



December 20, 2018

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on March 31, 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 candidate [REDACTED] used the ATU logo in his campaign literature. Section 401(g) of the LMRDA prohibits the use of union resources to promote any candidate for union office. Use of a union logo for campaign purposes may violate section 401(g) where the logo has market value, such as when the logo is protected by trademark, where the union restricts the use of its logo in some manner (such as requiring permission before the logo may be used for any purpose), and where the manner of its use implies that the union has endorsed a candidate. Section 41 of the ATU Constitution and General Laws provides that the union's "official seal . . . shall be used for no purpose other than business pertaining to the Organization."

There was no violation of section 401(g) in the instant case. The investigation established that [REDACTED] campaign literature included a picture of the local's current collective bargaining agreement (CBA) with employer Alameda-Contra Costa Transit District. The cover of that CBA features a photograph of the Local 192 building, and the Local 192 building, in turn, bears the ATU seal. The appearance of the ATU seal in this context could not reasonably be construed as an endorsement of candidacy by the union. Even if it could be so construed, the investigation established that [REDACTED]

opponent, winning candidate [REDACTED], used a similar picture of the CBA's cover on her own campaign literature. Moreover, the investigation disclosed that, after you complained to the election committee about the appearance of the ATU seal in [REDACTED] campaign literature, the election committee directed [REDACTED] to remove the seal from his campaign material, and [REDACTED] complied. The investigation also established that the union then sent a letter to candidates reminding them not to use employer or union resources, including the union's logo, to support their candidacy. There was no violation.

You also raised several allegations that the election was not conducted in accordance with 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.

First, you alleged that the appointed election committee members never came before the executive board for recommendation to the membership. You alleged that membership approval of the election committee was required by the local bylaws. 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.

Second, you alleged that it was improper for the local to hold its election by mail ballot. During the investigation, you clarified that you believed the bylaws required a polling place election. The Department's investigation disclosed that article 23 section 8 of Local 192's bylaws, as amended in 2015, provides for mail ballot elections. The Department's investigation further established that the union provided you with a copy of the letter sent to Local 192 by ATU International President [REDACTED] dated March 27, 2015, approving amendments to Local 192's bylaws, including the provision for election by mail ballot. There was no violation.

Third, you alleged that the union provided no notice when the election committee chair resigned. You alleged that only the two remaining election committee members observed the ballot pickup at the post office and transported the ballots to the union hall on December 1, 2017. You alleged that having only two election committee members perform these steps violated the local bylaws. The Department's investigation confirmed that election committee chair [REDACTED] resigned from the election committee on November 15, 2017. Article 23 section 7 of the bylaws authorizes the local

president to appoint a three-member election committee. However, the bylaws do not require that any notice be given if one of the members resigns. The investigation established that the two remaining election committee members performed the duties of the election committee. There was no violation.

Fourth, you alleged that union attorney [REDACTED] interfered during the ballot tally by advising the election committee. You alleged that there were no union bulletins requesting or authorizing the use of any attorney and that the attorney's involvement violated the local's bylaws. The Department's investigation established that the union's bylaws do not address whether the union's attorney may attend the tally or provide guidance to the election committee. The investigation uncovered no evidence that the attorney did anything improper during the ballot tally. There was no violation.

Next, you alleged that candidate [REDACTED] campaigned on union time while she was an acting shop steward. You identified member [REDACTED] as a witness to this allegation. As noted above, section 401(g) of the LMRDA prohibits the use of union funds to promote 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. The Department's investigation did not substantiate this allegation. Padda denied witnessing [REDACTED] campaigning on union or employer time. [REDACTED] provided a signed statement attesting that she did not campaign on union or employer time. There was no violation.

You next alleged that Local 192 election committee chair [REDACTED] posted comments on a Facebook page informing members about candidates for whom they should and should not vote. You alleged that, as the chairperson of the election committee, [REDACTED] should have been fair and impartial during the election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election.

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

Neither the LMRDA nor the union's constitution and bylaws 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 [REDACTED] 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 a large, suspicious crate in the back of the vehicle that election vendor UniLect used to transport the voted ballots from the post office to the union hall. 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 vehicle 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 vehicle and then removed, still sealed and locked, from the vehicle 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 also alleged that you did not see the name of then-incumbent local vice president Sandra Lee listed as either eligible or ineligible to vote. The Department's investigation established that Lee was a member in good standing and that her name appeared on the voter eligibility list. Lee confirmed that she received a ballot. There was no violation.

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,

[REDACTED]
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Chief, Division of Enforcement

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