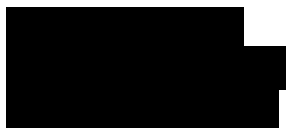




August 8, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to your March 29, 2023, complaint filed with the United States Department of Labor (“the Department”) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (“LMRDA”), 29 U.S.C. §§ 481 – 483, occurred in connection with the election of officers to the International Executive Board (“IEB”) of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (“UAW”), on November 29, 2022, through December 2, 2022.

Pursuant to a Consent Decree Order dated January 29, 2021, the United States District Court for the Eastern District of Michigan appointed an outside entity (“the Monitor”) to establish rules and provide oversight of the UAW's internal affairs, including international officer elections, for the next six years. Pursuant to Paragraphs 13 and 45 of the Consent Decree Order and Subsections 1-2, 9-2, and 9-3 of the 2022 UAW International Officer Election Rules (“Election Rules”), dated May 11, 2022, the Monitor is the initial and final authority for all UAW union officer election protests.¹ In addition, decisions of the Monitor are considered final for purposes of any complaint to the Department.

On December 19, 2022, you submitted a post-election protest to the Monitor containing numerous allegations. On March 19, 2023, the Monitor denied your post-election protest (“Monitor’s decision”). Subsequently, you filed a complaint with the Department on March 29, 2023. The Department investigated your allegations and has concluded that there was no violation of the LMRDA that may have affected the outcome of the election.

¹ There is an exception relating to rulings on candidate eligibility, not relevant in this instance. *See* Election Rules, 9-1 and 9-6.

Exhaustion of Remedies

In your complaint to the Department, you contest the Monitor's decision that most of the alleged violations in your post-election protest were untimely filed, asserting that the decision was "an effort to throw up procedural obstacles" and falsified the record. In support, you rely upon communications between yourself and the Monitor throughout the election process.

Whether the allegations in your election protest were timely filed with the Monitor directly relates to whether those allegations are now properly before the Department. Section 402 of the LMRDA requires a union member to exhaust available internal union remedies prior to filing a complaint with the Secretary of Labor. *See* 29 U.S.C. § 482(a). A member may file a complaint with the Secretary within one calendar month of receiving a final decision on an internal protest. 29 U.S.C. § 402(a)(1). A member who has invoked the available internal union remedies for three months without receiving a final decision may file a complaint with the Secretary within one month of the expiration of that three-month period. 29 U.S.C. § 402(a)(2); *see also* 29 C.F.R. § 452.135(b).

The Election Rules provide the requirements that members must follow for filing pre-election and post-election protests to exhaust their internal remedies. Subsection 9-2 provides that, "Protests concerning conduct occurring on or before November 28, 2022 ('pre-election protests') . . . shall be filed within ten (10) calendar days of the day when the protestor becomes aware or reasonably should have become aware of the action protested or such protests shall be waived as to internal adjudication . . ." Election Rules, 9-2(b). In contrast, Subsection 9-3 provides that, "Protests concerning conduct occurring on or after November 29, 2022 ('post-election protests') shall be filed with the Monitor and processed in the following manner: (a) Protests regarding any alleged improper election day or post-election conduct or event must be filed by the later of: (1) fifteen (15) calendar days of the unofficial announcement of the applicable 2022 Election results; or (2) five (5) business days of the date when the protestor becomes aware or reasonably should have become aware of the action protested. If the above time limits are not met, the protest shall be waived as to internal adjudication . . ." Election Rules, 9-3(a). The Election Rules were posted on the UAW's and the Monitor's website on May 11, 2022, and you cited these rules in your correspondence with the Monitor as early as July 15, 2022.

