



February 23, 2017



Dear [REDACTED]:

This Statement of Reasons is in response to your September 6, 2016 complaint filed with the United States 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 election of officers held by the Sheet Metal, Air, Rail and Transportation Workers Local 49 ("SMART Local 49") on June 15-17, 2016.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred that affected the outcome of the election. Below is an explanation of this conclusion.

You alleged that having a polling place at the Air Systems Components (ASC) location in El Paso, Texas gave an unfair advantage to incumbent Business Manager/Financial Secretary Vince Alvarado because only he had access to the facility. You also alleged that having a second polling place in El Paso burdened members living in other areas such as Alamogordo and Las Cruces, New Mexico. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office and guarantees union members a reasonable opportunity to vote. See 29 C.F.R. § 452.110. In assessing whether members had a reasonable opportunity to vote, the Department considers factors such as the distance between the members' work sites or homes and the polling places, the means of transportation available, and the members' hours of work. 29 C.F.R. § 452.94.

The Department's investigation revealed that the ASC has historically been designated as a polling place because it is conveniently located for the many members working there. There was no evidence that the ASC location was chosen to favor one candidate over another. While the current business manager does have greater access to the facility because he is responsible for conducting union business there, there is no evidence that he campaigned inside the ASC facility. Accordingly, there was no violation of the prohibition against disparate candidate treatment.

The investigation also revealed that, because of the long distance between the polling locations and members' work sites, the timing of members' work shifts, and the time during which the polling sites were open, some members were not able to get to the polls in time to vote after their work shifts. Accordingly, the investigation confirmed a violation of these members' right to a reasonable opportunity to vote. However, section 402(c) of the LMRDA requires that an election may only be set aside where a violation may have affected the outcome of the election. Here, the margin for the only contested race in the election was 33 votes and the number of members found to be affected was 10. The violation could not have affected the outcome of the election.

You alleged that some members may not have voted because they thought you and ██████████ would split the vote for Business Manager/Financial Secretary. You assert that the union improperly failed to inform the membership that ██████████ withdrew his candidacy for that position. Neither the LMRDA nor the regulations prescribe specific procedures for candidate withdrawal. While section 401(e) of the LMRDA requires that elections must be conducted according to the union constitution and bylaws, the union's constitution and local elections procedures are silent on candidate withdrawal procedures. Nevertheless, section 401(c) of the LMRDA requires adequate safeguards to ensure a fair election, which has been interpreted as prescribing a general rule of fairness. See 29 C.F.R. § 452.110.

The Department's investigation revealed that, on June 13, 2016, two days before the first day of voting, ██████████ sent SMART Local 49 president Charles Thomas a text message asking, "What do I have to do to withdraw from the election[?]" Mr. Thomas responded by text, "There is no withdrawing that I know of[.] Ballots have been made and distributed[.] I will look into it further tomorrow[.]" Mr. Thomas did not respond further to ██████████ and ██████████ did not further contact him about this subject. ██████████ name remained on the ballot and he received four votes.

Under these circumstances, the union's actions did not violate the general rule of fairness. ██████████ contacted Mr. Thomas only two days before the voting began, after the ballots had been printed and distributed, and his text message merely inquired about procedures for withdrawal. He did not state directly that he actually intended to withdraw. Nothing in the union's constitution or election procedures provided for withdrawal. ██████████ never followed up with Mr. Thomas to make clear that he was requesting to withdraw his candidacy. Absent the candidate's clear expression to the union of his intent or desire to withdraw, the union's failure to remove ██████████ as a candidate was fair. Accordingly, there was no violation.

You alleged that the ballot boxes were locked with common master locks, that the spare keys were not destroyed, and that the keys were kept by an individual affiliated with the incumbent Business Manager/Financial Secretary candidate. You further alleged

that the ballot boxes were not sealed with tape. Section 401(b) of the LMDRA requires a secret ballot and section 401(c) requires adequate safeguards to ensure a fair election.

The investigation revealed that a sheet metal ballot box was used at each polling place. Each box had two lids. The first lid had a slit on top through which the voters dropped their ballots and the second lid closed over the first lid. Each lid was secured with a separate padlock. Election Judge ██████ safeguarded all of the keys for the entire election period. The Department's review of the records found no evidence of tampering with the ballots. The first voter at every polling site except one verified that the ballot boxes were empty prior to voting. The one polling site without verification reported only 5 votes, and those 5 showed no evidence of tampering. There is no requirement that ballot boxes be sealed with tape prior to the ballots being counted. There was no violation.

