



March 20, 2018



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on October 4, 2017, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of the International Brotherhood of Electrical Workers (IBEW) Local 1186 (Local 1186 or Union), conducted on June 17, 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 alleged that because the Union failed to utilize True Ballot, Inc. to conduct the election, the Union's Election Committee unlawfully processed ballots and improperly accessed the ballot post office boxes. Specifically, you alleged that Election Committee member [REDACTED] checked "undeliverable" mail ballots often without notifying candidates, and re-mailed the undelivered ballots. Section 401(c) of the LMRDA provides that candidates, upon request, must be permitted to have an observer present at the preparation and mailing of the ballots, among other steps of the process including receipt. *See* 29 C.F.R. § 452.107(c). Further, Section 401(e) of the Act requires that officer elections must be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the Act. In addition, Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

Art. III, Sect. 8 of the Union's bylaws gives the Election Judge "the authority to establish additional procedures and safeguards not inconsistent with election rules and in conformance with the conduct of a fair election" in order to mail an official ballot to all eligible voters. Thus, Election Judge [REDACTED] had the authority to establish additional procedures using the Election Committee and commercial printing services to assist True Ballot – which did not have a representative in Hawaii – in the printing,

folding, and mailing of ballots. The investigation confirmed that the post office box for ballots returned to the Union as “undeliverable” was checked only on June 2, 8, and 12, 2017 – the same dates printed on the election agenda distributed at the candidates’ May 20, 2017 meeting. No observers requested to be present when the post office boxes were checked on the scheduled dates and True Ballot resent any duplicate ballots. The Department’s examination of the ballots also did not reveal any evidence of ballot tampering. There was no violation of the Act.

You next alleged that the ballot printing and folding were inappropriately conducted by Service Printers instead of True Ballot without Election committee members present to oversee the process and to ensure the security of the ballots. As stated above, additional procedures for the printing and folding of ballots to supplement True Ballot’s services did not violate the adequate safeguards provision of the LMRDA or the union’s constitution and bylaws. Candidate [REDACTED] disclosed that Election Committee Member [REDACTED] along with three candidates, were present at the ballot printing. Further, appropriate safeguards were utilized in the preparation of ballots, including recording the number of ballots printed, shrink-wrapped and folded. There was no violation of the Act.

You further alleged that contrary to the Union’s bylaws, candidates were not adequately informed of the date, time and place of ballot preparation and mailing, thus denying their right to have observers present. The “IBEW Local Union Election Guide” states that the election committee is to inform all candidates of the date, time, and place for the preparation and mailing of the ballots and of their right to have an observer present, without giving a time limit for this notice. The Union’s constitution and bylaws are silent on the subject of the election judge informing candidates about election events.

Election Judge [REDACTED] originally informed candidates that the ballot printing would be performed on May 24, 2017, and folding would occur on May 25, 2017. As noted above, three candidates attended the ballot printing. [REDACTED] informed candidates via email and text message that observers could attend the ballot stuffing and mailing at Service Printers, with the date changed from May 25 to May 30, 2017. On May 24, 2017, [REDACTED] sent a text message to candidates that the folding would occur the next day. On May 25, 2017, [REDACTED] sent another text message to candidates confirming that the ballot inserting and mailing would both occur on May 30, 2017 – the same mailing date stated on the election agenda given to candidates. Thus, candidates were notified of the date, time and place of ballot preparation and mailing, and of their right to have an observer present. There was no violation of the Act.

You next alleged that the Union failed to provide adequate safeguards for a fair election because candidate [REDACTED] was allowed to view undeliverable and late ballots at

the post office without signing in or having a key. However, this event allegedly occurred on June 24, 2017, the week after the conclusion of the election. [REDACTED] acknowledged that the post office worker did not let him touch the ballots. There was no other evidence of ballot tampering or evidence that other unauthorized individuals were allowed to handle the ballots at the post office. There was no violation of the Act.

You further alleged that contrary to the IBEW Constitution, the incumbent Unity Team slate used a modified version of the union's sample ballot for campaigning. Section 401(g) of the LMRDA prohibits the use of union or employer resources to promote the candidacy of any person in union officer elections. 29 C.F.R. §§ 452.73, 78. Specifically, you claimed that the image appeared to be an original sample ballot which was union property, and that sample ballots were not provided to other candidates. Section 401(c) of the LMRDA also prohibits disparate candidate treatment. When a union or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate that requests it. 29 C.F.R. § 452.67. Art. 25, Sect. (m) of the IBEW Constitution states in part: It shall not be considered an offense when a L.U. mails or posts in a conspicuous place a sample of the official ballot to be used in any L.U. election. However, the sample shall not carry any markings of any kind except that the word 'SAMPLE' shall appear prominently across the face of the ballot. The sample shall otherwise be an exact duplicate of the official ballot used.

The Union's Research and Communications Director confirmed that after work, he took a picture on his personal cell phone of the sample ballot posted in the union office elevator, downloaded the picture on his home computer, removed the word "sample" with his home computer software, and marked it with the Unity Team slate before giving the modified image to a supporter of the slate. Thus, no union resources were used for creating the modified sample ballot. Although the IBEW Constitution prohibits local unions from modifying sample ballots, it does not have a prohibition for candidates or their supporters. There was also no indication that any candidates requested a sample ballot from the Union. Additionally, after a pre-election protest was filed regarding the use of the modified sample ballot, the Election Judge removed the original sample ballot from the union office elevator. There was no violation of the Act.

