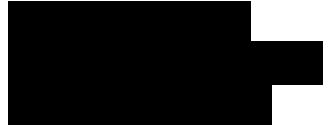




August 27, 2020



Dear [REDACTED]:

This Statement of Reasons is in response to your February 12 and 24, 2020 complaints filed with the Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of Local Union 100 (local or Local 100), International Brotherhood of Teamsters (International), conducted on December 19, 2019.

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

You alleged the local improperly disqualified [REDACTED] from running for office because of his retired status even though he was seeking employment in the craft. Section 401(e) requires that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. 29 U.S.C. § 481(e). The local's candidacy qualifications are set forth in the International Constitution and its bylaws. Article II, Section 4(a) provides, in relevant part, that to be eligible for election to any office, a member must be in continuous good standing and actively employed at the craft within the jurisdiction of the local for a period of 24 consecutive months prior to the month preceding nominations. That provision defines "continuous good standing" to mean compliance with dues payment requirements of Article X, Section 5, for 24 consecutive months prior to the month of nominations, together with no interruptions in active membership in the local because of, among other things, withdrawals. Article XVIII, Section 6(b) provides that a withdrawal card shall be issued to any member, including a local officer, who has retired, except that a member who continues to work at the craft, including employment with the International or any affiliate, shall be required to retain active membership. Article XVIII, Section 6(c) affords locals the discretion to permit retirees to attend meetings but does not permit retirees and other inactive members to hold office and vote. The local

bylaws reiterate the International Constitution's requirement that retirees must be issued a withdrawal card upon retirement unless he or she continues to work at the craft, including employment with the international or affiliate. Local 100 Bylaws (Local Bylaws), Section 22, (C)(3). In addition, the Local Bylaws reiterate the International Constitution's mandate that a withdrawal card shall be issued to retired members and that those inactive members on withdrawal cards are ineligible to hold office or vote. *Id.* at Section 22, (B)(2) and (B)(3).

You and ██████ were slate members on Teamsters United (TU), one of two challenger slates. ██████ was the presidential candidate on TU, while you unsuccessfully ran for vice president. The investigation disclosed that ██████ name did not appear on the ballot because the local determined he was ineligible to run for office. ██████ was elected to office in 2010. He retired from UPS in 2011, when he began receiving pension benefits while continuing to hold office. He ran in two subsequent elections, winning office in 2013 and losing in the 2016 election. The local issued ██████ a withdrawal card effective January 1, 2017. With respect to the challenged December 19, 2019 election, the investigation disclosed ██████ did not maintain continuous employment for 24 months prior to the November 7, 2019 nominations meeting; the qualifying period was November 2017 – October 2019. The local credited ██████ with the time he actually worked plus the additional months he successfully challenged in his NLRB suit claiming unfair labor practices and for which he received a monetary back pay award. In total, this credited time amounted to a maximum of 13 months – well below the requisite 24 months of continuous employment in the craft. ██████ obtained the above employment during the qualifying period from the local's film referral list. The Department's investigation found that the film referral list only provides sporadic employment opportunities. However, the local has over 60 signatory employers with whom any member, retired or active, may obtain full or part-time employment at any time. ██████ did not seek such employment, restricting his prospective employment to the sporadic film referral.

The union's candidacy qualification requirements restrict inactive members from qualifying for office. The union has two classes of members: active members and retired members. Active members include members temporarily laid off or otherwise unemployed for six months, after which time the union is required to issue such members a withdrawal card and cease deducting dues. IBT Constitution, Art. XVIII, Section 6(a). Members that are inactive for over 6 months cannot meet the candidacy qualifications for office; however, inactive members can meet the candidacy qualification if their period of unemployment is less than six months. In contrast, retirees – the other class of members with their own chapter – are treated differently with regard to the timing of the issuance of a withdrawal card. IBT Const. Art. XVIII, section 6(b) states: A withdrawal card shall be issued to any member, including a Local Union officer, who has retired, except that a member who continues to work at the craft,

including employment with the International Union, or any affiliate, shall be required to retain active membership. Local Bylaws Section 22, A(c)(3), in essence, reiterates the International Constitution's provision.

Section 401(e) requires unions to conduct their elections in accordance with their constitutions and bylaws, allowing unions to interpret unclear provisions of their governing documents, requiring the government, among others, to accept that interpretation unless it is clearly unreasonable. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 453.3. The International has interpreted Art. XVIII, section (b) to mean that for retirees, a local must issue a withdrawal card to a retired member *immediately* on his or her retirement. There is no six-month waiting period, as with temporarily unemployed members. Retired members cannot qualify for office unless they are employed continuously at the craft within the jurisdiction of the union throughout the qualifying period. For retirees, unlike active members temporarily unemployed, periods of unemployment of less than six months are a disqualification to office. Retirees are deemed inactive on the day on which their withdrawal card is effective.

