



January 27, 2022

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 1, 2021 complaint to 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 89 (local or Local 89), International Brotherhood of Teamsters (International), conducted on December 5, 2020.

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 members were denied the right to vote when the local restricted the availability of absentee ballots in two ways. First, the local did not permit members to leave a telephone message requesting a ballot. Second, the local did not permit a third party to drop off a postcard with the local requesting an absentee ballot. You concluded that these alleged failures resulted in sixteen members not receiving an absentee ballot. Section 401(e) provides in relevant part that every member in good standing is entitled to one vote. 29 U.S.C. § 481(e). But the basic rights of members to vote in elections may be qualified by reasonable rules and regulations in the constitution and bylaws. 29 C.F.R. § 452.85. Further, Article XXII, Section 4(b) of the International Constitution authorizes a local's executive board to establish all rules and regulations for the conduct of the election to supplement the provisions of the International Constitution and the Local Union Bylaws, including the authority to use mail referendum balloting or absentee balloting without membership approval.

The local executive board established its rules and procedures (Election Rules) for conducting its election in its combined nominations and election notice printed in the local's Fall 2020 newsletter and mailed to all local members. The Election Rules included provisions for requesting absentee ballots and duplicate absentee ballots, with the following instructions: "Requested Absentee Ballots may be obtained by calling the Secretary-Treasurer of the Local Union; by walk-in; or by mailing a request to the

Secretary-Treasurer at the Local Union's headquarters in Louisville.... The last four of the social security number information is necessary in order for the Local Union to confirm the requesting member is accurately identified. If a request for a Duplicate Absentee Ballot or Requested Absentee Ballot is made via telephone or walk-in, the requesting party must be the member to which the request is being made. No one shall be allowed to make a request for a Duplicate Absentee Ballot or Requested Absentee Ballot on behalf of another member. If the request is made in writing, only one Duplicate Absentee Ballot or Requested Absentee Ballot will be accepted per envelope.”

The Election Rules adequately informed all members of the acceptable method for obtaining an absentee ballot and a duplicate absentee ballot, providing members several options for obtaining such ballots: by telephone, walk-in to the local premises, or by mail, all of which must be requested by the voting member. Local 89, in prohibiting members from requesting an absentee ballot for other members and requiring members to speak directly to the local, sought to safeguard against accusations of not honoring absentee ballot requests and to ensure that members voted only one ballot. The investigation disclosed the local’s office secretary honored every absentee ballot request that was made in person and via telephone. Further, all members had the option to vote in person at the polls if they did not receive an absentee ballot.

With respect to the 16 members you identified as not having received an absentee ballot, the LMRDA requires unions to mail ballots to members but does not require that unions guarantee all members receive them. *See* 29 C.F.R. § 452.102 (in a mail ballot election where ballot serves as election notice, the union must mail ballots to members within prescribed times). The investigation disclosed that, of the 16 members you identified, 14 were mailed an absentee ballot. Seven of those 14 members voted in the election. With regard to the remaining two (16 you identified minus the 14 mailed an absentee ballot), the investigation disclosed that one member voted in person; the other person’s name was not on any local membership list. No member was denied the right to vote. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election when it automatically mailed an absentee ballot to members employed at the Caesars Indiana facility, which is within 15 miles from the local. Section 401(c) provides, in relevant part, that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c). The Election Rules provide that “Automatic Absentee Ballots will be mailed on or about November 12, 2020, to members in good standing who are employed outside of a fifteen (15) mile radius of the Local 89 Union Hall.” The investigation established that the Caesars Indiana facility is within 15 miles of the local’s union hall.

The investigation further disclosed that the local conducted an internal investigation regarding this issue and determined that members working at the Caesars Indiana facility were inadvertently mailed an absentee ballot from a previous mailing list that should not have been used. Thirty-nine members received an absentee ballot. However, because the lowest margin of victory was 1,042 votes, the inclusion of those 39 members' votes would not have affected the outcome of the election for any office. There was no violation that may have affected the outcome of the election.

You alleged that employer United Parcel Service (UPS) treated your slate's campaign material less favorably than the campaign material of Teamsters United, the incumbent slate, when the employer removed your slate's campaign material from breakrooms but not the incumbents' campaign material in the same area. Section 401(c)'s adequate safeguard provision includes certain specific safeguards, such as equal treatment of candidates, to avoid charges of disparity of treatment among candidates. 29 U.S.C. § 481(c); 29 C.F.R. § 452.66 and § 452.67. Neither the International Constitution nor the local bylaws address the posting of campaign materials on an employer's premises. Similarly, Local 89's Election Rules do not address the distribution of campaign material in the workplace. However, UPS has a written policy forbidding the distribution of any material in the workplace, except in non-work areas, such as breakrooms. UPS also prohibits the posting of any campaign material on any of its walls.

The investigation disclosed that UPS removed all campaign materials from its breakrooms, including yours and that of Teamsters United, your opponent slate. However, on that same day, management decided that the sliding of campaign material into the gaps in the breakroom's glass dividers did not violate UPS policy. Consequently, all of your campaign material was returned to you the same day and you were permitted to re-post your campaign material in the breakroom. The employer treated both slates equally by first removing all campaign material and then returning the campaign materials, which you could have re-posted.

The investigation further disclosed that some campaign material promoting Teamsters United was posted on a UPS wall, in violation of the employer's rules. However, some of your slate's campaign material was similarly posted on the walls. The employer removed all campaign materials from its walls, treating both slates equally. But even if Teamsters United's campaign material was the only campaign material posted in unauthorized locations on UPS property, there would be no effect on the outcome of the election because the maximum number of members who could have seen that campaign posting at this employer's site was 165, far fewer than the lowest margin of victory which was 1,042 votes for trustee. There was no violation that could have affected the outcome of the election.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred, and I have closed the file in this matter.

Sincerely,

A large black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker
Chief, Division of Enforcement

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