You next alleged that Executive Board At-Large Candidate [REDACTED] was improperly disqualified from candidacy because he was considered an apprentice and not eligible for office. Pursuant to Section 401(e) of the LMRDA, every member in good standing is eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Art. III, Sect. 7(f) of the Union's constitution and bylaws state: "No apprentice shall be eligible to hold office in any office in the local except that a member who has previously eligible to hold office in the LU shall remain eligible if he entered an apprentice program for the purpose of upgrading his

classification.” This provision is mirrored in Art. 15, Sect. 14 of the IBEW Constitution. The investigation confirmed that [REDACTED] has not taken the required test (“JATC certification”) for a state license to become a journeyman, and was so notified by letters dated December 3, 2014, August 8, 2016, and January 31, 2017. Therefore, [REDACTED] was properly disqualified from running as an apprentice. While you pointed out that Executive Board Member [REDACTED] had never taken the required test, the investigation determined that [REDACTED] joined IBEW in 1986, was a journeyman installer and wireman, and was elected to his position before the licensing rule became effective in 2014. Therefore, [REDACTED] was eligible for candidacy in 2017 because he was previously eligible to hold office in Local 1186. There was no violation of the Act.

You further alleged that [REDACTED], the IBEW 1186 Apprentice Coordinator and a Unity Team candidate, used union or employer resources to campaign when he sent text messages to the Unit 1 apprentices encouraging them to vote for the Unity Team slate. The investigation confirmed that [REDACTED] sent a campaign message from his personal cell phone, on his own time during the weekend. However, [REDACTED] used a list of phone numbers primarily obtained from contact sheets in the Union’s apprentice files – a union resource – in violation of Section 401(g) of the LMRDA. Section 401(c) of the Act also prohibits discrimination in favor of any candidate with the use of membership lists. Thus, using contact information from the Union’s apprentice files to campaign on behalf of one slate but not other candidates also violated Section 401(c). However, Section 402(c) of the LMRDA provides that an election will be overturned only where a violation may have affected the outcome of the election. Here, the investigation demonstrated that that the violation could not have affected the outcome of the election. Of approximately 258 identifiable Unit 1 apprentices who were sent the campaign text message, only 104 voted in the election. The campaign emails may have affected the votes of only these 104 members. However, the smallest vote margin in the election was 188 votes for the Executive Board Member-Unit 1 position. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You next alleged that Financial Secretary and Business Manager [REDACTED] campaigned at an apprenticeship class using employer or union resources. In determining whether a union communication promotes a person’s candidacy, courts evaluate the communication’s timing, tone and content. With respect to timing, [REDACTED] speech occurred on April 26, 2017, about three weeks before nominations for candidacy were held. The tone of [REDACTED] speech did not promote the incumbent officers and was not critical of any potential opposition nominees. Although [REDACTED] encouraged apprentices to get more involved with the Union and to vote in the election, the content of [REDACTED] speech did not encourage or endorse the reelection of the incumbent officers, or disparage any potential candidates. To the extent [REDACTED] comment about having a “good team” working with him at the Union might be construed as campaigning, the comment was incidental to his regular union business of speaking at apprenticeship

classes. *See* 29 C.F.R. § 452.76 (“Campaigning incidental to regular union business would not be a violation.”) Consequently, [REDACTED] speech did not constitute the unlawful use of a union’s or employer’s resources in violation of Section 401(g).

You further alleged that the Union failed to prevent tampering of returned “undeliverable” ballots as evidenced by the lack of cancelled postage on two returned ballots when the Election Committee picked up the late ballots and closed the mail boxes. However, these two returned ballots had bar codes printed by the Postal Service at the front of the envelopes. The Postal Service confirmed that some envelopes may not be cancelled, but the bar code on the bottom indicates that they were in fact processed by the Postal Service. The investigation revealed no other evidence of ballot tampering. There was no violation of the Act.

You next alleged that the Unity Team slate was improperly given access to the Union membership list to send an anonymous flyer critical of you that had address labels and postage stamps affixed but no return address. Valenti Printing Group confirmed that it did not distribute this mailing. No evidence was found indicating: 1) the author or distributor of the flyer, 2) the identity or number of recipients of the flyer, 3) that the Union paid for the mailing, or 4) that the Union’s membership list was used to distribute the flyer. All four Business Manager candidates denied sending the flyer. Election Judge [REDACTED] also denied giving any candidate the Union membership mailing list. There was no evidence of disparate treatment of candidates, or the use of union resources or membership lists, in the distribution of this flyer. Further, the investigation disclosed that anonymous campaign materials had been distributed in past elections. Therefore, there was insufficient evidence of a violation of the Act affecting the outcome of the election.

Finally, you alleged that Election Judge [REDACTED] favored the Unity Team slate and disparately treated other candidates. Specifically, you alleged that [REDACTED] 1) improperly dismissed or failed to address some of the election protests, and 2) permitted [REDACTED] to speak last while requiring other Business Manager candidates to draw lots to campaign after a membership meeting. The investigation disclosed that [REDACTED] only investigated the first election protest about the preparation and handling of ballots, with the remaining protests decided by International Vice President [REDACTED]. As explained above, there was no basis for the protest concerning the preparation and handling of the ballots, and therefore no error in [REDACTED] denying that protest. As to the order of speeches by the Business Manager candidates, no method to determine order is specified in the IBEW Constitution, Local Bylaws or election rules and all candidates had the same opportunity to speak. There was no violation of the Act.

Your complaint to the Department also raised issues that were not addressed in your protest to the union. Section 402(a) of the LMRDA requires that allegations of wrongdoing be raised with the union before being brought to the Department. Therefore, these allegations were not investigated.

In sum, as a result of the investigation, the Department has concluded that there was no violation of the Act affecting the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



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