In his decision, the Monitor addressed 34 of the allegations in your post-election protest and determined that only four of them were timely filed under Section 9-3(a) of the Election Rules insofar as they concerned conduct that occurred on or after November

29, 2022.² The Monitor noted that the remaining 30 allegations concerned conduct that occurred before November 28, 2022, and accordingly, were required to be raised as pre-election protests under the Election Rules. He concluded that these 30 allegations were untimely under Section 9-3(a) because more than 10 days had elapsed from when you were or reasonably should have been aware of the conduct protested in your December 19, 2022 post-election protest.³ In support of his determination that you were aware of or reasonably should have been aware of the specific issues that were protested in your December 19 complaint, the Monitor relied upon numerous email communications that you sent to the Monitor throughout the election period as well as allegations that you raised in your November 17, 2022 lawsuit filed in federal district court.⁴

In your complaint to the Department, you assert that the Monitor erred in finding that 30⁵ of the allegations in your post-election protest were untimely. In your complaint, you do not distinguish between the Election Rules governing “pre-election” and “post-election” protests but assert that communications with the Monitor in which you claim to have “protested all the deficiencies in the election” should have been treated as “protests” by the Monitor. The Election Rules at subsection 9-2, address pre-election protests and provide that “[a] protest must be filed in writing and sent by email to the Monitor. The protest shall contain a clear and concise statement of the grounds for the protest and the complainant’s name, address, phone number, and Local Union affiliation. The complainant bears the burden of presenting evidence of the alleged improper conduct.” See Election Rules, 9-2(e) and 9-3(c). Based on his interpretation of

² This number is derived from reading the Monitor’s March 19, 2023, decision in which he determined that three of your allegations were timely (as numbered by the Monitor, “Mr. Lehman’s Vote” (No. 14), “CNH Rally” (No. 30), “Secret Ballot Guarantee” (No.32)) together with the Monitor’s April 26, 2023, communication, in which he determined that one additional allegation of the 34 allegations should have been considered timely (“Request to Count Ballots After Deadline” (No. 33)).

³ According to the Monitor’s decision, he determined that the following numbered allegations were untimely, 30 in total: “Updating Global Mailing List” (No. 1); “Mr. Lehman’s Survey” (No. 2); “Individual Member Ballots” (No. 3); “Voter Turnout” (due to alleged failure to notify)(No. 4); “UAW Email List” (No. 5); “UAW Website” (No. 6); “Ballots Returned as Undeliverable” (No. 7); “Candidate Forums” (No. 8); “LUIS Database” (No. 9); Local Union Actions” (No. 10); Secret Mail-In Ballots” (No. 11); “Temporary Part Time Workers” (No. 12); “Convention Delegate List” (No. 13); “Voter Turnout” (due to alleged voter suppression)(No. 15); “Sterling Heights Assembly Plant” (No. 16); “GM Fort Wayne” (No. 17); “Freightliner Truck Manufacturing Plant” (No. 18); “Mack Avenue Plant” (No. 19); “Volvo Plant” (No. 20); “Ford Kansas City Assembly Plant” (No. 21); “GM Fairfax Plant” (No. 22); “Dana Inc. Parts Plant” (No. 23); “Planters Peanut Plant” (No. 24); “Jefferson North Assembly Plant” (No. 25); “GM Arlington Plant” (No. 26); “ GM Arlington and Mopar” (No. 27); “Flint GM Assembly Plant” (No. 28); “Metalsa Plant” (No. 29); “Local Union Audits” (No. 31); and “Election Rules Violation” (No. 34).

⁴ *Lehman v. Int’l Union, United Automobile, Aerospace, and Agricultural Workers of Am. And Neil Barofsky*, Case No. 22-cv-12790 (E.D. Mich. Nov. 22, 2022).

⁵ Upon review of your December 19, 2022, protest to the Monitor, the Department noted one additional allegation, also concerning conduct that occurred before November 28, 2022 (supervisors from Local 1302 who received ballots), and thus can also be considered along with the 30 allegations determined to be untimely by the Monitor.

the Election Rules, the Monitor explained that the post-election protest you filed on December 19, 2022, was the only protest that you filed.

