



March 9, 2018



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on July 28, 2017, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the UNITE HERE, Local 26, on March 28, 2017.

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.

First, you made allegations implicating the adequate safeguards provision in Section 401(c) of the LMRDA. That provision provides that a union must provide adequate safeguards to ensure a fair election. 29 C.F.R. § 452.110.

Initially, you alleged that some candidates on your slate received fewer votes than the votes received by the entire slate, calling into question the accuracy of the vote count. During the Department's investigation, the software engineer who programmed the equipment used to scan the ballots stated that he made a programming error and, as a result, four candidates on your slate received only the individual votes cast for each candidate and did not receive the votes cast for the entire slate. The investigation disclosed that after the engineer discovered this error, he corrected the error the next day by reprogramming the equipment so that the total votes received by each of the four candidates also included the votes received by the entire slate. The Department's recount of the votes showed that the outcome of the election was unchanged from the corrected union totals. The LMRDA was not violated.

Next, you alleged that the ballot scanner invalidated votes cast for your slate because the scanner interpreted the gray-shaded areas on the ballots as votes cast for both the individual candidates on your slate and your entire slate. The investigation disclosed that the scanner was programmed so that it did not detect or calculate any marks in the sections of the ballot that contained gray-shaded areas. The LMRDA was not violated.

In addition, you alleged that ballot tampering occurred when the ballots cast at the Providence, Rhode Island polling site were transported to the Boston, Massachusetts polling site for tabulation. The investigation disclosed that the union hired the American Arbitration Association (AAA) to assist in conducting the election. The investigation showed that an AAA representative used her personal vehicle to transport the ballots cast at the Providence polling site to the Boston polling site for tallying as soon as Providence polls closed. The investigation also disclosed that, prior to the Providence ballots being transported to the Boston location, the ballots were sealed in the ballot box with tape and the election officials wrote their signatures across the tape to ensure the security of the ballots. The investigation did not disclose any evidence that the tape securing the ballot box had been tampered with or removed while the ballots were in transit to the Boston location. Further, the Department's review of the election records disclosed that all 196 ballots that were cast at the Providence location were accounted for in the records. There was no evidence of ballot tampering or other election improprieties. The LMRDA was not violated.

You also alleged that the election committee members posted two blank ballots on a signboard at the entrance to the Boston polling site. The investigation disclosed that an AAA representative recommended that the election chairperson post two copies of blank ballots outside the Boston voting location and place an election committee member at the entrance to that location so that the member could answer voters' questions before voters entered the polling area. The election committee chairperson complied with the recommendation and wrote the word "Sample" in large letters across both ballots before posting them outside the polling site. The posting of sample ballots outside the polling place did not violate the LMRDA.

You also made allegations implicating the provision in Section 401(e) of the LMRDA requiring that a union conduct its election of officers in accordance with its constitution and bylaws.

You alleged that the union listed unopposed candidates on the ballot in violation of the UNITE HERE Constitution. Appendix A of the UNITE HERE Constitution provides that, when a local has not adopted its own bylaws, the local's election chair is required to cast a single ballot for each unopposed candidate in an officer election, and declare that candidate elected. The investigation disclosed that Local 26 has adopted its own bylaws. The Local 26 bylaws are silent regarding the names of unopposed candidates being placed on the ballot. Neither the UNITE HERE Constitution nor the LMRDA was violated.

Next, you alleged that the union's failure to provide each poll with a list of members that the union determined were not in good standing, along with the reason for the determination, violated Article 10, section 4(e) of the union's constitution. You further alleged that, because the union did not provide this list, members were prevented from paying dues arrearages at the polls and voting. The investigation disclosed that Article

10, section 4(e) of the UNITE HERE Constitution provides that the election committee must determine voter eligibility if the member's right to vote is challenged. However, the union's constitution and bylaws do not require the union to provide each poll with a list of members who are ineligible to vote. The governing documents also do not require that members be permitted to pay dues arrearages at the polls and vote. Further, Article 5, section 3 of the local bylaws and section 401(e) of the LMRDA restrict the right to vote to members in good standing. There is no evidence that the union prevented any member in good standing who went to the polls to vote on the day of the election from voting. Neither the local bylaws nor the LMRDA was violated.

You also alleged that two candidates elected to the executive board failed to attend the membership meeting and swearing-in ceremony on April 6, 2017, and that, pursuant to Article 5, Section 8 of the local bylaws, they forfeited their offices. This provision states,

The installation of all officers shall take place at the next regular meeting or at a special meeting following the election. If any officer-elect shall fail to make an appearance at the installation meeting, he/she shall forfeit the office to which he/she was elected, unless he/she has been excused by the Executive Board because of sickness or other justifiable reason.

