



February 23, 2016

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear Messrs. [REDACTED], and [REDACTED]:

This Statement of Reasons is in response to your July 8, 2015 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of the Laborers' International Union of North America Local 79 (LIUNA Local 79) conducted on June 24, 2015.

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 Act affecting the outcome of the election.

You alleged that LIUNA Local 79 violated the LMRDA and caused voter confusion when the election judges used new, unclear ballot instructions for slate voting. The investigation determined that the ballot instructions clearly stated on both pages that if a voter marked a slate box, no other marks would be counted. However, despite what appears to be a clear instruction, the Department's review of the ballots indicated that 262 voters marked a slate box in addition to marking votes for individual candidates on the opposing slate. Even if this action by 262 voters were held to indicate unclear instructions and voter confusion, the smallest margin of winning votes was 468¹. Thus, the 262 votes would not have affected the outcome of the election. There was no violation of the Act.

¹ LIUNA Local 79 set aside 217 ballots that had not been placed in secret ballot envelopes. While LIUNA's Guide for Local Union Judges of Election (Chapter 9, Section 3) states, "Void any ballots that were not in a secret ballot envelope," this practice is inconsistent with OLMS policy. Accordingly, OLMS did a recount to include the 217 ballots that were initially set aside. In this OLMS recount, the smallest margin of winning votes was 468. The initial certified ballot count of the American Arbitration Association, which did not include the 217 ballots that were set aside, resulted in a smallest margin of 439. The 262 votes in question would not have affected the outcome of the election in either case.

You alleged that LIUNA Local 79 violated the LMRDA and caused voter confusion when the election judges permitted the predominantly-incumbent slate to re-use the name "Clean Slate." Certain candidates, originally a part of the "Clean Slate," left that slate and became members of the "Integrity Slate," such that members may have been confused as to slate composition when checking the slate box. The investigation revealed that candidates were listed on the ballot individually, by name and slate affiliation and could be voted for on an individual basis. There was no violation.

You also alleged that LIUNA Local 79 violated the LMRDA when it allowed Business Manager Candidate Mike Prohaska to run for office after his nomination was not seconded. Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws. Article VI, Section 1(f) of the LIUNA constitution requires that, "[a]ll members properly nominated shall be nominated by two (2) other members in good standing." The nominations meeting transcript and interviews with election officials confirmed that members [REDACTED] and [REDACTED] both nominated Mike Prohaska during the nominations meeting. There was no violation of the Act. In any event, it appears that this violation was not properly before the Secretary, because you did not properly exhaust your internal union remedies. You filed your election protest with the judges of election rather than with the General Executive Board as required by Article XI, Section 8 of the ULUC.

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

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

cc: Terry O'Sullivan, General President
Laborers International Union of North America
905 16th Street, NW
Washington, D.C. 20006-1765

Kenneth Brancaccio, President
Laborers Local 79
520 8th Avenue, Suite 679
New York, NY 10018

Robert M. Cheverie, Esq.
333 East River Drive, Suite 101
East Hartford, CT 06108

Beverly Dankowitz, Acting Associate Solicitor
Civil Rights and Labor-Management Division