U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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June 03, 2021

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on December 21, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act ("LMRDA" or "Act"), 29 U.S.C. §§ 481-483, occurred in connection with the mail ballot election of union officers completed by the International Union of Operating Engineers (IUOE), Local 302, on August 28, 2020.

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. Following is an explanation of this conclusion.

You asserted several allegations implicating section 401(g) of the Act, 29 U.S.C. § 481(g). First, you alleged that the union's in-house legal counsel transmitted an email to the union email addresses of Local 302 staff members that discussed the incumbent slate's campaign. Section 401(g) of the Act prohibits the use of union or employer resources to promote the candidacy of any person in an election of union officers. Accordingly, union officers and employees may not campaign on time that is paid for by the union or use union funds, facilities, equipment, stationary, etc., to assist them in such campaigning. 29 C.F.R. § 452.76.

The investigation disclosed that the union's in-house legal counsel did not transmit a campaign email to the union email addresses of Local 302 staff members. Instead, the investigation found that on June 11, 2020, at 10:21 p.m., the Local 302 incumbent president used his personal email account to transmit a partisan campaign email supportive of the incumbent slate to the personal email addresses of 33 Local 302 staff members. The investigation also disclosed that while the incumbent president was preparing to transmit the campaign email and typing the staff members' personal email addresses in the "to" field of the email the autofill function on his computer automatically put in the union email address of one staff member. As a result, the

president inadvertently transmitted the campaign email to that union email address. However, section 401(g) of the Act proscribes the use of any union resource to promote the candidacy of any person in an election of union officers, regardless of the union's motive or intent. Therefore, section 401(g) of the Act was violated when the president forwarded a partisan campaign email supportive of the incumbent slate to a union email account – a union resource. However, the smallest vote margin for any race was 69 votes and, therefore, this violation did not affect the outcome of the election. Further, the investigation found that the staff member who received the campaign email in his union email account did not forward or disseminate it to any other member. There was no violation of the Act that may have affected the outcome of the election.

Next, you alleged that a business representative campaigned for the incumbent slate while on union paid time when he collected personal telephone numbers and email addresses from staff members at the union office while they were working. The investigation disclosed that in November 2019 a business representative collected personal telephone numbers and email addresses from union members/employees at the union office while the business representative was on break time. However, the evidence is inconclusive concerning how many members/employees were on personal or break time during this incident. In addition, the investigation found that the business representative's activity did not rise to the level of unlawful campaigning under section 401(g) of the Act. Specifically, the business representative did not make campaign statements, distribute campaign materials, or specifically solicit the members'/employees' votes while he collected their personal contact information. Further, the business representative spent only several minutes collecting the information and did not spend a disproportionate amount of time engaging in that activity. The Act was not violated.

In addition, you alleged that union funds were used for campaign purposes when the union distributed calendar books to members in February of 2020 that bore the union's logo and the incumbent business manager's name. You also alleged that, during a staff meeting held in February of 2020, a union official confirmed that union calendar books containing the name of the incumbent business manager and the union's logo would be distributed to members for the incumbents' campaign. The investigation found that the union has a longstanding past practice of distributing calendar books to members in December so that members can have the books by January of the following year. The investigation found that the union office located in Bothell, Washington, was responsible for mailing the calendar books to the other union offices and mailed them out late. As a result, the calendar books were not distributed to members until February of 2020. In any event, the investigation showed that these books have always included the business manager's name and the union's logo. The calendar books contained no reference to the election or to anyone's candidacy and were not promotional in nature.

Further, although you asserted that a union official confirmed during a February 2020 staff meeting that union calendar books would be distributed to members for the incumbents' campaign, only two members who attended that meeting corroborated that assertion. Specifically, during the investigation a member of your slate and one of your supporters stated that they heard a union official confirm during the February 2020 staff meeting that union calendar books would be distributed to members for the incumbents' campaign. However, during the investigation other members, including the union official, who attended that same meeting denied or did not recall hearing anyone state during the meeting that the calendar books would be used for partisan campaigning. Further, none of these members or your supporter corroborated your assertion that the union official confirmed the use of such books for campaigning. The Act was not violated.