The investigation showed that all 14 members of the executive board excused the two candidates from the April 6 meeting on the condition that they take the oath of office within two months. The Department's review of the April 11 and April 16 meeting minutes disclosed that the president-elect administered the oath of office to one candidate on April 11, 2017, and the other candidate on April 16, 2017. Neither the bylaws nor the LMRDA was violated.

In addition, you alleged that the union failed to publish the election results as required by Article 10, Section 4 of the UNITE HERE Constitution and 29 CFR 452.108. You also alleged that the union had a duty to post not just the final election results, but also the preliminary results and the methods by which those results were reached, including the number of unopposed candidates, how unopposed candidates' votes were counted, and how the slate votes were tabulated.

Article 10, Section 4(h) of the UNITE HERE Constitution requires the election committee to "report the results of the election." Article 5, Section 7 of the local bylaws requires the election results to be "announced by the Election Committee." During the investigation the election chairperson stated that the certified election results were posted on the union bulletin board at every worksite. He further stated that the union posted the results on its Facebook page. The results also were posted on the union's website on March 30, 2017, the day that the AAA officially announced the election results. Further, neither the UNITE HERE Constitution nor the local bylaws require the union to report or announce the preliminary election results or the methods by which the results were reached.

In addition, the union did not violate the Department's regulation at 29 CFR 452.108. Both Section 401(e) of the LMRDA and the regulation provides that the votes cast by members of "each local labor organization must be counted, and the results published, separately." The regulation does not provide a specific format for publication. The LMRDA was not violated.

Also, you made allegations implicating the provision in Section 401(g) of the LMRDA prohibiting the use of union funds to promote the candidacy of any person in an election of union officers. 29 C.F.R. § 452. 73.

First, you alleged that the incumbent slate used a Local 26 vendor to print the slate's campaign flyers and that the incumbent president used union funds to pay for this printing. The Department's review of the election records showed a check in the amount of \$2,204.70 from the incumbent slate's personal bank account that was made payable to the vendor on June 16, 2017. The Department verified that this amount corresponded to the totals on the vendor's invoices for campaign materials purchased by the incumbent slate. In addition, the Department's review of the bank statements for the incumbent slate's checking account disclosed that no funds were transferred from Local 26 to that account. The LMRDA was not violated.

Next, you alleged that on the day of the election organizers and other paid union staff drove voters to the Boston polling site while the organizers and staff were on paid union time. The Department's review of the organizers' and staff's leave records show that they were on personal leave for the entire day of the election. You also alleged that the organizers or staff used rented passenger vans, personal vehicles, or an employer courtesy shuttle to transport voters to the polls. The Department's review of the rental records for the passenger vans showed that the costs of these rentals were paid with personal credit cards. These payments did not involve the expenditure of union funds in violation of section 401(g). In addition, the organizers' and staff's use of their personal vehicles to transport voters to the polls did not constitute a violation of the LMRDA.

Moreover, the investigation showed that the individual you alleged used an employer courtesy shuttle to transport voters to the Boston polling site denied that he engaged in this activity. The investigation showed that on the day of the election the individual drove to the Boston location in his personal vehicle during his lunch break, voted, and then returned immediately to work. Further, the investigation showed that the individual works at a hotel in a position that does not allow him access to the employer's courtesy shuttle. The LMRDA was not violated.

Also, you alleged that organizers and stewards campaigned at hotels while on paid union time. During the investigation the organizers and stewards stated that they campaigned while on personal time. The Department's review of the timekeeping and personnel documents for these individuals corroborated that they used personal time for election-related activities. The LMRDA was not violated.

Finally, you alleged that probationary members were improperly excluded from the voter eligibility roster. Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate of his choice. Thus, a union must do more than simply afford each member the mere naked right to cast a ballot; the right each member has to vote must be meaningful.

During the investigation the union confirmed that some employees are required to serve a probationary period before becoming full members. During that period employees are not entitled to the attendant rights of membership, including the right to vote. This membership requirement does not violate the statute. However, the investigation disclosed that five voters whose names were on the voter eligibility list were required to cast provisional ballots because election officials overlooked their names on the list and assumed that they were probationary employees. The union did not include these provisional ballots in the vote tally. In addition, the ballots of seven other individuals that the union considered to be probationary employees were not included in the vote tally. The Department's review of the election records did not disclose any information supportive of the union's position that these individuals were probationary employees ineligible to vote. Thus, the LMRDA was violated when at least five and as many as 12 members were deprived of the right to cast meaningful ballots.

However, section 402 of the LMRDA provides that an election may only be overturned when a violation occurred that may have affected the outcome of the election. Here, the Department's recount of the votes showed that your slate received 90 votes and the opposing slate received 889 votes, for a vote margin of 799 votes. This vote margin far exceeded the 12 votes that may have been excluded from the vote tally. Thus, the fact that the union prevented as many as 12 members from casting meaningful ballots could not have affected the outcome of the election.

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,

A large black rectangular redaction box covering the signature area.

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Chief, Division of Enforcement

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