



August 29, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your December 12, 2022, complaint filed with the Department of Labor (Department), alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the Utility Workers Union of America (UWUA) Local 127 (Union or Local 127) election of officers, completed on September 21, 2022.

The Department conducted an investigation of the complaint. As a result of the investigation, the Department has concluded, with respect to the allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that Local 127 failed to follow its constitution by having incumbent officers on its election board. Specifically, you alleged that Local 127 Vice President Michelle Biddlecome and then-President Mark Miller both served on the Election Board and participated in the ballot tally on September 21, 2022. Section 401(e) of the LMRDA requires unions to conduct their elections in accordance with their constitutions and bylaws, insofar as consistent with the LMRDA. 29 U.S.C. § 481(e). Article VI, Section 5 of Local 127's constitution states, in relevant part, that "[n]o candidate for office or incumbent Executive Board Officer shall serve on the Election Board or in any other manner whatsoever take part in the conduct of the election." Further, as a related matter, you alleged that Local 127 failed to provide adequate safeguards to ensure a fair election because Biddlecome and Miller had access to the ballot template and printed ballots, which were printed and stored at Local 127's office. Section 401(c) of the LMRDA requires that unions provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c).

The investigation disclosed that, before the September 21, 2022 election, Miller called for volunteers to serve on the election board, but nobody volunteered. The investigation further disclosed that, after receiving no volunteers, Miller asked Biddlecome, and members [REDACTED] and [REDACTED] to form the Election Board because he

worked with and saw these members most frequently. He believed that each had previously participated in a ballot tally and that they were familiar with election procedures.

Biddlecome and Miller acknowledged that they misinterpreted “incumbent Executive Board Officer” to mean one who both holds office and appears on the ballot. Although the investigation disclosed that previous Local 127 Election Boards contained incumbent officers, UWUA provided its interpretation that “incumbent” is not limited to those appearing on the ballot. The UWUA’s interpretation of its own governing documents is owed deference and will be accepted unless clearly unreasonable. *See* 29 C.F.R. § 452.3. Based on its interpretation, the UWUA determined that Miller’s and Biddlecome’s participation in the ballot tally was improper. The Department’s investigation found that Vice President Biddlecome and then-President Miller’s positions on the Election Board and participation in the ballot tally violated Article VI, Section 5 of Local 127’s constitution.

Regarding the creation and printing of the ballots, the Department confirmed that Local 127’s secretary created and printed the ballot template at the Union’s office. The Department’s investigation included a thorough review of election records, including Local 127’s ballot template, the printed ballots, and all other election records when the Department performed a recount of the ballots. The Department found no evidence of ballot fraud or tampering. Accordingly, although Local 127 violated Article VI, Section 5 of its constitution by allowing incumbent officers to participate on the Election Board and failed to provide adequate safeguards, the Department’s investigation found that there was no effect on the outcome of the election.

You further alleged that Local 127 failed to follow its constitution by allowing Biddlecome to retrieve the ballot box alone on the morning of the ballot tally. Section 401(e) of the LMRDA requires unions to conduct their elections in accordance with their constitutions and bylaws, insofar as consistent with the LMRDA. 29 U.S.C. § 481(e). Article VI, Section 5 of Local 127’s constitution states, in relevant part, that “[n]o candidate for office or incumbent Executive Board Officer shall serve on the Election Board or in any other manner whatsoever take part in the conduct of the election.” Further, section 401(c) requires that unions provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c).

During the investigation, Biddlecome explained that she retrieved the ballot box from Ambi Mail alone on the morning of the ballot tally because (1) former Office Manager Debra Vollmar, who traditionally retrieved the ballot box in previous elections, refused to do so; and (2) Ambi Mail was along Biddlecome’s route to the Local 127 union hall on the morning of the tally and she retrieved the ballot box out of convenience. However, Biddlecome’s retrieval of the ballot box violated Article VI, Section 5 of Local 127’s

constitution, as she was properly considered an “incumbent Executive Board Officer” at the time. Accordingly, the Department’s investigation found that Biddlecome’s retrieval of the ballot box on the morning of the ballot tally violated Article VI, Section 5 of Local 127’s constitution and therefore section 401(e), as well as section 401(c)’s adequate safeguards requirement. The Department reviewed Local 127’s election records and found no evidence that Vice President Biddlecome’s retrieval of the ballot box had an effect on the outcome of the election. Specifically, the Department’s review of all election records revealed no evidence of ballot tampering or fraud. Accordingly, although Local 127 violated Article VI, Section 5 of its constitution and failed to provide adequate safeguards, the Department’s investigation found that there was no effect on the outcome of the election.

You alleged that you were denied the right to have an observer after you were asked to leave Local 127’s office during the ballot tally. Section 401(c) of the LMRDA provides that candidates have the right to “have an observer at the polls and at the counting of the ballots.” 29 U.S.C. § 481(c). The Department’s interpretive regulations at 29 C.F.R. § 452.107(a) make clear that the right to have an observer “encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots,” and that a candidate may serve as his or her own observer unless prohibited by the union’s constitution and bylaws, election rules, or past practice. Additionally, the LMRDA places the onus on the candidate to request and to have an observer present.

Specifically, you alleged that you went to Local 127’s union hall to observe the tally. When the Election Board came across a duplicate ballot, you suggested holding the ballots up to the light to confirm the color of the ballot. After this suggestion, Biddlecome consulted what she believed to be Department of Labor rules. Citing those rules, Vice President Biddlecome informed you that candidates are not allowed to be their own observer, and the Election Board asked you to leave.

Although the Department’s investigation found no evidence that you expressly requested to be an observer, the context and totality of the circumstances indicate that you wanted to be your own observer. You were on the ballot and you began observing the ballot tally. Further, Biddlecome discerned that you were there to observe the ballot tally because she consulted what she believed to be the Department of Labor rules relating to candidates acting as their own observers. When the Election Board asked you to leave, you were denied the opportunity to act as your own observer. Accordingly, the Department’s investigation found that Vice President Biddlecome’s denial of your right to have to an observer violated section 401(c) of the LMRDA. As discussed above, the Department’s investigation included a thorough review of Local 127’s election records and the investigation did not substantiate any problems with the ballots or tally that would have changed the outcome of the election. As noted above, the Department found no evidence of ballot tampering or fraud. Accordingly, although

Local 127 violated section 401(c) of the LMRDA, there was no effect on the outcome of the election.

Finally, in your complaint to the Department, you raised allegations regarding a member, [REDACTED], not being mailed a ballot. Section 402(a) of the LMRDA requires that a member exhaust the remedies available to him or her under the union's constitution and bylaws before filing a complaint with the Secretary of Labor. 29 U.S.C. § 481(a). This allegation was not properly exhausted and therefore was not investigated by the Department.

For the reasons set forth above, the Department has concluded that no violation of the Act occurred that may have affected the outcome of the election in connection with your allegations. Accordingly, I have closed the file on this matter.

Sincerely,

[REDACTED]

Tracy L. Shanker
Chief, Division of Enforcement

cc: James Slevin, National President
Utility Workers Union of America
1300 L Street, NW, Suite 1200
Washington, DC 20005

Ray Summa, President
UWUA Local 127
540 Warehouse Road
Casper, WY 82601

[REDACTED], Associate Solicitor
Civil Rights and Labor-Management Division