A review of your post-election protest discloses that it contains the word “protest” in the subject line and its first sentence makes clear that it is an election protest, as it states, “[w]ith this letter, I am formally protesting the 2022 UAW International Officer Election results in their entirety.” In contrast, none of the email communications that you sent the Monitor during the course of the election contained the words “complaint” or “protest,” nor do any of these emails refer to Section 9 of the Election Rules, which governed pre-election protests. The Department reviewed these email communications and determined that while they reveal your awareness of specific issues, the content of these emails was clearly distinguishable from your December 19, 2022 post-election protest. As the Monitor explained during the Department’s investigation, the Monitor viewed the statements made in your numerous emails throughout the election period as general grievances or attempts to pass along information to the Monitor about the conduct of the election. Further, it is notable that the Monitor did not adjudicate any of the issues raised in your email communications as would be required if such communications were formal pre-election protests. At no point during these communications did you clarify to the Monitor that you were attempting to file formal pre-election protests under the Election Rules.

When presented with a union’s interpretation and application of its own governing documents, the Department must first look to section 401(e) of the LMRDA, which provides that a union must comply with its constitution and bylaws when conducting officer elections. 29 U.S.C. § 481(e). Under the LMRDA, the interpretation consistently placed on a union’s governing documents by the responsible official or governing body will be accepted unless clearly unreasonable. 29 C.F.R. § 452.3. It is well settled that, “[i]f a court finds any arguable authority for [the union’s] interpretation, it cannot be patently unreasonable, and the court will defer to that interpretation.” *Exec. Bd. of Transp. Workers Union of Philadelphia, Loc. 234 v. Transp. Workers Union of Am., AFL-CIO*, 236 F. Supp. 2d 480, 488–89 (E.D. Pa. 2002), *order dissolved on other grounds*, 338 F.3d 166 (3d Cir. 2003); *see also Fulk v. United Transp. Union*, 160 F.3d 405, 409 (7th Cir. 1998).

Under the Consent Decree and Election Rules, the Monitor stands in the shoes of the UAW to hear and adjudicate allegations and protests of potential violations of the Election Rules or Title IV of the LMRDA. *See* Election Rules, Sections 1-2. The Department takes no position as to whether the Monitor’s asserted interpretation is the best or most reasonable. But consistent with long-standing Title IV precedent, the Department finds that under these circumstances there is “arguable authority” for the Monitor’s interpretation and application of Election Rules. The Department’s investigation, which included a thorough review of your email communications with the Monitor during the election period, established that the Monitor reasonably

concluded that 30 of your allegations were untimely because you did not properly exhaust the union's internal remedies. Because you failed to properly exhaust these allegations pursuant to the union's Election Rules, the Department does not have jurisdiction over these particular allegations and dismisses those 30 allegations raised in your March 29, 2023 complaint. *See* 29 U.S.C. § 482; 29 C.F.R. § 452.135(b).

But even if your pre-election correspondence to the Monitor were construed as "pre-election protests" to which the Monitor either provided a final response or provided no response, these 30 allegations would still fail to satisfy section 402's exhaustion requirements. As stated above, section 402(a)(1) states that a member may file a complaint with the Secretary within one calendar month of receiving a final decision on an internal protest; section 402(a)(2) states that a member who has filed a protest but who has not received a final decision for three months may file a complaint with the Department within one month of the expiration of that three-month period. *See* 29 U.S.C. § 482(a)(1)-(2).

For example, in your "post-election protest," you alleged that the Monitor failed to promote the candidate forum for the office of international president that you participated in on September 22, 2022 (No. 8), and you cited the text of your September 26, 2022, email to the Monitor in which you point out the requirements of the rule relating to candidate forums and asked, "Could you please outline what steps are being taken to ensure the recording of the debate reaches 'the broadest possible audience' beyond the 1 percent who have seen it already?" The Monitor did not consider the email to be a formal pre-election protest, but he responded to you by email on September 30, 2022. If your email were construed as a formal pre-election protest, as you now claim it to be, and if the Monitor's response were construed as a final decision, then you had one calendar month or until October 30, 2022, to file a complaint with the Department. Or, if the Monitor's response were not construed as a final decision, you were required to wait three months, after which you had one calendar month or until January 30, 2023, to file a complaint with the Department. In this instance, you did neither, which undermines the position you now take in your complaint to the Department that you viewed your informal email communications with the Monitor as formal pre-election protests.

