



February 13, 2018

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your October 23, 2017 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the election of local officers of the International Brotherhood of Electrical Workers (IBEW) Local 611 conducted on June 1, 2017, and the runoff election conducted on June 22, 2017.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation occurred which may have affected the outcome of the election.

First, you alleged that, prior to the runoff election, union officials made campaign calls in support of Business Manager Carl Condit to members using personal phone numbers from a union membership list. You identified two members whom you claim received these campaign calls. Section 401(g) of the LMRDA provides that union resources may not be used to support a particular candidate's campaign.

The Department investigated this allegation and found no evidence of a violation. Assistant Business Manager Santos Griego admits that he contacted [REDACTED] but states that the call was related to union business. Ben Jr. confirmed that Griego initially called about his delinquent dues but then claims that Griego engaged in campaigning in support of Condit. Assistant Business Manager Baudilio Baca similarly stated that he called [REDACTED] in order to tell [REDACTED] about a picture he had of him with his father that was taken during his initiation in May 2017. According to Baca, it was [REDACTED] who brought up the election. While use of union funds for campaigning purposes is prohibited by section 401(g), campaigning incidental to regular union business is not a violation. 29 C.F.R. § 452.76. The Department's investigation revealed that any campaigning that may have occurred on these calls was incidental to other regular union business. There was no violation.

Second, you allege that Condit and his supporters campaigned at worksites on employer property during work hours. Specifically, you claim that campaigning occurred at the B&D Electric, Enterprise Electrical Services, and U.S. Electric worksites. You also allege that Condit used the union vehicle when traveling to these worksites. Section 401(g) of the LMRDA prohibits the use of union or employer resources to promote any candidate for union office.

The Department investigated these allegations and uncovered evidence that campaigning occurred at the B&D Electric worksite during work hours. Two members reported that they observed Condit campaigning during and after the safety meeting on June 6, 2017. This campaigning constitutes a violation of Section 401(g) of the LMRDA. The Department, however, confirmed that 31 members of IBEW Local 611 attended the June 6 safety meeting and, of those, only three voted in the June 22 runoff election. Because the margin of victory in the runoff election was 37 votes, the three potentially affected votes could not have impacted the outcome of the election. The investigation did not uncover facts supporting your allegations relating to other worksites or to use of the union vehicle.

Third, you claim that Condit, Baca, and Trujillo had improperly campaigned at the Joint Apprenticeship and Training Committee (JATC) for the Electrical Industry and that this constituted disparate candidate treatment because you were not permitted to campaign at this site. Section 401(c) of the LMRDA prohibits disparate candidate treatment. 29 C.F.R. § 452.66.

The Department's investigation revealed that Condit and Baca campaigned at the JATC before the 5:00 p.m. classes on Monday, June 5, and Tuesday, June 6. While the JATC maintained a rule prohibiting campaigning onsite, Local 611 and the JATC Director offered you an opportunity to campaign at the JATC following Condit and Baca's campaigning. Although you claim that this was not an adequate remedy because the ballots for the runoff election had already been mailed out, the Department determined that this was a reasonable offer because the ballots were mailed out on June 5 and this offer was made to you on June 7, which would have been sufficient time for you to campaign. Since a reasonable offer was made to eliminate any disparate treatment, there was no violation.

The Department did, however, determine that Baca had not taken leave when conducting this campaigning. Local 611's work schedule is from 8:00 a.m. to 5:00 p.m. As a result, Baca's campaigning took place on union time, in violation of section 401(g) of the LMRDA. Nonetheless, the Department determined that this violation could not have affected the outcome of the election. A total of 27 apprentices attended classes on the two days that Condit and Baca campaigned at the JATC; of these 27, only six voted

in the runoff election. Again, this number is not sufficient to alter the outcome of the election.

Fourth, you similarly allege that [REDACTED], a supporter of Condit, improperly distributed campaign literature at the Los Alamos National Laboratory (LANL) site on employer time. You allege that this gave Condit an unfair advantage as other candidates were not permitted to campaign at this site.

During the course of its investigation, the Department obtained a copy of the LANL Code of Conduct, dated August 11, 2014, which states that "campaigning or distributing political materials on Laboratory property or through Laboratory resources is prohibited." Accordingly, it was a violation of sections 401(c) and 401(g) for [REDACTED] to distribute campaign literature at this location. When the Department interviewed [REDACTED], he claimed that he only distributed three or four campaign cards, and that the only person he could specifically identify as having received a campaign card was [REDACTED]. The Department's review of the election records confirmed that [REDACTED] did not vote in either the initial or the runoff election, and therefore his receipt of campaign literature could not have impacted the outcome of the election. The remaining three members who may have received campaign cards are not sufficient to have affected the outcome of the election. Accordingly, there was no violation which may have affected the outcome of the election.

Fifth, you allege that there were irregularities with the union membership list which may have resulted in some eligible members not being mailed ballots and some ineligible members being permitted to vote. You base this allegation on the fact that Bookkeeper Judy Burkhalter provided you with inconsistent numbers when you requested the total number of eligible members prior to the initial election. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote in a union election.

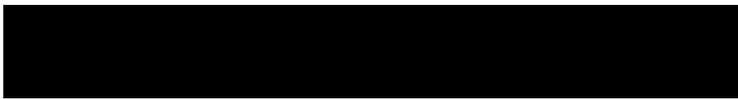
The Department did not uncover any evidence during the course of its investigation that indicated a problem with the membership list. Rather, when you first contacted Bookkeeper Burkhalter to request the number of members, she provided you with the correct number of members. She later wrote that number down but, in doing so, transposed the figured and mistakenly provided you with an incorrect number when you called again. While you were provided with an incorrect number, there is no evidence to suggest that this reflected a change to the membership list. Accordingly, there was no violation.

Finally, you allege that the ballots were miscounted, resulting in some ballots being improperly disqualified. Again, section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote in a union election.

The Department determined that certain ballots not included in the tally should have been counted. A maximum of one ballot was improperly disqualified in the original election, and a maximum of two ballots were improperly disqualified in the runoff election. In neither case was this sufficient to alter the outcome of the election, as 19 additional votes were required in the initial election to win a majority, and the margin in the runoff election was 37 votes. Thus, there was no violation of the Act that affected the outcome of the election.

You have also alleged that Condit used the union car while on union time to go to the post office to observe the collection of ballots during the runoff election on June 22, 2017. This allegation would not have constituted a violation of Title IV of the LMRDA. For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



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Division of Enforcement

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