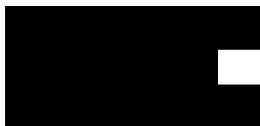




December 19, 2019



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on February 15, 2018, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the regularly scheduled election of union officers conducted by the International Brotherhood of Teamsters, Local 264, on October 26, 2016.

The Department of Labor (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. Following is an explanation of this conclusion.

You made three allegations implicating the right to vote provided in section 401(e) of the LMRDA. Under this provision, every member in good standing has the right to vote for or otherwise support the candidate or candidates of the member's choice. 29 C.F.R. § 452.84.

First, you alleged that Local 264 failed to adequately accommodate members' requests for duplicate ballots after the union learned of a flaw in the design of the outer ballot return envelope. The investigation disclosed that the back of the outer ballot return envelopes that were included in the ballot packages mailed to members on September 20 and September 27, 2016, contained the voter's home address as well as a barcode. In some instances, the post office's sorting machine scanned the back of the envelope containing the voter's home address and barcode instead of scanning the front of the envelope containing the address of the post office box the union secured for the return of the voted ballots. As a result, the sorting machine rerouted voted ballots enclosed in such envelopes back to the voter's home address.

To remedy this problem, the union hired a printer that designed a new outer ballot envelope to be included in the duplicate ballot packages. The newly-designed envelopes did not contain the voter's home address or a barcode on the back of the envelopes, which allowed the sorting machine to correctly route those envelopes to the designated post office box. To alert members to the availability of the duplicate ballot packages containing the newly designed envelopes, the union mailed a letter to each member's last known home address on October 5, 2016, informing members that they should request a duplicate ballot package if their voted ballots had been returned to them and instructing members on how to obtain such ballots. In response to the October 5 letter, members called the union office requesting duplicate ballots or left messages to that effect in the union's voicemail. The investigation showed that the union office staff checked the union's voicemail daily to ensure that the voicemail was not full and that members could leave requests for duplicate ballots in the voicemail. The investigation also showed that office staff forwarded requests for duplicate ballots to the printer/ mailer for processing and mailing on a daily basis.

The investigation further disclosed that initially the union's office manager mistakenly informed at least one member who called the union office and requested a duplicate ballot that the member could not request such ballot until the member's voted ballot had been returned to his home address. After this incident, the election supervisor informed the office manager that she should mail a duplicate ballot to every eligible voter who requested one. Thereafter, the office manager honored all requests for duplicate ballots. As a result, Local 264 mailed 487 duplicate ballots to members who requested them. The investigation did not disclose any evidence that the union failed to adequately accommodate members' requests for duplicate ballots. The LMRDA was not violated.

Second, you alleged that the union's office manager gave members incorrect information when she told them to cross out the barcode on the back of the outer envelopes enclosing their voted ballots and to then mail the envelopes back to the designated post office box. As stated above, Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. The investigation disclosed that the union's office manager initially instructed several members to cross out the barcode and other identifying information on the back of the outer ballot return envelope but then stopped providing those instructions. During the vote count, the union was unable to count five ballots because the identifying information on the ballot return envelope had been crossed out. As a result, the union voided those five ballots and did not include them in the tally. Because those ballots were not included in the tally, those voters were denied the right to vote. However, the smallest vote margin for any race in the election was 255 votes. Thus, this violation of the LMRDA could not have affected the outcome of the election.

Third, you alleged that the union failed to count the voted ballots of members employed by the Lakeshore Central School District (Lakeshore) for only 10 months out of the year because their names did not appear on the voter eligibility list generated by the International. The investigation disclosed that the voted ballots of 23 Lakeshore members were not counted or included in the vote tally. To the extent that the LMRDA was violated concerning these 23 voters, the smallest vote margin for any race was 255 votes. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

Additionally, you alleged that the incumbent candidate for recording secretary used a union credit card to pay the postage on certain ballot packages that had been returned to the post office as undeliverable. Section 401(g) of the LMRDA prohibits the use of union funds to promote any person's candidacy in an election of union officers. 29 C.F.R. § 452.73. This prohibition includes any cost incurred by a union or anything of value contributed by a union. The investigation disclosed that during the election the incumbent candidate for recording secretary accompanied election committee members to the post office to check for ballot packages that had been returned to the post office as undeliverable. During that visit, the candidate realized that some of the ballot packages had been returned to the post office for insufficient postage. On the advice of the election supervisor, the candidate used a union credit card to pay for the outstanding postage and the post office re-mailed the packages to the intended recipient. The candidate's use of a union credit card to pay for the outstanding postage on such packages did not promote the candidacy of any particular candidate in the election and, thus, did not constitute an unlawful expenditure of union funds in violation of section 401(g). The LMRDA was not violated.

Finally, the investigation disclosed that you did not comply with the mandatory pre-election protest procedures prescribed in the union's constitution and bylaws regarding your September 23 and October 10, 2016 pre-election protests.

Section 402 of the LMRDA requires a complaining union member either to have properly exhausted the remedies available under the labor organization's constitution and bylaws or to have invoked such available remedies for three months without receiving a final decision in order to file a valid complaint with the Department. The purpose of the exhaustion and invocation provisions is to preserve, to the maximum extent feasible, the independence of the labor organization from unnecessary governmental interference, by giving the labor organization the first opportunity to cure any defects in its election process.

In the present case, the International constitution provides that a member must file a pre-election protest with the local union secretary treasurer in writing within 48 hours of knowledge of the event complained of for referral to the Local Executive Board (LEB). An adverse decision of the LEB may be appealed to the General President within

15 days of that adverse decision. A decision from the General President may be appealed to the General Executive Board within 15 days of the General President's decision.

Regarding your September 23, 2016 pre-election protest, the investigation disclosed that the LEB issued an adverse decision on your protest on November 1, 2016. Therefore, you were required to file an appeal with the General President within 15 days of that adverse decision or November 16, in order for the appeal to have been timely. You did not file an appeal with the General President until November 27, 2016. Therefore, you failed to file a timely appeal with General President. With respect to your October 10, 2016 pre-election protest, the LEB denied that protest in a letter dated December 26, 2016; therefore, you had until January 10, 2017, to file a timely appeal with the General President. However, you never appealed that adverse decision to the General President or the General Executive Board. Therefore, you failed to properly exhaust the remedies available under the union's constitution and bylaws regarding the October 10 pre-election protest. As a result of your failure to comply with the mandatory pre-election protest procedures prescribed in the union's constitution and bylaws, the allegations in your September 23 and October 10 pre-election protests are not properly before the Department and are dismissed.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV 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: James Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Brian Dickman, President
Teamsters Local 264
35 Tyrol Drive
Cheektowaga, NY 14227