You alleged that different polling sites required members to produce different documents to vote, with some requiring an ID or dues receipt to vote, some requiring both, and one requiring none. You also alleged that long lines developed at the polling site at the union hall in Albuquerque because members had to get their dues receipt before they could vote, and some members left without voting rather than wait in line. Section 401(b) of the LMRDA requires local union officers to be elected by members in good standing and section 401(e) guarantees members in good standing the right to vote.

The investigation confirmed that different polling places had different procedures for checking voter eligibility. However, there is no evidence that any member in good standing was prevented from voting because the member did not have the documentation required at the polling site. The Department's review of the union's records showed that the union's election resolution for the June 2016 election stated that members had to be in good standing to vote, but did not require any particular identification documents. The election notice similarly did not state that any particular identification documents were required to vote, such that a member might be deterred from voting by a lack of correct documentation.

Regarding the Albuquerque polling site, while some members did wait in line to get their dues receipts at the union hall, there is no evidence that anyone was prevented from voting for lack of a dues receipt or by having to wait for a receipt. There is also no evidence that any ineligible person was able to vote in the protested election because of the lack of an ID requirement. Accordingly, there was no violation.

You alleged that union organizer and executive board candidate ██████ observed you putting mailing labels on your campaign literature at the union hall. You alleged that ██████ could have seen the names of the members to whom you did not send

campaign material and told your opponent. You further alleged that no other candidate was observed while preparing campaign materials.

The investigation revealed that the union's policy is that someone on the staff observes while candidates place mailing labels on their campaign literature to ensure that candidates do not copy the membership list. In the protested election, [REDACTED] observed you affixing mailing labels to your campaign literature. The two other candidates for Business Manager/Financial Secretary were also observed by union staff as they were mailing campaign literature. There is no evidence that [REDACTED] saw the names of the members to whom you did not send campaign material and no evidence that he told anyone about those names.

You also alleged that candidates such as [REDACTED] are not allowed to be observers. The union's constitution and local election procedures guarantees candidates the right to have an observer at the distribution, casting, and tabulation of the ballots but does not allow candidates themselves to be observers. See SMART Constitution & Ritual art. 12, § 6(c); SMART Local Elections Procedures and Guidelines 23. There are no specific rules, however, that prohibit the union from having a staff member who also happens to be candidate observe another candidate preparing campaign literature in order to enforce the no-copying rule. As discussed above, there is no evidence that [REDACTED] saw the names of the members to whom you did not send campaign material and no evidence that he told anyone about those names. Accordingly, there was no violation.

You alleged that Joint Apprenticeship and Training Committee instructor [REDACTED] and coordinator [REDACTED] campaigned for incumbent Business Manager/Financial Secretary candidate [REDACTED] during apprenticeship classes in May and June 2016. Section 401(g) of the LMRDA prohibits the use of labor organization or employer resources to promote a candidate. Accordingly, officers and employees of a union may not campaign on time that is paid for by the union, and officers and employees may not use union funds or other resources for campaigning. Campaigning that is incidental to legitimate union business does not violate the LMRDA. 29 C.F.R. § 452.76.

The Department's investigation revealed that, while on union time at the training, [REDACTED] and [REDACTED] told the apprentices that the election was coming up and encouraged them to vote. Certain individuals who attended the training stated that [REDACTED] said he was going to vote for [REDACTED] and that both [REDACTED] and [REDACTED] gave their opinion that [REDACTED] was a good business manager. [REDACTED] was running for Business Manager/Financial Secretary, the only contested race in the election. Under these circumstances, the endorsement of [REDACTED] constituted a violation of the rule against using union time to campaign. However, section 402(c) of the LMRDA provides that an election will only be overturned where a violation may have affected the outcome of the election. The

margin in the Business Manager/Financial Secretary race was 33 votes, and only 17 of the 32 apprentices who attended classes in May and June 2016 voted in the election. The violation could not have affected the election.

You also alleged that local union organizers [REDACTED] and [REDACTED] campaigned at the ASC facility in El Paso, Texas on union time. You indicated that a retired member told you he saw [REDACTED]'s jeep in the parking lot of the facility. The investigation found that wage survey work was performed there around the time of the election. However, the investigation revealed no evidence that [REDACTED] or [REDACTED] campaigned at the ASC facility. Accordingly, there was no violation.

