



December 20, 2018

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on April 8, 2018, 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 192, Amalgamated Transit Union (ATU), in December 2017.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You first alleged that the local president did not present the election committee chair and members to the membership for approval. You alleged that such approval was required by the local bylaws. Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV.

The Department's investigation disclosed that Local 192's bylaws, which were amended in 2015, do not require membership approval of election committee members. Article 23 section 7 of the bylaws authorizes the local president to appoint the three members of the election committee and to appoint one of the members as the chair of the committee. The investigation established that President [REDACTED] appointed the members and chair of the election committee as provided for in the local bylaws. There was no violation.

You next alleged that Local 192 election committee chair [REDACTED] criticized your candidacy on a Facebook page. You alleged that, as the chairperson of the election

committee, ██████ should have been unbiased and maintained a businesslike relationship with all candidates. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. In addition, section 401(g) prohibits the use of union funds to promote a candidacy. Accordingly, officers and employees of a union may not campaign on time that is paid for by the union or use union funds to assist them in campaigning.

During the investigation, Matthews acknowledged that she had posted a comment in favor of ██████ candidacy on the private Facebook page of Local 192 member ██████ on Sunday, November 12, 2017. The investigation also disclosed that ██████ had posted comments critical of your candidacy on the same Facebook page on a Saturday night; the investigation did not determine the exact date. The investigation uncovered no evidence that ██████ posted the comments while on time paid for by the union or that she used any union funds in making the posts.

The investigation further established that the union's constitution and bylaws do not prohibit election committee members from campaigning on their own time using their own resources. Nevertheless, the investigation also established that the other election committee members directed ██████ to remove the Facebook post, which she did on November 14, 2017. They also directed her to resign from the election committee, which she did on November 15, 2017. There was no violation.

You next alleged that, on December 1, 2017, the day of the ballot tally, you observed an employee of election vendor UniLect placing the ballots retrieved from the post office inside the back of an SUV that also held another, bigger box. You alleged that, to be transparent, UniLect should have placed the ballots in a clear trunk. As noted above, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election.

The investigation established that the extra box you observed in the back of the UniLect SUV housed a backup ballot card reader. There was no evidence that any person improperly accessed or tampered with the ballots. The investigation established that you witnessed the ballots being removed from the post office box and placed in a plastic ballot box, which you then witnessed being sealed and locked. The investigation established that you witnessed the sealed and locked box being loaded into the back of the UniLect SUV and then removed, still sealed and locked, from the SUV at the union hall. The investigation established that you then witnessed all the ballots being removed from the ballot box and transported to the tally room. The investigation further established that you signed witness forms attesting to all of these steps. There was no violation.

You next alleged that nominations took place at a special meeting on October 19, 2017, instead of at the regular meeting in November. You alleged that Local 192's bylaws require nominations to be held at the regular meeting in November of every third year. You alleged that most members were unaware of the change in the process and did not show up to nominate anyone or to be nominated. During the investigation, you identified three members who worked at AC Transit Division 6 who wanted to run for office but did not know of the nominations meetings.

Section 401(e) of the LMRDA requires a union to provide a reasonable opportunity for members to nominate and be nominated for office. In addition, as noted above, section 401(e) provides that the election shall be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV. The investigation disclosed that article 23 section 2 of Local 192's bylaws requires that nominations be held on or before the first Monday of November. The investigation established that the nominations meetings were held on October 19, 2017. The investigation further established that Local 192 provided members with notice of the nominations meetings, including the date, time, and location of the meetings. The nominations notice was posted on union bulletin boards at all worksites on September 20, 2017, and mailed to all members on October 3, 2017.

During the Department's investigation, only one of the three members you identified, [REDACTED], agreed to be interviewed. [REDACTED] admitted that he had seen the nominations notice posted on the union bulletin board at Division 6 prior to the nominations meetings. He stated that he did not receive the notice in the mail, but he acknowledged that he had moved in January 2016 and had not provided his new address to the union. The other two members you identified did not return the investigator's telephone calls. The investigation disclosed that members were given a reasonable opportunity to nominate and be nominated for office. There was no violation.