The latest email response from the Monitor to any of the communications raising these 30 allegations was sent on November 11, 2022, in response to your email sent earlier that day. Accordingly, if the Monitor's November 11, 2022 correspondence is considered a final decision, then under section 402(a)(1), you would have had to file your Title IV complaints with the Department by December 11, 2022. However, if the Monitor's November 11, 2022, response was not construed as a final decision, then under section 402(a)(2), you were required to file your Title IV complaints with the Department by March 11, 2023. Because you did not file a complaint with the

Department until March 29, 2023, you did not meet the statutory deadline for filing a timely Title IV complaint on these matters. So, while the Department defers to the Monitor's interpretation of "pre-election protests" as defined by the Election Rules, even if it did not, the ultimate conclusion would remain the same – the 30 allegations listed above were not properly exhausted and fall outside the scope of the Department's Title IV authority.

As a related matter, your complaint to the Department raised two allegations for the first time: (1) you alleged that the Monitor had a conflict of interest, and (2) you alleged that an ineligible member, [REDACTED], received a ballot. As discussed in detail above, under the Election Rules, allegations must be raised internally with the Monitor before they may be raised to the Department. Because these allegations were not raised internally and were presented to the Department for the first time, they are not properly before the Department, and they were not investigated.

Four Remaining Allegations that Were Properly Exhausted

The Monitor concluded that four of your allegations were timely filed: (1) that your ballot was never counted; (2) that the LMRDA's secret ballot requirement was violated; (3) that the Monitor improperly denied your request to count late-arriving ballots; and (4) that Region 4 Director made threats against your campaign volunteers on December 17, 2022.⁶

Denial of the Right to Vote

LMRDA section 401(e) provides that every member in good standing shall have the right to vote or otherwise support the candidate or candidates of their choice. 29 U.S.C. § 481(e). You alleged that you were denied the right to vote when you mailed your voted ballot, but the union's online ballot tracking tool did not indicate that your ballot had been received. The Department's investigation revealed that the step in the process used by the election vendor, Merriman River Group (MRG), to provide members with the opportunity to track their ballot was separate from the process that it used to count the ballots. The outer return envelope of each ballot package was printed with a sequence number to match voters with their ballot package. Once received, the ballot package was scanned into the database to determine whether the voter was eligible to vote. Then the ballot package was scanned into a second database to be connected to the tracking tool.

⁶ These allegations correspond to "Mr. Lehman's Vote" (No. 14), "Secret Ballot Guarantee" (No.32), "Request to Count Ballots After Deadline" (No. 33) and "CNH Rally" (No. 30).

The Department's investigation found that due to the volume of ballot packages received during certain periods, MRG skipped the second scan for some of the ballots and later made manual entries of those ballot packages into the second database. When checking whether your ballot had been received, MRG staff discovered that a data field for a number of ballot entries in the second database lacked manual entries for the date and time when they were scanned, which then caused the ballot tracking tool software to erroneously report them as not having been received. But the fundamental point is that the ballot tracking tool was a separate step, completely unrelated to whether your ballot was received and counted at the tally. This was a tool established to provide members with more information about the status of their ballots, but it was an imperfect tool and was never intended to serve as official notice as to whether any particular member's ballot was received and included in the tally. The Department's investigation established that your ballot was received and counted and that MRG updated the second database to include all the necessary information related to your ballot package. The investigation confirmed that the electronic control record indicated that your ballot was scanned on November 21, 2022, and that your ballot was counted in the election. Accordingly, there was no violation.