You further alleged that union organizer [REDACTED] used his union-issued cell phone to call member [REDACTED] to campaign for Business Manager/Financial Secretary candidate [REDACTED]. The Department's investigation revealed that, in the second half of June 2016, [REDACTED] and [REDACTED] communicated by email and by phone about a manpower request form and a grievance. A review of [REDACTED] union cell phone records shows that he contacted [REDACTED] on June 15, 2016, the first day of voting, at 8:21 pm for one minute, 8:43 pm for 14 minutes, and 8:57 pm for 33 minutes. While the evidence indicates that some campaigning may have taken place during these phone conversations, the evidence is conflicting and inconclusive. Regardless, even if the conversation violated the statute, it only involved 1 member and that one vote could not have affected the outcome of the election.

You next alleged that [REDACTED] campaigned during work hours at the Los Alamos National Laboratory (LANS) facility, during a meeting about the upcoming LANS contract and negotiations. The investigation revealed that [REDACTED] attended a contract negotiations meeting at the LANS facility on May 26, 2016. During the question-and-answer period, when asked about the election, he said that the local was holding an election and that members should vote. Although he did not explicitly ask the audience to vote for him, he talked about all of the good things he had done for members. To the extent that [REDACTED] comments constituted campaigning, the campaigning was incidental to legitimate union business. Accordingly, there was no violation.

You alleged that union president Charles Thomas misinformed you on June 17, 2016 that candidates were allowed to observe the ballot tally. The following morning, President Thomas stated that he misspoke and that candidates were not allowed to observe the ballot tally, which was scheduled to take place that day, leaving you insufficient time to arrange for another observer. Section 401(c) of the LMRDA provides for a candidate's right to have an observer at the polls and at the counting of the ballots. The LMRDA does not prohibit candidates from serving as their own observers, but unions may prohibit candidates from serving as observers, as your union

does. See SMART Constitution and Ritual art. 12, § 6(c); SMART Local Elections Procedures and Guidelines p. 23.

The investigation confirmed your allegations that President Thomas initially misspoke and then corrected his mistake too late for you to find another observer at the ballot tally. The investigation revealed that no candidate had an observer at the tally. However, the Department's review of the election records found no evidence of ballot fraud or tampering at the ballot tally. Accordingly, even if the misstatement of the rule resulted in a denial of your right to have an observer, there was no effect on the outcome of the election.

You alleged that you, the recording secretary, were pressured to sign the local union's election report and submit it to the international union even though the report contained only a vote summary sheet and did not contain the tallies of valid ballots counted, void ballots, and unresolved ballots. You allege that this violated the union constitution.

Section 401(e) of the statute requires that an election be conducted in accordance with the union's constitution. Article 12, Section 6(c) of the union constitution requires that the tellers and election judge "prepare a written report of all tallies and ballots cast for each candidate and the number of void ballots" and submit the signed report to the recording secretary. Once the tellers and judge's report has been submitted to the local union, Section 6(d) requires the recording secretary to file with the General Secretary-Treasurer the names and addresses of the newly elected officers, the number of the dues receipts of each elected officer showing payment to and for the months in which nominations and election occurred, and "a complete tally sheet showing the exact vote for each office." These provisions do not explicitly require that the filing by the recording secretary contain all of the information in the election committee's report. Therefore, there was no violation.

You alleged that ballots from different polling places were not mixed together before they were tallied, such that one could tell which geographic areas supported which candidates. The LMRDA requires that elections be conducted by secret ballot, which is defined in section 3(k) as requiring that ballots be "cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." There is no requirement in either the statute or the union's constitution that ballots from different polling locations be mixed together before they are counted. In any event, the investigation revealed that the ballots from different polling places were, in fact, mixed together before they were counted. Accordingly, there was no violation.

You alleged that owner-members [REDACTED] were permitted to vote even though Article 16, Section 1(d) of the union constitution prohibits owner-members from voting for local union officers.

The investigation revealed that [REDACTED] is an owner-member, but that [REDACTED] is a member. [REDACTED] was the only owner-member who voted in the protested election. Accordingly, the investigation confirmed a violation of the constitution. This violation resulted in an effect of one vote. When this one vote is added to the number of votes affected by other violations of the LMRDA as described above, the total number of votes that may have been affected in the contested election is 29. As this number does not reach the margin of victory, which was 33 votes, the violations identified in the investigation could not have affected the outcome of the election.

Finally, you alleged that you, the recording secretary, were not asked to be involved in the sending of election notices. You argue that this violated the union constitution. Article 13, Section 3 of the union constitution provides that the recording secretary shall "issue all notices for meetings." It does not require the recording secretary to play a role in issuing election notices. Accordingly, there was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file regarding this matter.

Sincerely,

[REDACTED]

[REDACTED]

Chief, Division of Enforcement

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