



February 3, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor (Department) on March 9, 2022. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the mail ballot election of union officers of the International Brotherhood of Teamsters (IBT) Local 764, which was completed on November 19, 2021. Local 764 appointed the Pennsylvania Department of Labor and Industry (PADOLI) to conduct most aspects of the election.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations of the LMRDA occurred which may have affected the outcome of the election.

You raised several allegations implicating the adequate safeguards provision in section 401(c) of the LMRDA. This provision requires unions to provide "[a]dequate safeguards to insure a fair election." 29 U.S.C. § 481(c). Thus, a union's wide range of discretion regarding the mechanical, procedural aspects of an election is "circumscribed by a general rule of fairness." 29 C.F.R. § 452.110. Violations of the adequate safeguards provision are determined on a case-by-case basis.

First, you alleged that [REDACTED], a representative from the PADOLI, did not provide a United States Postal Service (USPS) record of the number of voted ballots returned to the post office box. The Department's investigation established that USPS did not keep a count of the voted ballots returned to the post office box and the union was thus not required to report such a count. Furthermore, the union provided observers with a summary of the ballots it received and counted, as well as the results of the tally. Accordingly, there was no violation of the LMRDA.

You further alleged that PADOLI representative [REDACTED] collected the voted ballots out of the observers' sight in a back room at USPS. However, observers informed the Department that [REDACTED] remained continuously in their sight while he collected the ballots

from the USPS counter on November 19, 2021. Furthermore, while a USPS supervisor initially stated his belief that voted ballots were picked up more than once, he later admitted that he may have been mistaken, specified that he was not involved in providing any of the returned ballots to the union, and asserted that the front desk clerk would know more than him on this matter. The USPS front desk clerk who opened the post office box account and retrieved the returned ballots on the tally day unequivocally stated that no voted ballots were picked up from USPS prior to November 19, 2021. Accordingly, there was no violation of the LMRDA.

Next, you alleged that members were never provided the number of ballots that were printed, mailed, and leftover. The Department's review of the election records box disclosed that it contained an "election summary" detailing the number of ballots initially mailed, duplicate ballots mailed, undeliverable ballots remailed, and voted ballots returned, as well as 152 leftover ballots. However, the union never counted nor recorded the total number of printed and leftover ballots, and never received an official count of printed ballots from Raff Printing, the company that printed the ballots. While the Department's review of the invoice prepared by Raff indicated that 1,200 ballots were printed for the election, the investigation disclosed that Raff always prints within a 10% range of the amount ordered, meaning that it printed anywhere between 1,080 and 1,320 ballots. The Department's review of the mailing records showed that Raff initially mailed 1,060 ballots, then turned over all the remaining ballots to PADOLI representatives. These representatives then mailed 10 duplicate ballots to members, for a total of 1,070 mailed ballots. Thus, if 1,200 ballots were printed and 1,070 were mailed, there should have been 130 leftover ballots in the election records. Yet the Department's investigation established that there were 152 leftover ballots in the election records, an excess of 22 ballots. Since neither the union nor the PADOLI representatives counted or recorded the number of leftover ballots, they could not reconcile the leftover ballots at the end of the tally. As a best practice, the union should have requested or determined an exact count of the ballots printed.

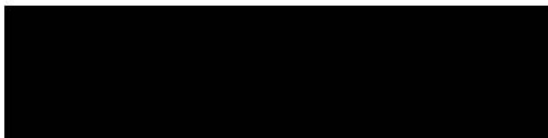
However, the Department's investigation also determined that there was no showing that the union failed to adequately safeguard the ballots, nor did the investigation uncover any fraud or ballot tampering. From the time the ballots were printed until the day of the tally, the leftover ballots were in the sole custody of PADOLI representatives, secured in the locked trunk of [REDACTED] state vehicle, and there is no evidence that anyone improperly accessed the ballots during this time. Moreover, the investigation determined that voter eligibility was checked using the return envelopes before counting the ballots, and no members voted more than once. Observers also witnessed the collection of the voted ballots at the post office, the voter eligibility check, the tallying of voted ballots, and the reading of the election results. The Department's recount of the voted ballots only revealed a difference of one vote in two races, further confirming the accuracy of the tally. Furthermore, while the investigation determined

that the sample ballot's watermark could be digitally removed, the Department's examination of the voted ballots and other election records did not reveal any ballot tampering or fraud. While it would have been preferable for the union to have kept an exact count of the ballots, the total number of mailed and leftover ballots included in the election records, 1,222 (1,070 mailed + 152 leftover), fell within the 1,080 to 1,320 range Raff printed. Accordingly, under the specific facts of this case, there was no violation of the LMRDA.

Finally, you alleged that the leftover unused ballots were not placed in the election records box at the conclusion of the tally. The Department's investigation did not substantiate this allegation. As noted above, the Department's review of the election records determined that the box contained 152 leftover ballots, which fell within the range Raff printed. The inclusion of these leftover ballots in the election records box aligned with the bulk of the information provided to the Department from observers and election officials. Although you claimed that the election records box presented during the January 10, 2022, hearing before IBT Joint Council 53 and later provided to investigators was not the same box that the election records were sealed in on the day of the tally, the investigation did not support this claim. When the Department picked up the election records box from IBT Local 764, the taped seal on the box – including the election committee members' signatures over the tape – was still intact. There were no indications that the election records box had been replaced, opened or tampered with prior to the Department's investigation. Accordingly, there was no violation of the LMRDA.

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. Accordingly, I have closed the file in this matter.


Sincerely,

A large black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker  
Chief, Division of Enforcement

cc: Sean M. O'Brien, General President  
International Brotherhood of Teamsters  
25 Louisiana Avenue, NW  
Washington, DC 20001

Ty Sees, President  
International Brotherhood of Teamsters, Local 764  
450 Beaver Street  
Milton, PA 17847

  
Markowitz & Richman  
123 S. Broad Street, Suite 2020  
Philadelphia, PA 19109

, Associate Solicitor  
Civil Rights and Labor-Management Division