



August 29, 2017

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed March 20, 2017 with the United States Department of Labor, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the June 24, 2016 election of officers for UNITE HERE Local 54, in Atlantic City, New Jersey.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations, that no violation occurred which may have affected the outcome of the election.

First, you allege that the incumbent leadership scheduled contract negotiations and a strike vote on June 16, 2016, immediately before the officer election to further their candidacy in the officer election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. The requirement of adequate safeguards imposes a "general rule of fairness" on a union's election procedure. 29 C.F.R. § 452.110.

The Department investigated your allegation and found no evidence that the strike vote was intentionally scheduled to coincide with the officer election. Rather, the investigation determined that the union initiated the negotiations in March 2016, and that it was the employers who requested that the negotiations be delayed. The choice to then strike during the July 4<sup>th</sup> holiday weekend was based on valid union business objectives. Furthermore, Article V, Section 3 of the Local 54 bylaws require that the officer election be held triennially on the last Friday in June, which necessitated that the election be held on June 24, 2016. Thus, the strike vote was not timed to influence the election, and there was no violation of the LMRDA.

Next, you allege that the incumbent leadership connected strike pay to winning the election, promising members \$400 in strike payments if the incumbents won. You further allege that the incumbent leadership denigrated the *Unite for Change* slate

because they did not support a strike. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate. 29 C.F.R. § 452.73

The Department's investigation did not uncover any evidence that the incumbent slate promised strike pay to members if they voted for the incumbents or that any union funds were used to support the incumbent slate. Specifically, the strike pay amounts were controlled by the UNITE HERE International, not Local 54, and would have been available to support Local 54 members in the event of a strike regardless of who was elected in the Local 54 officer election. Moreover, it is not necessary for the Department to determine whether the incumbents based their campaign on their support of the strike (and any ensuing benefits from striking), because this is an appropriate issue for an election campaign and would not violate the LMRDA.

You also allege that members' dues were not properly taken out of their pay before the election; therefore, eligible members were unable to vote. Section 401(e) of the LMRDA states that "each member in good standing shall be entitled to one vote." A member in good standing whose dues are checked off by his employer pursuant to his voluntary dues deduction authorization provided for in a collective bargaining agreement may not be disqualified from voting by reason of alleged delay or default in the payment of dues. 29 C.F.R. § 452.87.

You identified [REDACTED] as members who were improperly deemed ineligible to vote as a result of their dues not being properly taken out of their pay. At the time of the June 6, 2016 nominations meeting, [REDACTED] were behind in dues payments, but were both permitted to restore their good standing by payment of back dues. Both individuals were then nominated for officer positions and were listed as candidates on the ballot. Additionally, both [REDACTED] appeared on the voter eligibility list and both signed the list, indicating that they successfully cast ballots in the election. Significantly, any member who appeared at the polling site but was not listed as eligible to vote was allowed to cast a challenged ballot. The Department's review indicated that 138 challenged ballots were voted. Accordingly, there was no evidence that members were denied the right to vote, and there was no violation.

You next allege that representatives from the UNITE HERE International and other UNITE HERE locals campaigned in support of the Local 54 incumbents and that some members and casino employees were put in leave of absence (LOA) status and paid to campaign for the Local 54 incumbents. As stated above, Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate. 29 C.F.R. §§ 452.73, 452.78.

You identified [REDACTED] as a UNITE HERE representative who campaigned for incumbents while on union time. The Department's investigation, however, did not uncover any evidence that [REDACTED] campaigned while on union time. [REDACTED] admitted that he campaigned for the incumbent slate, but stated that he only campaigned while

on personal time. [REDACTED] leave records support his claim. You also named [REDACTED] as an individual who had campaigned while on union paid leave. Again, the Department did not uncover any evidence of improper campaigning. The Department's investigation revealed that Ireland's work for the local involved talking to various members about the Local 54 boycott activities, not the campaign for local union office. Accordingly, there was no violation.

You further allege that the *Unite for Change* slate was not allowed to use the union's texting system and membership list but that the incumbent slate was allowed to use the texting system for campaigning purposes. Section 401(c) of the LMRDA prohibits disparate candidate treatment. When a union or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if he or she requests it. 29 C.F.R. § 452.67.

The Department's investigation revealed that the incumbent slate retained a third party vendor named CallFire to send two campaign text messages to a list of supporters whose names and cell phone numbers the slate had collected using pledge cards. The Department determined that Local 54 did not have a text messaging system, and that only UNITE HERE International maintained a text messaging system. UNITE HERE International's system was used to send out boycott-related texts, but there was no evidence that this system was used for campaigning. There was no violation.

Similarly, you allege that incumbent officers and supporters were given access to casino properties to campaign while the *Unite for Change* slate was not provided with this access. The Section 401(g) prohibition on the use of employer funds to promote a person's candidacy encompasses the contribution of an employer's resources and property to promote anyone's candidacy. 29 C.F.R. § 452.78. Under the LMRDA, employers may determine for themselves whether to permit or prohibit campaigning on their premises, as long as the employer's policy is uniformly imposed. 29 C.F.R. § 452.66; 29 C.F.R. § 452.78.

Again, the Department did not uncover any evidence of disparate treatment in this regard. While Albert did visit casinos as part of his job, there was no evidence that he campaigned during these work-related visits. There was no violation of the LMRDA.

You also allege that members were given titles by the incumbents and were permitted to intimidate supporters of the *Unite for Change* slate. Specifically, you claim that these members, including Vice President Javier Soto, confiscated *Unite for Change* literature on the day of the strike vote outside of Boardwalk Hall while allowing the incumbent slate to distribute campaign literature inside Boardwalk Hall. You also allege that Soto verbally abused *Unite for Change* supporters during the June 2016 strike vote at Boardwalk Hall.

The Department's investigation did not uncover and you did not provide any evidence of titles being granted. Additionally, the investigation did not uncover evidence of intimidation by the incumbent slate during the strike vote. Additionally, the investigation did not support your claim that the incumbent slate was campaigning inside of the Boardwalk Hall during the June 16, 2016 strike vote. Election Committee [REDACTED] and a representative of the New Jersey State Board of Mediation both stated that they did not observe any campaigning within Boardwalk Hall during the strike vote, and that no campaign literature was allowed inside the hall. Members were advised to put any campaign literature away before entering the hall. Moreover, the Department's investigation revealed that the flyer you allege was distributed by the incumbent slate during the strike vote was not printed until after the strike vote. There was no violation of the LMRDA.

Finally, you allege that members who worked at the Golden Nugget Casino Hotel did not have notice of the election posted in the casino. Section 401(e) of the LMRDA provides that a union must mail notice of a union officer election to each member's last known home address at least 15 days prior to the election. The union did mail a combined notice of nomination and election to its members in May 2016, more than 15 days prior to the June 24, 2016 election. There is no requirement that notice of the election be posted in the workplace. This allegation, even if true, would not violate the statute, and therefore was not investigated.

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

Sincerely,

[REDACTED]

Sharon Hanley, Chief  
Division of Enforcement

cc: D. Taylor, President  
UNITE HERE  
275 7<sup>th</sup> Avenue, 16<sup>th</sup> Floor  
New York, New York 10001-6708

Robert McDevitt, President  
UNITE HERE Local 54  
1014 Atlantic Avenue  
Atlantic City, New Jersey 08401

Mr. Richard McCracken  
General Counsel  
1630 S. Commerce Street  
Las Vegas, Nevada 89102

William T. Josem, Esq.  
Cleary, Josem & Trigiani LLP  
Constitution Place  
325 Chestnut Street, Suite 200  
Philadelphia, Pennsylvania 19106

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