



May 13, 2013

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor on July 27, 2012, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the rerun election of officers conducted by the Amalgamated Transit Union (ATU) Local 1385 on April 18, 2012.

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 there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that your nickname was not listed on the ballot and that the union did not notify candidates that they had the option of having nicknames appear on the ballot. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. Thus, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege. 29 C.F.R. § 452.110.

The investigation disclosed that the local's constitution and bylaws are silent concerning the use of nicknames on the ballot, and the union's governing documents do not require the union to notify candidates concerning such use. The investigation also disclosed that the ballot did not contain any nicknames and that none of the candidates, including your opponents, requested the union to list a nickname on the ballot. The investigation further revealed that you complained to the union either after the ballot already had been sent to the printer for printing or after the election was completed that your nickname [REDACTED] was not listed on the ballot as your first name. However, prior to your making that complaint, you never requested the union to list your nickname on the ballot. In any event, the investigation disclosed that you have been a member of the local's executive board for nearly 20 years and that you are known among the membership as both [REDACTED] and as [REDACTED]. In addition, your name was listed on the ballot as [REDACTED] for the January 2012 regular election, which

was held only three months prior to the April 2012 rerun election. The minutes for the nominations meeting listed your name as [REDACTED] and you signed that name on the voter eligibility sign-in sheet. Further, although your campaign materials listed your first name as [REDACTED] that name is a commonly known nickname for [REDACTED]. Your campaign materials clearly stated that you were running for the office of president, and you were the only candidate for either of the contested races, including the office of president, whose first name or last name was listed on the ballot as [REDACTED] or [REDACTED]. Under these circumstances, there is not probable cause to believe that voters were unable to identify your name on the ballot. The LMRDA was not violated.

You alleged that the name of a candidate who withdrew from the race for president should not have been printed on the ballot. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election.

The investigation disclosed that on April 9, 2012, the union received a letter from a candidate indicating that he was withdrawing from the race for president. By the time the union received the letter, the printer had printed the ballots and shipped them back to the union. The union posted a notice on the union boards located at an employer facility informing members that the candidate had withdrawn from the election. The union also forwarded a similar notice to another facility for posting. However, the union acknowledged during the investigation that members not located at these facilities, those on leave, and retirees would not have seen the postings. The union could have placed a notice at the polls advising members of the candidate's withdrawal, but did not. Thus, the adequate safeguards provision of the LMRDA was violated when the name of a candidate who had withdrawn from the race for president remained on the ballot, and the union failed to inform all of its members of such withdrawal. The investigation showed that this candidate received two votes in the race for president. The smallest vote margin for that race was four votes; thus, the two votes received by the candidate did not affect the outcome of the election for president. There was no violation that may have affected the outcome of the election for president.

Finally, you alleged that the union may have used an inaccurate voter eligibility list, resulting in ineligible members voting in the election. Section 401(e) of the LMRDA provides that every member in good standing is eligible to vote. 29 C.F.R. § 452.84. The investigation disclosed that you believe that new hires voted in the election and that they were ineligible to vote because they were subject to a probationary period.

The investigation disclosed that the ATU Constitution and General Laws do not require new hires to complete a probationary period before they qualify for membership and become eligible to vote. Section 21.6 of the ATU Constitution and General Laws prescribes the requirements for membership and provides that an individual is a member in good standing and eligible to vote so long as the individual has submitted


an application for membership and either has paid dues and initiations fees in whole or in part or has authorized a payroll deduction for such payments. The investigation revealed that one new hire/member who was required to pay dues directly to the union did not pay dues for the months of March 2012 and April 2012 and voted in the election. Section 21.9 of the ATU Constitution and General Laws provides that members who are two full months in arrears of dues payment stand suspended. At the time of the April 18 election, the new hire/member was not two full months in arrears of such payments, and had not been suspended from membership. Thus, it appears that the new hire/member may have been eligible to vote. In any event, the smallest vote margin was 4 votes; thus, the vote cast by the new member even when added to the two votes mentioned above would not have affected the outcome of the election.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Lawrence J. Hanley, International President
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