You also alleged that the special nominations meetings were held only at the Local 192 hall and were not held at SolTrans (Solano County Transit). The investigation disclosed that Local 192's bylaws do not specify the location of the nominations meetings. The investigation established that it was the union's practice to hold nominations meetings at the union hall. The investigation confirmed that nominations were held at special meetings at the union hall at 10:00 a.m., 4:00 p.m., and 8:00 p.m. on October 19, 2017. The investigation revealed that Local 192 provided a nominations notice to members that specified the date, time, and location of the meetings. The nominations notice was posted on union bulletin boards at all worksites on September 20, 2017, and mailed to all members on October 3, 2017. There was no violation.

Relatedly, you alleged that SolTrans members did not have a chance to participate in the nomination process as they received the mailed nominations notice five days after nominations were held. As noted above, section 401(e) of the LMRDA requires a union to provide a reasonable opportunity for members to nominate and be nominated and to conduct its election in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV. The investigation established that, during the election, some SolTrans members – National Express Transportation Company (NETC) members working in Vallejo, California – complained that they had not received the nominations notice in the mail. The investigation disclosed that Financial Secretary-Treasurer [REDACTED] and the printing vendor mailed the nominations notice to NETC-Vallejo members again on October 9, 2017. The investigation further disclosed that, also on October 9, 2017, the election committee personally placed the nominations notice in each NETC member's worksite mailbox. The investigation uncovered no evidence that SolTrans members were not given a reasonable opportunity to nominate and be nominated for office. There was no violation.

You next alleged that SolTrans Steward [REDACTED] was declared ineligible to run for office even though she was a member in good standing. You alleged that [REDACTED] had been wrongfully terminated by her employer for a period and reinstated with back pay. You alleged that candidate [REDACTED] was in a similar situation but was allowed to run for office. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed.

Section 14.2 of the ATU Constitution and General Laws provides that, to be eligible to run for local union office, an individual must have been a member in continuous good standing of his or her local union for two years preceding nominations. The investigation disclosed that Local 192 sought guidance regarding section 14.2 of the ATU Constitution and General Laws from ATU International President [REDACTED] during the challenged election. [REDACTED] advised Local 192 by letters dated October 10 and October 17, 2017, that it is the ATU's long-standing policy that a member who has been suspended and not paying dues for less than twelve months is eligible to run for office if he or she pays the arrearage in full (or begins making up dues payments according to an agreed-upon payment schedule) before nominations open. The investigation disclosed that this exception to the continuous good-standing requirement is based on section 21.11 of the ATU Constitution and General Laws, which provides that a member who has been suspended and not paying dues for less than twelve months may be reinstated and placed in good standing after paying the arrearage.

Nominations were held on October 19, 2017. The investigation established that [REDACTED] was suspended and not paying dues from December 2015 until July 2017. Street paid the arrearage in July 2017 and was reinstated. However, because [REDACTED] had been suspended and not paying dues for more than twelve months during the two years preceding nominations, she did not qualify for the exception to the continuous good-standing requirement. The investigation further established that [REDACTED] was suspended and not paying dues for less than twelve months, from December 2015 to May 2016. [REDACTED] paid the arrearage in May 2016 and was reinstated. Therefore, [REDACTED] met the exception to the continuous good-standing requirement. The investigation confirmed that the union consistently applied its policy exception to the two-year continuous good-standing requirement during the challenged election. There was no violation.

You next alleged that the ballot return deadline in the election notice was unclear or misleading, causing some members to miss the deadline to send in their ballots. You alleged that the notice stated that the ballots must be in no later than 12:00 noon on December 1, 2017, and that UniLect picked up the ballots at 12:00 noon on December 1, 2017.

