



May 20, 2009



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor on September 10, 2008, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Local 1186 (local or Local 1186), International Brotherhood of Electrical Workers (International), conducted on June 21, 2008.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations which affected the outcome of the election.

You made several allegations concerning the use of union and employer funds to promote candidacy. Section 401(g), 29 U.S.C. § 481(g), of the LMRDA prohibits unions and employers from contributing any funds, resources, or any thing of value, including use of union or employer premises, to promote the candidacy of any person in a union election. With respect to the use of union funds, you alleged that your opponent, Damien Kim, used the acronym "IBEW" in campaign material that was distributed to all members. The investigation disclosed that there were two slates of candidates: "Team 2008," headed by you the incumbent Local 1186 Business Manager/Financial Secretary; and "Unity Team," headed by Damien Kim the incumbent Local 1186 President. The investigation disclosed that both slates used the IBEW acronym in their campaign mailings. Review of your campaign mailing and the envelope in which it was sent showed that on the lower left corner, in red capital letters were written "IBEW ELECTION INFORMATION" with no return address. Your opponent's campaign mailing contained the phrase "IBEW Unity Team." The investigation further disclosed that the use of the acronym "IBEW" was not prohibited by the constitution and bylaws and that the acronym was not used in a manner that would violate the LMRDA prohibition on the use of union resources to promote candidacy. See 29 U.S.C. § 481(g). There was no violation.

You alleged that the opposing slate campaigned on union property prior to the start of the April 8, 2008, membership meeting. The investigation disclosed that the election committee took measures to ensure that no campaigning occurred on union property by placing signs that stated "Absolutely no campaign distribution or displaying campaign material beyond this point and within this building structure." These signs were posted in the parking lot and by the elevators on all floors of the union building. Slate members and supporters distributed campaign literature on the two driveways leading to the union parking lot, outside of the prohibited area. The union's facilities were not used to promote any member's candidacy because campaigning was not conducted on union property. There was no violation.

You alleged that several labor unions pressured staff members to contribute union funds and resources to promote Damien Kim's candidacy. You identified employees of two other labor organizations as witnesses who would provide details of such illegal conduct. The investigation did not reveal evidence substantiating your allegation. One employee denied any knowledge of this allegation. The other employee stated that a staff member of the union at which he is employed told other staff members to contribute to Kim's campaign, but the employee refused to provide the staff member's name. This employee did admit that the staff member never stated that union funds were to be contributed to Kim's campaign. Kim denied that any pressure occurred. There was no violation.

You alleged that employer funds were used to promote candidacy as Unity Team campaign material was taken to apprenticeship classrooms held at the Honolulu Community College and distributed by an instructor and the director of the apprenticeship program. The investigation disclosed that apprentice instructor [REDACTED] placed a stack of your opponent's campaign literature in his classroom. After his class was over, he announced that students were welcome to take a flyer concerning the election. A similar experience occurred in instructor [REDACTED]'s classroom which had 23 students. A few days later, the apprenticeship director and the election committee chair met with the apprenticeship instructors, telling them that no distribution of campaign literature was permitted during or after classroom sessions. However, a week later, instructors [REDACTED] and [REDACTED] witnessed you and two other candidates on your slate, possibly [REDACTED] and [REDACTED], in the classroom building handing out campaign flyers to apprentices before classes commenced. In addition, [REDACTED] handed [REDACTED] a stack of your flyers to distribute to his students. The investigation disclosed that [REDACTED] placed the flyers in a stack on his classroom desk after the conclusion of his class.

Consequently, even if a violation was found to have occurred, a violation was committed by both slates. Both you and Kim distributed your campaign literature to substantially the same audience, the apprentices. Both you and Kim had your

campaign literature in one of the above-named instructor's classroom for dissemination. The effect of the violations would offset one another such that there would be no effect on the outcome of the election.

You alleged that [REDACTED], a former Local 1186 business agent, campaigned to employees of PC Enterprise while on union-paid time. You identified three PC Enterprise employees, all members of Local 1186, who would confirm your allegation. The investigation revealed that one of those employees denied ever having a meeting with [REDACTED] at any time. A second employee remembered meeting [REDACTED] at a PC Enterprise job site but did not witness any campaigning. The third employee you identified met with [REDACTED] regarding wage issues with PC Enterprise. After the meeting concluded, the employee asked [REDACTED] about union affairs, and [REDACTED] provided him with a campaign flyer.

