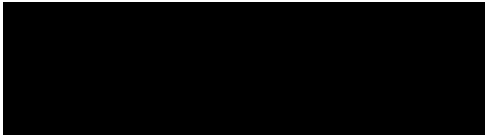




October 21, 2016



Dear [REDACTED]

This Statement of Reasons is in response to your three separate complaints, received by the U. S. Department of Labor on June 17, 2015, July 20, 2015, and October 6, 2015, respectively, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers in Local 78 (local or Local 78), Laborers International Union of North America (International), that was held June 20, 2015.

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

Four of your allegations concerned the fairness of the election. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election. Unions have a wide range of discretion regarding the conduct of their elections, circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

First, you alleged that the local should have held the election at a neutral facility such as a public school, rather than the premises of the local. Article VI, section 2(j) of the International Constitution places the responsibility on local union members to establish the time, date, and location of an election. The investigation disclosed that at the local's May 26, 2015 membership meeting, the members in attendance voted to hold the election at the union office. You chose not to attend that meeting and voice your concerns. The membership had the constitutional authority to determine the location of the election, and did so in a fair and democratic manner. There was no violation.

Second, you alleged that one of the election judges was a relative of one of the incumbent candidates. Although the International Constitution is silent on this issue, a constitutional supplement, the LIUNA Local Union Officer Elections: A Guide for Local Union Judges of Election (Election Guide), states "[t]here is no rule prohibiting a Judge

of Election from being related to a candidate. In evaluating the conduct of the Judges of Election, it is ultimately the decisions of the Judges, not their relationships that must be evaluated." Chapter 1, page 4.

The investigation disclosed that [REDACTED], one of the three election judges appointed by the local executive board, is a distant cousin of [REDACTED] the incumbent business manager. Nothing in the decisions of the election judges, including [REDACTED], indicated any bias in favor of incumbents, or against challengers, including you, nor have you provided any such evidence. The general rules of fairness were safeguarded. There was no violation.

Third, you alleged that the local should have manually counted the ballots after the conclusion of the tally because you did not trust the current administration. You ran for the office of business manager against incumbent [REDACTED]. The only other contested officer position on the ballot was for auditor, in which four candidates ran for three auditor positions. The investigation disclosed margins of victory in excess of 900 votes for those two offices. The Department's recount of the ballots confirmed the local's count for auditors but disclosed a minor discrepancy for business manager that increased the margin of victory for your opponent: you received 534 votes while your opponent received 1,477, a margin of 943 votes. There was no violation.

Fourth, you alleged that the local should not have listed offices that were not contested, because this confused voters. Neither the LMRDA nor the union constitution prohibits the display of unopposed candidates' names on the ballot. However, the Election Guide, page 44, encourages such a practice, allowing its subordinate locals to make such decisions for themselves. Although it is not required, "placing the unopposed names on the ballot would promote the democratic process by giving the membership a more informed vote." You were not unable to identify any voter who was confused by the ballot for any reason, nor did the investigation disclose any such evidence. There was no violation.

In addition to the allegations addressed above, you next alleged that the local compromised the secrecy of the ballot when it numbered the ballots. Section 401(b) requires, in relevant part, that locals conduct their elections by secret ballot. 29 U.S.C. § 481 (b). The LMRDA defines "secret ballot" as an expression by ballot cast in such a manner that the person expressing such choice cannot be identified with the choice expressed. 29 U.S.C. § 402(k). The investigation disclosed that Elections USA, Inc., the election company hired to conduct the local's election, used a numeric code on the upper left-hand corner of the ballot to distinguish ballots cast at the New York polling site (0001) from those ballots cast in New Jersey (0002). No other marks were on the ballot. The Department's review of the ballots showed that this numbering did not make it possible to connect any voter with his or her vote. There was no violation.

You further alleged that the local denied you a reasonable opportunity to campaign for business manager when it held the election on June 20, 2015, which was 15 days after June 5, the day you were notified that the International had reinstated your candidacy. You assert that your opponent received an unfair advantage because he was able to commence campaigning before June 5. The LMRDA requires that all candidates be afforded a reasonable opportunity to campaign, an opportunity that must be applied equally to all candidates. 29 C.F.R. § 452.79. What is a reasonable period of time depends on the circumstances. *Id.* The Department's investigation determined that local members voted on May 26th to reschedule the election to June 20th. The investigation disclosed that you campaigned prior to the nominations meetings held May 5-6, 2015, when you were disqualified. The investigation also disclosed that you campaigned after your disqualification but prior to your reinstatement, by staging demonstrations with your supporters outside the union office to protest your disqualification. You did not request a campaign mailing although you were free to do so at any time during the pendency of your appeal. You had an additional two weeks to campaign after your reinstatement, a sufficient amount of time within which to conduct your campaign prior to the June 20th election. There was no violation.

In a related issue, you alleged that the local's decision to reschedule its election to Saturday, June 20, 2015, denied members the opportunity to vote because many members were working that day. Section 401(e) provides in relevant part, that "every member in good standing shall . . . have the right to vote". As noted above, the International Constitution authorizes local members to set the date, time, and place of the election. Art. VI, section 2(j). The investigation disclosed that the local members' decision to reschedule the election was based on the fact that June 20, 2015 was the last Saturday before schools closed, and the last weekend before the commencement of the high season for asbestos removal work. There was no evidence that fewer members were able to vote because of the rescheduled election. In fact, approximately 60 percent of the local's membership voted in the election, a relatively high voter participation rate in a union officer election. The local provided its members with a reasonable opportunity to vote. There was no violation.

Finally, you alleged that a two-hour reduction in the polling time denied members in southern New Jersey the opportunity to vote because they would not have sufficient time to travel to the northern New Jersey polling site. As noted above, section 401(e) mandates that every member in good standing shall be eligible to vote implies that unions take into consideration its members' working hours, among other considerations. 29 C.F.R. § 452.94. The investigation disclosed that members set the polling hours from 9 am to 7 pm, a ten-hour period, two hours less than the hours set in the previous election. Nevertheless, the investigation also disclosed that there were two eight-hour work shifts: 7 am to 3 pm, and 4 pm to 12 am. A review of the record

showed that 555 members worked on June 20, 2015. The majority of those members worked eight-hour shifts, commencing either in the morning or the afternoon. The two work shifts did not totally overlap with the local's voting hours, allowing members to vote either before or after their work shifts. Significantly, all 555 of those members worked in New York. Consequently, your concern regarding the travel time of New Jersey members to the polls is unfounded. In addition, even if all 555 members had voted in your favor of the losing candidates, there would have been no effect on the outcome of the election for any contested office. Given these specific findings, the local's polling hours provided its members a reasonable opportunity to vote. There was no violation.

For the reasons set forth above, your administrative complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,



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