



May 2, 2017

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U.S. Department of Labor on December 5, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the regularly scheduled election of officers conducted by the Operating Engineers Local No. 428 on August 15, 2016.

The Department of Labor conducted an investigation of your complaint. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election.

You alleged that incumbent business manager Michael Lee and retired union member [REDACTED] improperly used union resources to mail campaign literature in support of the candidacy of the incumbent officers. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any individual in an election. However, section 401(c) also requires unions to comply with a candidate's reasonable request to distribute campaign literature to the union membership at the candidate's expense and requires that all candidates be treated equally with regard to the expense of such mailings.

The investigation revealed that Local 428 adopted a resolution setting forth its procedures for distributing campaign mailings at a candidate's request. The resolution provides that each candidate shall promptly pay the actual cost to the union for handling and mailing campaign literature. Mr. Lee sent campaign mailings to union members on July 13, 2016 and July 26, 2016. [REDACTED] sent a campaign mailing to union membership on July 25, 2016. Mr. Lee and [REDACTED] printed their flyers at an independent print shop and purchased mailing envelopes at commercial retailers, but used the union's postage meter. Local 428 Office Secretary Annette Mejia affixed the mailing labels and mailed the literature at the local post office. Records indicate that Mr. Lee and [REDACTED] paid the union in cash for the cost of the labels and postage as well as Ms. Mejia's time on the days that the mailings were sent.

██████████ slate sent a campaign mailing on July 15, 2016. ██████████ printed his flyers at an independent print shop and elected to buy both mailing envelopes and stamps at a commercial retailer, although ██████████ was offered the opportunity to use the union's postage meter, he declined. Ms. Mejia also helped ██████████ affix the mailing labels and mailed the campaign literature from the local post office. ██████████ paid the union for the cost of the labels and Ms. Mejia's time on the day the mailings were sent.

The record reveals that all candidates immediately and fully reimbursed the union for expenses incurred in connection with the campaign mailings. Thus, they did not improperly use union resources. Further, the union's mailing procedures were applied equally to all parties who conducted campaign mailings. Accordingly, there was no violation of the LMRDA.

You alleged that the Local violated its bylaws by using a second post office box for undeliverable ballots and failing to open that box on the day of the ballot tally or allow observers to witness its periodic opening and closing. Section 401(c) of the LMRDA provides that candidates have a right to have an observer present at the polls and the counting of ballots. Section 401(e) requires unions to conduct their elections in accordance with their constitution and bylaws so long as those provisions are consistent with the LMRDA. The Local bylaws, Article X, Sections 3(d)-(e), (g), note that the CPA shall rent a post office box to which ballots will be returned; the CPA will open the post office box to collect the returned ballots in the presence of the election committee and any observer that a candidate wishes to have present.

The investigation revealed that the Local rented one post office box to receive voted ballots and another box solely to receive ballots that were returned as undeliverable. Employees of the CPA firm retained by the Local periodically checked the box designated for undeliverable ballots and worked with union staff to resend ballots when possible. All ballots that were returned as undeliverable have been accounted for. Although no candidate observers or election committee members were present when the second post office box was checked, no violation of the LMRDA occurred. No candidate requested permission to have an observer present when the checks for returned undeliverable ballots were performed (although observers were present when the main box for voted ballots was checked), thus LMRDA Section 401(c) is not implicated. Further, the Local's bylaws are silent as to whether more than one post office box may be rented and whether it is necessary to check for returned undeliverable ballots on the tally day, when it would be too late to resend them. In accordance with the Local's bylaws, election committee members were present when the post office box containing voted ballots was opened and ballots were counted.

You alleged that the Local gave different membership lists to the two business manager candidates, with Mr. Lee receiving a list of 1,369 members while [REDACTED] list contained only 1,244. Section 401(c) of the LMRDA prohibits discrimination among candidates in the use of membership lists. The investigation revealed that Mr. Lee actually received a list of mailing labels with only 1,230 members because he did not want to mail to members with known bad addresses; [REDACTED] list contained 1244 names which included 14 known bad addresses. The aforementioned resolution concerning campaign mailings estimated that the union had 1,369 members, but subsequent evaluation of the membership list revealed that many of those members were not members in good standing who would be entitled to vote in the officer election. The lists that were actually provided to the candidates to send out campaign literature consisted only of members in good standing. As the candidates both received the same membership lists, no violation of the LMRDA occurred.

For the reasons stated herein, we have concluded that no violation of the LMRDA occurred which may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Sharon Hanley, Chief  
Division of Enforcement

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