



January 23, 2018



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint to the Department of Labor, received April 17, 2017, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the December 13, 2016, election of union officers held by Local 1359 (local or Local 1359), International Longshoremen's Association (International).

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded, with respect to your specific allegations, that there was one violation of the Act that may have affected the outcome of the election, but that violation was remedied by the South Atlantic and Gulf Coast District (District). As to your remaining allegations, the Department has concluded that there was no other violation that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the local failed to include three auditor positions in its election notice. An election notice must contain specific information, including all offices to be filled, and must be mailed to every member's last known home address not less than fifteen days prior to the election. 29 U.S.C. § 481(e); 29 C.F.R. § 452.99. The investigation disclosed that the election notice, mailed November 7, 2016, did not list the three officer positions of auditor. By the time the local discovered its error, there was insufficient time to meet the 15-day minimum notice. As a result, the District, in its April 3, 2017 decision, upheld your appeal, and ordered a new election for three Auditors. That decision preceded your administrative complaint, filed with the Department on April 17, 2017. Consequently, the District, and not the Department, will supervise Local 1359's new election for three auditors.

You alleged that the local should not have permitted certain nominees to run for office because they were nominated by members not in good standing. The investigation disclosed that the union constitution and bylaws prohibits those who have been suspended or expelled from participating in nominations for union office. However, two members who were either suspended or expelled from membership nevertheless

nominated several members for office. Although the two nominators were ineligible to nominate any member under the terms of the International Constitution and the local bylaws, all the members nominated were in good standing and eligible to run for office. Given that the local permits any member to self-nominate, those nominees' acceptance of their nomination served as their self-nomination. There was no violation.

You alleged that the local failed to provide adequate safeguards when it permitted an election committee member to speak Creole to voters at the polls. The investigation disclosed that between 60-70 local members speak Creole only or have difficulty reading and understanding English. At the direction of the election committee chair, an election committee member fluent in Creole informed Creole-speaking members that they cannot vote for more than five trustees and three auditors or their ballot would be rejected by the voting machine. Ballots had been rejected prior to these members receiving instruction in Creole. One of the candidates' observers who was present at the poll and who understands Creole confirmed that at no time did that election committee member instruct any Creole-speaking member to vote for any candidate. The local properly permitted voting instructions in Creole to allow its Creole-speaking members a reasonable opportunity to vote. There was no violation.

You alleged that seventeen members were denied the right to vote when they failed to pay an assessment fee imposed without prior notice of delinquency, and not enforced in prior elections. Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. Article XIV, section 5 of the International constitution provides that

[a]ny member, who is thirty . . . days or more in arrears in the payment of dues shall be automatically, and without notice, suspended from all rights and privileges of membership. Any member who is eighty . . . days or more in arrears in the payment of dues shall be given written notice that failure to pay within ten . . . days shall mean automatic expulsion; and upon his/her failure to pay within such ten . . . days, he/she shall be automatically, and without further notice, expelled or dropped from the local.

Article XIV, section 3 of the local bylaws reiterates the same language. Article XIV, section 6 of the International Constitution provides for reinstatement of expelled or suspended members upon the payment of all moneys due at the time of his suspension or expulsion. Those expelled must also pay the initiation fee and any additional indebtedness for dues and assessments as accrued during the period of expulsion. Unless, the local union orders with the approval of the International Secretary-Treasurer orders otherwise. The section further provides that "nothing herein shall be construed to compel a local to reinstate or readmit an expelled member."

This provision is reiterated in Article XIV, section 6 of the local bylaws.

The investigation disclosed that fifteen members were not permitted to vote in the December 13, 2016 election because they failed to pay a reinstatement fee. In 2009, the local had obtained approval from the International to impose a \$250 reinstatement fee for dues arrearages, instead of the \$1,000 initiation fee specified under Article XIV, section 1 of the Local's Bylaws,. The local membership approved the imposition of a reinstatement fee during its August 2016 membership meeting. As required by the International Constitution, the local mailed delinquency notices to all fifteen members, advising them of their delinquency and/or suspension/expulsion. On the day of the election, the local permitted those 15 members to pay all dues owed, including the reinstatement fee, to allow them to regain their good standing. However, all 15 declined to do so. The local nevertheless permitted those fifteen members to vote by challenged ballot and allowed them an additional ten days to show cause why their vote should be counted. None of those members availed themselves of that opportunity. The local decided not to count the votes of those fifteen people because they failed to pay all dues owed, including the reinstatement fee, and were thus ineligible to vote. There was no violation.

You alleged that two nominees who were either delinquent in dues or owed money to the local were permitted to run for office. Section 401(e) provides in relevant part, that every member in good standing shall be eligible to be a candidate. Article XIII, section 3(a) of the International Constitution provides that a candidate for office must be a member in good standing for at least one year preceding the nominations meeting. The one-year qualifying period was from November 22, 2015 through November 22, 2016, the date of the local's nominations meeting. Section 3(o) of the LMRDA defines "member in good standing" as one who has fulfilled the requirements for membership and has neither voluntarily withdrawn from membership nor been expelled or suspended from membership, among other things not relevant here.

The investigation disclosed that the names of both candidates, [REDACTED] and [REDACTED], were erroneously placed on the dues delinquency list. [REDACTED] name should not have been on the dues delinquency list because he was current in his dues payments. Similarly, incumbent presidential candidate [REDACTED] name also should not have been on that list because he owed no dues. However, [REDACTED] did owe the local approximately \$1,000 for a hotel room reserved originally for two office secretaries who declined to attend the 2014 district's convention at the last minute, at which time [REDACTED] daughter used that room instead. [REDACTED] paid the amount due on November 28, 2016, prior to the election. Since both of those candidates owed no dues to the local within the one-year qualifying period, both were in good standing and eligible to run for office. There was no violation.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election that has not been remedied. Accordingly, the office has closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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