Section 401(g) of the LMRDA prohibits union officers and employees from campaigning while on time that is paid for by the union. 29 U.S.C. § 481(g). However, Department of Labor regulations provide that campaigning incidental to regular union business does not violate section 401(g). 29 C.F.R. § 452.76. [REDACTED] was engaged in regular union business to discuss wage-related issues during the meeting with a local member employed by the PC Enterprise. The isolated incident of providing the campaign flyer at the conclusion of conducting legitimate union business during a discussion initiated by a union member constituted campaigning incidental to legitimate union business. There was no evidence that the union business was a pretext to provide an opportunity to campaign. There was no violation.

You made several allegations concerning the election committee chair's bias against you and his failure to discharge his duties in a fair manner. Specifically, you alleged that the election committee chair did not allow for equal distribution of campaign material at the apprenticeship classes. Section 401(c) of the LMRDA, 29 U.S.C. §481(c), provides unions a wide range of discretion regarding the conduct of their elections, but that discretion is circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110. The investigation disclosed that the election committee chair treated you no differently than your opponent. Once the election committee chair learned that campaign material was in the room of one of the apprenticeship instructors, he held a meeting with all apprentice instructors advising that no such material was permissible in classrooms; he also issued a cease-and-desist letter to both slates. There was no unequal treatment and no violation.

You alleged that the election committee chair ignored your complaints concerning election committee members who displayed support for your opponent. Specifically, you alleged that the election committee chair refused to remove an election committee member who made inappropriate comments during a union meeting attended by 100

members. The investigation disclosed that you were speaking to Unit 1 members sometime in May 2008 when you asked your audience if they had any questions. [REDACTED], an election committee member, then stated that your recent campaign flyer incorrectly attributed a quote to him, and he wanted the opportunity to explain so as to avoid any misunderstanding. The election committee chair acted immediately, advising that there would be no further discussion on this issue as the substance could be construed as campaigning. The election committee chair's immediate action showed favoritism to no one. There was no violation.

You alleged that the election committee chair favored the appointment of your opponents' supporters rather than your supporters to the election committee, claiming time and again that he had enough volunteers. You also identified two members whom you alleged wanted to serve on the election committee but whose requests were denied by the election committee chair. The investigation disclosed that of the two members you identified as requesting to serve on the election committee, one denied making any such request while the other acknowledged making such a request two weeks before the tally when the election committee no longer had any vacancies. There was no favoritism and no violation.

You alleged that the election committee chair insisted you were violating campaign rules by scheduling meetings on outer islands and insisted on escorting you to ensure campaign rules were followed but did not insist on escorting your opponent Kim to meetings. The investigation disclosed that meetings at the outer islands were originally scheduled for a few days after the conclusion of the tally. You rescheduled those meetings so that the dates were several days in advance of the tally. In an effort to affirm the integrity of the election and to deflect any appearance of impropriety, the election committee chair traveled with you to those meetings, making himself available to answer any election-related questions. The election committee chair did not accompany Kim because Kim was not traveling to neighboring islands at union expense. There was no unequal treatment. There was no violation.

You alleged that the placing of two addresses on the return ballot envelope, *i.e.*, the post office box address and the post office street address, resulted in a delivery delay extending beyond the 9 a.m. June 21, 2008 deadline for returning ballots, disenfranchising over 90 members whose ballots arrived after the deadline and were not included in the tally. Article III, section 8(g), of the Local 1186 Bylaws, provides, among other things, that the election committee chair is required to select a depository to which the return ballot envelopes shall be made, and that the election committee chair shall see that the address of such depository is placed on the pre-addressed return ballot envelopes. Article III, section 8(k) of the Local 1186 Bylaws prohibits the inclusion in the tally of any return ballot envelopes received later than the time and date

set by the local, but permits the election committee judge to extend the deadline in the event of an extraordinary event beyond the local's control.

The investigation disclosed that the election committee chair followed the same format as in the local's previous election. This format included placing both the post office box and the post office street address on the return ballot envelope. According to the Kapalama Post Office, the dual addresses would have caused at most, a delay of a few hours, but not a delay of one day or more. In any event, members, not the local, determined when they would place their ballots in the mail. Ballots were received by members with sufficient time to return them well in advance of the deadline. The address on the return ballot envelope did not violate the local's constitution and bylaws or the LMRDA. There was no violation.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

cc: Edwin D. Hill, International President
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