Also, you alleged that, on August 4, 2020, the incumbent business manager and the incumbent president campaigned while on paid union time to members who were working at jobsites located in Eastern Washington State. During the investigation, the incumbent business manager stated that he visited jobsites near Roslyn, Washington on August 4, 2020, but did not campaign at the jobsites. He also stated that on that date he traveled to Spokane, Washington, to attend a trust meeting and met with the incumbent president at a jobsite near Roslyn, Washington. The incumbent business manager stated that while he was at that jobsite he signed up a new member and spoke to other members about hunting and fishing. In addition, the incumbent business manager stated that neither he nor the incumbent president campaigned while visiting the jobsite. Further, the investigation did not disclose the name of any member who was the recipient of any such campaigning. In fact, during the investigation you admitted that you did not know who the officers spoke with at the jobsites, how many members they spoke with, what they discussed, or any other details regarding the visits. The Act was not violated.

Finally, regarding section 401(g), you alleged that a business representative campaigned while on paid union time at a jobsite located in Lynnwood, Washington. You asserted that there was no union purpose for this visit as it was outside the business representative's normal area of work. The investigation did not disclose any evidence that the business representative engaged in unlawful campaigning while visiting the Lynnwood, Washington, jobsite. The investigation instead found that the business representative went to the L300 project jobsite, a transit light rail system being built through Lynnwood, Washington, on three occasions prior to and during the election period. The business representative stated during the investigation that during two visits to the L300 project jobsite he met with the project lead and management at the jobsite office regarding previous projects he had worked on for the company. On his third visit to the jobsite, he discussed with the project lead and management certain

Local 302 members who the company wanted to be assigned to the L300 project because they were good workers.

The investigation found that the business representative did not have contact with any Local 302 members during his visits to the L300 project jobsite or engage in any campaign activity at that jobsite. The investigation disclosed that during such visits members were working in restricted areas secured by a fence that required them to have the proper safety and work certifications before they could enter the work area. The business representative stated during the investigation that he did not have the required certifications and, therefore, he would have been prevented from accessing that work area even if he had wanted to do so. The investigation also found that the business representative did not speak with any union members during his visits with the project lead and management while he was at the jobsite business office. Further, the investigation found that the business representative's visits to the jobsites were a normal function of his union duties and responsibilities. The Act was not violated.

Next, you alleged that at least 100 Local 302 members in District 286 were denied the right to vote due to an inaccurate mailing list that the union used to mail ballot packages to members. Section 401(e) of the Act provides that members in good standing have the right to vote for or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.84. The statutory protection of the right to vote implies that there must be a reasonable opportunity to vote. 29 C.F.R. § 452.94. In a mail ballot election the right of every eligible member to vote must require at a minimum that a union take reasonable steps to maintain current mailing addresses for its members and to distribute election ballots to all those entitled to vote.

The investigation found that Local 302 took reasonable steps to maintain current mailing addresses for its members and afforded eligible members a reasonable opportunity to vote. Specifically, the investigation disclosed that in 2019 IUOE Local 286 merged with Local 302 and became District 286 of Local 302. After the merger was completed, the Local 302 dues membership administrator and the information technology staff updated Local 302's membership database. This process included electronically transferring mailing addresses and other information for the District 286 members from the IUOE's membership database to the Local 302 membership database. To ensure that this updated information had been accurately transferred, Local 302 staff cross checked that information with the information in the IUOE's database and resolved any discrepancies. Local 302 staff completed the transfer of the updated information for the District 286 members on December 16, 2019. On August 5, 2020, the accounting firm Local 302 hired to conduct the ballot mailing used Local 302's updated database to mail 13,493 ballots to eligible voters. Of these ballots, 221 of them were returned as undeliverable, including 95 ballots that had been mailed to District 286 members.

To obtain updated addresses during the election, the Local 302 office manager looked up the member's information in the Local 302 database to ascertain whether a member had updated his or her own information after the ballot mailing. The union also reviewed the old District 286 membership database to determine whether there was a more recent mailing address for a member that had not been transferred to the Local 302 database after the merger. If there was no updated information in either database, the office manager contacted the union pension fund to obtain any available updated mailing addresses for members. If the union pension fund was unable to provide that information, the office manager called the member to obtain the member's current mailing address and contacted the member's employers if the member could not be reached.