The investigation established that the union mailed an election notice to members that stated as follows: "You must mail your ballot in sufficient time so that it will be received no later than 12:00pm, Friday, December 1, 2017. Ballots will be picked up at noon from the post office" The investigation further established that the mail ballot packages mailed to members included voting instructions that stated as follows: "Ballots which are not received at the designated Post Office address by 12:00 noon on Friday December 1, 2017 shall not be counted." The investigation confirmed that the ballots were retrieved from the post office at noon on December 1, 2017. There was no violation.

You also alleged that some members did not receive their ballots and did not receive the duplicate ballots they requested. Section 401(e) of the LMRDA provides that each member in good standing is entitled to vote. The investigation established that duplicate ballot request instructions were posted at members' worksites in addition to being mailed to members. The instructions provided a 24-hour toll-free number for members to call to request duplicate ballots. Election vendor UniLect received and processed the duplicate ballot requests. The investigation disclosed that 36 duplicate ballot requests were made during the request period, and 36 duplicate ballots were mailed out.

[REDACTED] was the only member you identified as not receiving a duplicate ballot after requesting one. During the investigation, [REDACTED] stated that she did not receive a ballot for the primary election. The investigation established that [REDACTED]

called to request a duplicate ballot on November 16, 2017, and a duplicate ballot was mailed to her the following day. The investigation also established that [REDACTED] did not vote in the challenged election. During the investigation, [REDACTED] acknowledged that she did not follow up with the union after she did not receive a duplicate ballot in the mail. There was no violation.

You next alleged that a number of your campaign mailings were returned to you in the mail, both because of incorrect addresses and because of missing labels. You alleged that election committee members who assisted with your campaign mailing deliberately put stacks of mail into the box without address labels. During the investigation, you provided evidence of 45 envelopes returned to you because of bad addresses. You did not provide any evidence of envelopes returned to you because of missing address labels.

During the investigation, you acknowledged that you were present and assisted during the preparation of your campaign mailing. You also acknowledged that [REDACTED] was present as your assistant and observer. During the investigation, [REDACTED] stated that you checked all of your envelopes to ensure that each had an address label on it. The investigation disclosed that [REDACTED] rode in the election committee member's car that carried your box of envelopes to the post office. Both you and [REDACTED] observed that the envelopes were delivered to a postal employee.

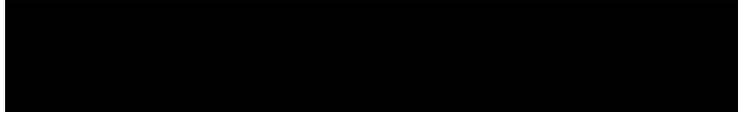
The investigation disclosed that candidates were treated equally with respect to list of members for distribution of campaign literature. The investigation did not reveal evidence that a candidate was provided a better list or better addresses in an attempt to promote the individual's candidacy. Other candidates who conducted campaign mailings also had envelopes returned to them. Other candidates stated that they received a number of returned envelopes that was comparable to the number of returned undeliverable envelopes you received. There was no violation.

You also raised an allegation in your complaint that had not been raised in your protest to the union. Section 402(a) of the LMRDA requires that a member exhaust the remedies available to him or her under the union's constitution and bylaws before filing a complaint with the Secretary of Labor. This allegation was not properly exhausted and was not investigated by the Department.

Finally, you raised other allegations that, even if true, would not constitute violations of the LMRDA. These allegations were not investigated by the Department.

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

Sincerely,



Sharon Hanley
Chief, Division of Enforcement

cc: Lawrence J. Hanley, International President
Amalgamated Transit Union
10000 New Hampshire Avenue
Silver Spring, MD 20903

Yvonne Williams, President
ATU Local 192
8460 Enterprise Way
Oakland, CA 94621

Margot Rosenberg, Esq.
Leonard Carder
1330 Broadway, Suite 1450
Oakland, CA 94612

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