance	Justin Gragert	15
Chief Steward - East Metro Transportation	Ronald Short	92
Chief Steward – East Metro Maintenance	Robert Daniels	Unopposed
Chief Steward – Boulder Transportation	Lance Longenbohn	Unopposed
Chief Steward - Boulder Maintenance	Robert “Dale” Davis	2
Chief Steward - Light Rail Transportation	Aaron Boettcher	61
Chief Steward – Light Rail Maintenance	Marvin Robert	Unopposed
Chief Steward - District Shops/Blake Street	Mitch Decent	10
Chief Steward – First Transit Longmont	Cole McGinnis	Unopposed
Chief Steward – First Transit Denver	Stan Abeyta	Unopposed
Chief Steward - First Transit Commerce City	Felix Martinez	67



**U.S. Department of Labor**

Office of Labor-Management Standards  
Division of Enforcement  
Washington, DC 20210  
(202) 693-0143 Fax: (202) 693-1343



June 7, 2017

[REDACTED]

Dear [REDACTED]

The enclosed Determination represents the Department's final disposition of the matter mentioned therein.

Sincerely,

[REDACTED]

Sharon Hanley  
Chief, Division of Enforcement

Enclosure

**U.S. Department of Labor**

Office of Labor-Management Standards  
Division of Enforcement  
Washington, DC 20210  
(202) 693-0143 Fax: (202) 693-1343



June 7, 2017

Mr. Julio Rivera, President  
Amalgamated Transit Union Local 1001  
3315 West 72nd Avenue  
Westminster, CO 80030

Dear Mr. Rivera:

The enclosed Determination represents the Department's final disposition of the matter mentioned therein.

Sincerely,

[Redacted signature block]

Sharon Hanley  
Chief, Division of Enforcement

Enclosure

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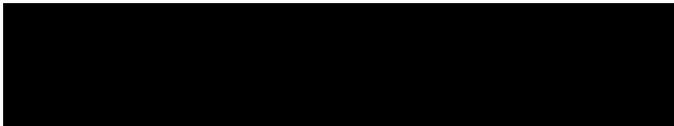
June 7, 2017

Mr. Larry Hanley, International President  
Amalgamated Transit Union  
10000 New Hampshire Avenue  
Silver Spring, MD 20903

Dear Mr. Hanley:

The enclosed Determination represents the Department's final disposition of the matter mentioned therein.

Sincerely,



Sharon Hanley  
Chief, Division of Enforcement

Enclosure

**U.S. Department of Labor**

Office of Labor-Management Standards  
Division of Enforcement  
Washington, DC 20210  
(202) 693-0143 Fax: (202) 693-1343



June 7, 2017

[Redacted]

Dear [Redacted]

The enclosed Determination represents the Department's final disposition of the matter mentioned therein.

Sincerely,

[Redacted]

Sharon Hanley  
Chief, Division of Enforcement

Enclosure

**U.S. Department of Labor**

Office of Labor-Management Standards  
Division of Enforcement  
Washington, DC 20210  
(202) 693-0143 Fax: (202) 693-1343



June 7, 2017

[REDACTED]

Dear [REDACTED] a:

The enclosed Determination represents the Department's final disposition of the matter mentioned therein.

Sincerely,

[REDACTED]

Chief, Division of Enforcement

Enclosure

**U.S. Department of Labor**

Office of Labor-Management Standards  
Division of Enforcement  
Washington, DC 20210  
(202) 693-0143 Fax: (202) 693-1343



June 7, 2017

Mr. Richard Rosenblatt, Esq.  
Rosenblatt and Associates  
8085 E. Prentice Avenue  
Greenwood Village, CO 80111

Dear Mr. Rosenblatt:

The enclosed Determination represents the Department's final disposition of the matter mentioned therein.

Sincerely,



Sharon Hanley  
Chief, Division of Enforcement

Enclosure