As a result of these efforts, Local 302 was able to obtain current home addresses for 184 of the 221 members whose ballots had been returned as undeliverable prior to the ballot tally. Duplicate ballots were mailed to these members. Despite the union's best efforts, however, it was not able to locate current mailing addresses for 37 of the 221 members. However, a procedure for obtaining duplicate ballots was in place for members who did not receive a ballot in the mail and duplicate ballots were mailed to members who requested them. The Act was not violated.

In connection with the allegation that District 286 members were denied the right to vote, you alleged that many members living in the outlying areas of the union's jurisdiction did not have enough time to receive, mark, and return their ballots before the deadline by which voted ballots had to be received by the union. The investigation found, however, that the ballots were mailed to voters on August 5, 2020, and voted ballots had to be received at the post office box secured for their return no later than August 28, 2020. The investigation also found that the longest delivery time for a voted ballot to reach that post office box after it was mailed back by the voter was 11 days. Further, the Department's review of the election records did not reveal that an unusually large number of voted ballots arrived at the return ballot post office box after the deadline for the receipt of such ballots. The Act was not violated.

In addition, you asserted several allegations implicating the provision in section 401(e) of the Act, 29 U.S.C. § 481(e), guaranteeing members' rights to vote for and support the candidate of their choice without intimidation and fear of reprisal. First, you alleged that members were intimidated by a union official and, thus, prevented from supporting the candidates of their choice, when he directed Local 302 members/employees to take time off to campaign for the incumbent slate. You further alleged that the incumbent business manager threatened to fire members/employees who did not support that slate. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates

of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. 29 U.S.C. § 481(e); 29 C.F.R. § 452.82.

The investigation found that the subject members were Local 302 employees who had been appointed to paid staff positions. The investigation disclosed that some of these members believed that there was an unwritten rule requiring them to support the incumbent slate to retain their staff positions with the union. However, the incumbent business manager did not order them to campaign for the incumbent slate. In fact, at least one staff member campaigned for both slates. Another staff member was a candidate on your slate and did not support the incumbent slate. Further, the investigation found that the statements made by union officials to staff members regarding taking time off to campaign were limited to informing them that they were prohibited from campaigning while on paid union time and, therefore, would be required to take time off to campaign.

Further, even if the incumbent business manager threatened to fire or actually fired staff members who did not support his slate, it is well established that an elected union officer is free to demand loyalty and political support from his own appointed staff so long as the staff members' rights as union members are not affected. The investigation found that no eligible staff members were denied the right to vote or run for office, prevented from supporting the candidate or candidates of their choice, or prohibited from making nominations or being nominated for office. Thus, no rights attendant to union membership were affected. The Act was not violated.

You also alleged that the incumbent business manager intimidated and harassed a member who nominated a challenger during a nominations meeting. You asserted that the incumbent business manager spoke with this member on the telephone after the nominations meeting, threatened to fire the candidate the member had nominated, and asked where the member worked. The investigation found conflicting evidence concerning the nature of the telephone conversation between the incumbent business manager and the member. In any event, the member who you alleged was intimidated and harassed by the incumbent business manager during the telephone conversation stated during the investigation that he was not intimidated by the incumbent business manager with respect to making nominations for office or voting in the election. Thus, no rights attendant to union membership were affected. The Act was not violated.

In addition, you alleged that the incumbent business manager threatened members during an argument that took place outside the location of a nomination meeting. You also asserted that the incumbent business manager's threatening behavior may have intimidated members and prevented them from supporting the candidates of their choice. The investigation revealed that an argument occurred between the incumbent

business manager and members outside the location of a nomination meeting but that the argument concerned a rumor that the union intended to close a training facility and was unrelated to the election. Further, during the investigation the members involved in the argument with the incumbent business manager denied being intimidated by him. The Act was not violated.

Further, you alleged that the incumbent business manager intimidated a member who posted questions on the union's Facebook page when the incumbent business manager engaged the member in an argument about the posts. The investigation found that the posts and the argument involved the availability of union gift cards and was unrelated to the election. The Act was not violated.

Finally, you alleged that the office manager lived with the incumbent business manager and, therefore, the office manager's involvement in updating the Local 302 voter database was a conflict of interest. Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to insure a fair election. 29 U.S.C. § 401(c); 29 C.F.R. § 452.110. The investigation found no evidence that the office manager engaged in fraudulent activities or other election improprieties while performing any union duties related to the election. The Act was not violated.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election and I have closed the file regarding this matter.

Sincerely,

[redacted]

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Chief, Division of Enforcement

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