

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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March 13, 2018



Dear [REDACTED]

This Statement of Reasons is in response to your complaint to the Department of Labor, received August 21, 2017, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the June 26, 2017 election of union officers held by Local 1055 (local or Local 1055), International Brotherhood of Electrical Workers (International).

The Department of Labor (Department) conducted an investigation regarding your allegations. As a result of the investigation, the Department concluded that there was no violation that may have affected the outcome of the election.

You alleged that the local used an inaccurate membership list to mail ballot packages and as a result, eligible members did not receive a ballot and ineligible members were allowed to vote. Section 401(e) of the LMRDA provides in relevant part that "every member in good standing shall . . . have the right to vote for . . . the candidate or candidates of his choice . . ." Further, Section 401(c) of the LMRDA requires that a union provide "adequate safeguards to insure a fair election," which has been interpreted to require a general rule of fairness in the conduct of election. 29 C.F.R. § 452.110(a). The investigation disclosed that the local inadvertently printed ballot mailing labels for both eligible (active) and ineligible (inactive) members. The local discovered its mistake on the day it was mailing the ballots, May 26, 2017. Instead of reprinting the active list containing mailing labels for only eligible members, or checking a voter eligibility list, the election committee members used their own personal knowledge to determine each member's eligibility. However, the correct membership list was used to verify members' eligibility during the tally conducted on June 26, 2017.

The investigation determined that 198 of the 340 active members (58%) voted in the election. Only one ineligible voter participated in the election. The local addressed and

mailed a ballot to [REDACTED], who is not a member of the local. The ineligible vote cast by [REDACTED] was included in the tally in violation of section 401(e).

The election records also showed that 39 members did not initially receive a ballot. Of those members, 35 were mailed a replacement ballot. Of the four members who were not mailed a replacement ballot, three knew of the election but chose not to vote. Only one member, [REDACTED], stated he could not recall whether he was aware of the election, and he did not vote. The failure of the local to mail that eligible member a ballot denied him the right to vote in violation of section 401(e).

In summary, one eligible member, [REDACTED], was denied the right to vote and one ineligible member, [REDACTED], voted and his vote was included in the tally. However, section 402(c) of the LMRDA requires that an election will only be overturned if a violation may have affected the outcome of the election. These violations concerning two members could not have affected the outcome of the election, because the lowest margin of victory was six votes. There was no violation that may have affected the outcome of the election.

In addition, you made several allegations that the incumbent business manager [REDACTED] t [REDACTED] campaigned on time paid for by employer Gulf Power Company (employer) and by the union. Specifically, you alleged that [REDACTED] promoted his candidacy by visiting the Crist Plant, a worksite of the employer, on a number of occasions. You allege that he gained access denied to other candidates. You further allege that while there he shook members' hands and told members that he was on his own time. You saw the statement about being on his own time as an admission that he was campaigning. Section 401(g) of the LMRDA provides in relevant part that "[n]o moneys received by any labor organization by way of dues . . . and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title." This prohibition includes campaigning on union or company time. 29 C.F.R. § 452.76, 78(a).

The investigation disclosed that [REDACTED] visited the Crist Plant on a number of occasions in 2017, obtaining permission from the Crist Plant manager before entering the premises. On one of these dates, [REDACTED] was accompanied by then financial secretary [REDACTED], successful candidate for local president. The investigation disclosed that he made these visits for grievance handling purposes, as well as for discussions of retirement benefits and the fairness of treatment of employee-members during the prior year's Christmas holidays. The investigation did not find evidence that anyone heard or saw [REDACTED] campaign at any of these visits. With respect to [REDACTED] comment about being on his own time, he stated he meant that he was not receiving any extra pay to meet with employee-members to discuss grievances or retirement benefits. Both [REDACTED] admitted shaking members' hands as

a gesture of courtesy. The investigation did not disclose evidence to show that [REDACTED] campaigned while at the employer's work site. There was no violation.

Finally, you alleged that [REDACTED] used the local's membership lists, a resource of the union, to promote his candidacy. Specifically, you alleged that at the tally, [REDACTED] checked off names from lists he obtained from the union to promote his candidacy. Section 401(g) of the LMRDA prohibits union officers from using union resources, including union lists unavailable to other candidates, to promote their candidacies. The investigation disclosed that [REDACTED] had two lists which he had compiled over a ten-year period. The lists were compiled by his accessing the employer's intranet. All employees had similar access. [REDACTED] two lists - one containing the names of members in alphabetical order, with job titles and plant locations, and the other with similar information but not in alphabetical order - differed substantively from the union's voter eligibility list used at the tally. [REDACTED] stated he compiled his lists during hours not paid for by the union or employer, and the investigation found no evidence that contradicted his statements. Further, [REDACTED] made no campaign mailings for the election at issue using the lists. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file in this matter.

Sincerely,

[REDACTED]
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Chief, Division of Enforcement

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