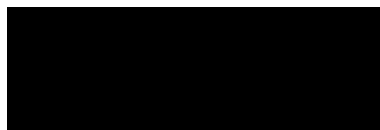




October 31, 2016



Dear [REDACTED]

This Statement of Reasons is in response to your April 19, 2016 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada (UA), Local 234 on December 12, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that no violation occurred which may have affected the outcome of the election. Following is an explanation for this conclusion.

You alleged that Local 234 denied its membership information regarding the possibility of conducting a mail ballot election, thus denying all members the opportunity to participate in the election. Section 401(e) of the LMRDA requires a labor organization to conduct union officer elections in accordance with its constitution and bylaws. Section 123(a) of the UA Constitution permits locals to request mail ballot elections and directs that such requests be voted upon by the local membership and subsequently sent to the UA General President for final approval or denial. The request must be made at least thirty (30) days prior to nominations and must explain why mail ballots are necessary. Nothing in the LMRDA or the UA Constitution requires that members be given specific notice of the mail ballot provisions of Section 123(a).

The investigation determined that no request for a mail ballot was made at Local 234 meetings prior to the nominations meeting, including membership meetings in September and October 2015. As there is no requirement for a mail ballot in the absence of a request, there was no violation of the UA Constitution or of the LMRDA.

Additionally, you alleged that Local 234 denied members the opportunity for the Department to advise the Local 234 Election Committee on election issues. The investigation revealed that a training session was contemplated for October 2015 but cancelled due to budget constraints. As there is no requirement for this training found in the Local 234 Bylaws, the UA Constitution or the Act, there was no violation of the LMRDA.

Next, you alleged that Local 234 withheld phone lists from candidates and that those lists were used by incumbent officers to campaign for re-election. Section 401(c) of the LMRDA provides that a labor organization may not discriminate in favor of or against a candidate in the use of membership lists. The investigation revealed that Local 234 leadership made the decision not to release the membership phone list to any candidates in October 2015, based on legal advice from union counsel. While you alleged that incumbent candidates nevertheless used union phone lists to call members for campaign purposes, the investigation did not substantiate this allegation. The investigation did find that Business Manager (and candidate) [REDACTED] initiated a robocall to be sent to members to remind them to vote on Election Day. However, it was not a campaign email. The email contained only information about the election's date, time and location. Further, the robocall was recorded and distributed by Business Manager [REDACTED] of Local 295, to avoid an appearance that the recording was being used for campaign purposes by [REDACTED]. There is no evidence that any candidate received access to, or improperly used, a union phone list for campaign purposes in this election. There was no violation of the LMRDA.

You further alleged that Local 234 supplies and equipment were used to create a selected candidates list that was distributed to members nearing the polling place on Election Day. Section 401(g) of the LMRDA provides that no moneys received by a labor organization by way of dues or assessments may be used to promote the candidacy of any person in a union election. See 29 C.F.R. § 452.76.

In the investigation, [REDACTED] admitted using a Local 234 computer, printer and copier to make as many as 30 copies of a preferred candidate list that was passed out to members outside of the polling room on Election Day, December 12, 2015. [REDACTED] said that Business Agent [REDACTED] helped him pass out candidate lists in the lobby area outside of the polling location. [REDACTED] stated that he could not recall how many lists he had and stated that he gave lists to two out-of-town members and the rest of his allotment to member [REDACTED]. [REDACTED] also stated that he could not recall how many lists he received or when he stopped passing them out to members. Several witnesses corroborated that candidate lists were distributed to members. However, none of the witnesses reported repeated distribution of the list. In addition, the Department randomly selected and surveyed 21 members who voted, none of whom witnessed a candidates' list having been distributed on Election Day at any time.

While the distribution of a candidates list created using union resources violated the Act, in order for the election to be overturned, Section 402(c) requires evidence that the violation may have affected the outcome of the election. The Departmental recount of the election results determined that the closest margin of victory in a race that might have been affected by the candidate list was 59 votes in the Executive Board race. The investigation indicated that the list was distributed to fewer members than 59. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You also alleged that Local 234 denied a request to permit non-candidate members to contact other members using union mailing labels in support of candidates. Section 401(c) of the LMRDA places an obligation upon a labor organization to comply with all reasonable requests by a *candidate* to distribute candidate literature to all members at the candidate's expense. However, there is no provision within the Local 234 Bylaws, the UA Constitution or the LMRDA that guarantees a *non-candidate* the right to union mailing labels for campaign purposes. There was no violation of the LMRDA.

In addition, you alleged that Local 234 funds were used to denigrate candidacy in the form of a newsletter that had "slandorous and untrue accusations" concerning the 2012 General Election. The investigation produced a copy of a Local 234, July 2013 newsletter, wherein [REDACTED] described the results of Member [REDACTED] election protest with the Department regarding the 2012 General Election. [REDACTED] article described the findings of the Department, thanked Local 234's Election Committee for staging the election and noted, "This unnecessary protest cost an estimate of \$10,000 or more dollars."

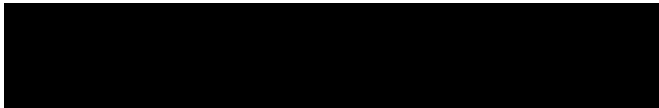
Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in union officer elections. Courts have consistently held that the tone, content, and timing of union-promulgated material determines whether the material is in fact campaign material that falls within the section 401(g) prohibition. The overall timing, tone, and content must be evaluated to determine whether the material effectively supports or attacks a candidate in the election. A review of the article reveals that no candidate's name was mentioned. Further, the newsletter was distributed approximately two and-a-half years prior to the December 12, 2015 election. As [REDACTED] article informed members of the results of an election protest, did not refer to an upcoming election, and was published more than two years before the December 2015 election, there was no violation of the LMRDA.

Finally, your complaint raised an issue that was not timely protested under Section 125(b) of the UA Constitution. You alleged that Local 234 permitted an ineligible candidate to appear on the ballot for the position of Local 234 President. Because, you

did not properly exhaust this allegation under the union's procedure, as required by section 402(a) of the LMRDA, it is not properly before the Department.

For the reasons set forth above, it is concluded that no violation of the LMRDA affecting the outcome of the election occurred. Accordingly, we have closed the file on this matter.

Sincerely,



Sharon Hanley
Chief, Division of Enforcement
Office of Labor-Management Standards

cc: William Hite, General President
United Association of Plumbers and Pipefitters
Three Park Place
Annapolis, MD 21401

Jeff Hendricks, President
UA Local 234
5411 Cassidy Road
Jacksonville, Florida 32254

Beverly Dankowitz, Associate Solicitor
Civil Rights and Labor-Management Division