The union has explained that the difference between active members, including the subclass of those temporarily unemployed, and retirees is that active members are dependent on an income solely derived from employment with one of the local's 60 signatory employers. By contrast, retired members receive an income derived from their pension. Any work retirees perform while on retirement status supplements their income. The International Constitution recognizes that difference, and the local's officers confirmed that Local 100 treats these two classes of members differently because each class has a different interest. The Department accepts the International's interpretation of its constitution because it is not clearly unreasonable.

Although the local permits retired members to obtain sporadic work from the film referral list, the local does not view such sporadically employed retirees as being "temporarily unemployed." Notably, the union's position on temporary employment is consistent with the Department's regulation addressing this issue. *See* 29 C.F.R. § 452.41. The Department's investigation established that because [REDACTED] retired from UPS, his receipt of the employer's pension does not restrict his employment with any of the over 60 signatory employers. [REDACTED] had the opportunity to obtain full or part-time employment with any of the 60 signatory employers at any time during the 24-month qualifying period but failed to do so. Instead, he placed his name on the film referral list, which resulted in his accumulating a maximum 13 months continuous work during the qualifying 24-month period. Finally, the Department's investigation demonstrated that the local applied its candidacy qualification uniformly to all retired members. The local properly disqualified [REDACTED] from running for office because he failed to meet the candidacy qualification requirement. There was no violation.

You alleged that the local failed to mail its combined nominations and election notice to all members as evidenced by approximately 700 fewer members on the membership list than shown on the local's 2018 LM-2 Report filed with the government. Section 401(e) requires unions to mail an election notice to every member not less than 15 days prior to the election. Section 401(e) also requires that unions provide members with a reasonable opportunity to nominate candidates. 29 U.S.C. § 481(e). A union may combine nominations and election notices into one notice but must then satisfy the LMRDA's more stringent election notice standard. Although the International Constitution is silent on the issue of nominations and election notices, the Local Bylaws address both notices. Section 19(B) provides that, at least 20 days prior to the nomination meeting, specific notice of the date, time and place of the nominations meeting and the offices to be filled shall be mailed or published in any local publication mailed to the membership, except that a notice of nominations and election may be combined. The Local's Bylaws impose a higher standard for a nominations notice than does the LMRDA.

The investigation disclosed that the local's membership fluctuates, at times rising when new members join, and reducing when members are removed from the rolls because of withdrawals, suspension, and/or termination of employment. The local mailed a combined nominations and election notice on October 9, 2019. The local used the International's database, TITAN, to compile members' names and addresses. Not included in the local's mailing list were the names of anyone who appeared as a Code 18, signifying a termination of employment or those not current in dues payments while on layoff status. The local mailed 4,238 combined notices. Ballots, which served as an election notice, were mailed on November 26, 2019 to 4,548 members. The increase in membership included new hires, suspended members who regained good standing after notices were mailed, members heretofore identified as Code 18, as well as 17 re-hired employees previously identified as terminated from employment. The fluctuation in membership figures was not due to the local's manipulation of the membership list.

A review of the local's election records showed that 14 of the 17 re-hired members were not mailed a notice. However, 16 of those 17 re-hires were mailed a ballot which contained the election notice; and four of the 17 re-hires voted in the election. Although the local violated its bylaws by not mailing a nominations/election notice to 14 re-hired members, there was no effect on the outcome of the election. The lowest margin of victory was 39 votes, exceeding the number of re-hired members (17) who were not mailed a ballot; the effect of the violation is further decreased to 13 because four re-hires voted. Accordingly, there was no violation that may have affected the outcome of the election.

You alleged that the local did not mail a combined nominations/election notice to members employed by Ryder. Specifically, you alleged the local was politically

motivated to disenfranchise Ryder members because a large number of Ryder members favored your candidacy. Section 401(e) requires that all eligible members have the right to vote in a covered officer election. 29 U.S.C. § 481(e). Further, section 401(c) imposes a general mandate that adequate safeguards to ensure a fair election shall be provided, which include safeguards not contained in a union's constitution or bylaws, but nevertheless must be observed. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. To support this allegation, you identified [REDACTED] as Ryder members who did not receive notice. The Department's investigation disclosed that the local mailed every member of Ryder a combined nominations and election notice as well as a ballot because the local had experienced delays in Ryder's dues deduction process. To avoid disenfranchising any of those members whose dues payments were delayed, all of whom were on dues check-off, the local mailed all Ryder members a notice and a ballot. The local's actions are consistent with the Department's regulations addressing this issue. See 29 C.F.R. § 452.37(b) (member whose dues are withheld by the employer for payment to the union pursuant to checkoff authorization may not be declared ineligible to vote). Further, the Department's investigation disclosed that both [REDACTED] and [REDACTED] were mailed a ballot, and in fact, voted. The local provided its members at the Ryder facility with the opportunity to vote and provided adequate safeguards to ensure a fair election. There was no violation.

Sincerely,

[REDACTED]

Tracy L. Shanker
Chief, Division of Enforcement

cc: James P. Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Bill Davis, President
Teamsters Local 100
2100 Oak Road
Cincinnati, OH 45241

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