Compromised Ballot Secrecy and Lack of Adequate Safeguards

LMRDA section 401(a) provides that every national or international labor organization shall elect its officers by secret ballot and section 401(c) provides that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. §§ 481(a) and (c). You alleged that ballot secrecy could have been compromised when observers from the incumbent slate and attendees present during the ballot tally used their cell phones on the main count floor near where ballot packages were opened and ballots were separated from their secret ballot sleeves. You also alleged that you observed a tally worker on the count floor open the outer envelope and remove the ballot from the sleeve instead of separating it on two separate occasions.

The investigation revealed that several persons were using their cell phones on the floor until you pointed it out to the Monitor, who then immediately informed those on the counting floor that cell phone use was prohibited. The investigation did not find any witnesses who observed those individuals taking photos with their cell phones on the counting floor. When interviewed, the election vendor explained the ballot extraction process, which occurred while under observation by election workers and observers; first, the secret ballot envelope was removed from the outer envelope with the member's identifying information, and then, as a separate process, workers would open the secret ballot envelope, and remove the folded ballot. The investigation found that even though it was possible that an election worker could have opened the return envelope and extracted the ballot from the ballot sleeve in the first step, it was unlikely that secrecy was violated because the ballot would still have been folded within the

secret ballot sleeve. Further, once you pointed out the two instances of the election worker opening the envelope and extracting the ballot from the sleeve at the same time, that worker was immediately instructed to follow the correct protocol. Accordingly, there was no violation.

In addition, you alleged that David Stalnaker's presence at the tally as a UAW representative was improper because as an administrative assistant to the president's office, he had expressed support for the incumbent slate. The investigation revealed that he was one of five representatives assigned by the UAW to be present at the tally to support the voting process, including responding to constitutional questions. Stalnaker stated that he remained impartial and did not express support for any candidate while he was on the count floor, which is corroborated by the Monitor's statement to you during the tally that Stalnaker did not need to leave because he was "remaining impartial." Accordingly, there was no violation.

Denial of Request to Count Late-Arriving Ballots

As stated above, LMRDA section 401(c) provides that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(a) and (c). You alleged that the LMRDA was violated when the union and the Monitor denied your request to accept late-arriving ballots while the tally was still underway. The Election Rules and ballot instructions promulgated by the Monitor provided a deadline of November 28, 2022, 4:00 p.m. Eastern Time, for voted ballots to be delivered at the designated U.S. Postal Facility. The process of tallying those ballots received by November 28, 2022, at 4:00 p.m. ran from November 29, 2022, to December 2, 2022. When interviewed, the Monitor stated that your request was denied because the Election Rules were clear and the Rules required that ballots be received no later than 4:00 p.m. on November 28, 2022. Your request to waive the ballot deadline would effectively create a new election date. Section 401(e) requires that notice of an election must be mailed to each member at least fifteen days prior to the election. 29 U.S.C. § 481(e). The law is clear that a change to the election date, at the time of your request, would not have permitted the union to send timely notice to all members as required by Title IV. The union developed a ballot deadline and notified its members of this deadline. There was no statutory obligation to extend the voting period or change the election date. In fact, to do so would likely have caused great confusion among the UAW membership. Accordingly, there was no violation.

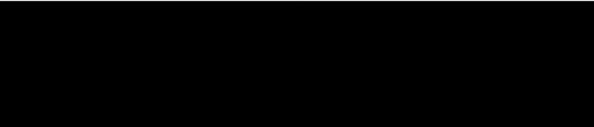
Threats Against Your Campaign Volunteers

Lastly, you alleged that the Region 4 Director made threats against your campaign volunteers at a rally for striking workers in Mount Pleasant, Wisconsin, on December 17, 2022. Even assuming this allegation were found to be a violation, the conduct

occurred well after the election and thus 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. Accordingly, the office has closed the file regarding this matter.

Sincerely,


A large black rectangular redaction box covering the signature area.

Tracy L. Shanker
Chief, Division of Enforcement

cc:



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, Associate Solicitor
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