



May 27, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (Department) on September 30, 2021. Your complaint alleges that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the December 15, 2020 election of officers for the United Association of Plumbers Local Union 290 (Local 290).

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

You alleged that Local 290 did not provide adequate safeguards with respect to ballots that the union belatedly discovered had not been retrieved from the post office. You expressed concerns that True Ballot (the company with which the union contracted to conduct the election) was not present when the ballots were retrieved from the post office and about the security of the ballots while in storage at the union hall. Section 401(c) of the LMRDA includes a general mandate that a union provide adequate safeguards to ensure a fair election, including the right to have an observer at the polls and the counting of the ballots. 29 U.S.C. § 481(c). The Department's regulations explain that this right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of the tally sheets. 29 C.F.R. § 452.107. In mail ballot elections, the right includes the right to have an observer present at the preparation and mailing of the ballots and their receipt by the counting agency. *Id.* Additionally, Section 401(e) of the LMRDA states, "every member in good standing . . . shall have the right to vote for . . . the candidate or candidates of his choice." 29 U.S.C. § 481(e). Therefore, every eligible member must be afforded a reasonable opportunity to vote. *See* 29 C.F.R. § 452.94.

The investigation confirmed that there were a large number of ballots that were received at the post office by the December 14, 2020 deadline but that were not turned over when Local 290 retrieved the ballots on December 15, 2020. The investigation determined that this was due to a mistake involving the post office's overflow mail procedures. A post office representative explained that when a P.O. box becomes full,

post office procedures direct that any additional mail be placed in an overflow area and that the post office employee place a yellow overflow notice card in the full P.O. box. The customer, upon picking up the mail, is supposed to find the overflow notice card and present it to the postal service clerk, who will then know to retrieve additional mail from the overflow area.

At some point during the election, the P.O. box obtained by Local 290 to hold voted ballot packages became full and additional incoming mail was placed in an overflow area. It seems that an overflow notice card may not have been placed in the P.O. box because none was found by Local 290 or during the investigation. On December 15, 2020, the Election Committee and Local 290's accountant went to the post office to retrieve the ballots for the tally. The postal clerk handed them only the ballots in the P.O. box. The accountant inquired about any ballots in the overflow area since there had been overflow mail in previous election cycles. The postal clerk assured him that there were no other ballots. The post office later explained that without the overflow notice card, the postal clerk would not have known to look for additional ballots in the overflow area. Local 290 unknowingly took fewer than half of the voted ballot packages back to its headquarters, tallied them, and announced the results.

After the P.O. box was emptied on December 15, 2020, the post office refilled it with the overflow ballot packages. The ballot packages remained unopened and secure in the P.O. box until June 2021, when Local 290 learned of the existence of the additional mail. On June 23, 2021, Local 290's Assistant Business Manager was at the post office to mail personal items, and was informed by the clerk at the assistance window that Local 290's P.O. box was overflowing and needed to be emptied. The next day, the Election Committee Chair went to retrieve the contents with an employee of Local 290's accountant, who held the keys for the election P.O. box. They emptied the ballot packages into a cardboard box and transported the box to the union hall. They counted out all the ballot packages and saw that most of the ballots were postmarked prior to December 15, 2020. They then returned the ballot packages to the cardboard box, sealed it with tape, and signed over the tape to safeguard against tampering. They placed the box in an upstairs storage room at the Local 290 office until the union held a second tally, in the presence of observers, on August 5, 2021.

The initial omission from the tally of the ballots in the overflow area of the post office was inconsistent with the LMRDA's requirements, as were the suboptimal safeguards taken with respect to the pickup of the ballots and their storage. Nevertheless, these violations did not affect the outcome of the election. The investigation revealed no evidence of ballot fraud, tampering or manipulation.

Additionally, the overflow ballots did not change the outcome of any of the officer positions.¹ Local 290 tallied the overflow ballots that were postmarked prior to the day

¹ OLMS did not conduct a recount of the votes for the delegate positions to the Convention of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and

of the election, and the winning candidates did not change even though there were minor changes to the electoral margins. Local 290 vacillated about whether to count 10 ballot packages that had no postmarks on them, but ultimately opened them and tallied them. Counting these non-postmarked ballots did not affect the outcome of the one race with a margin small enough to have been affected: the examining board pipefitter position. As such, the investigation revealed there was no violation affecting the outcome despite the deficiencies concerning the overflow ballots.

You also made several allegations relating to denial of the right to vote. As explained above, Section 401(e) of the LMRDA requires that all members in good standing be given a reasonable opportunity to vote. 29 U.S.C. § 481(e); 29 C.F.R. § 452.94.

First, you contested Local 290's decision not to count 12 ballots that were postmarked on or after December 15, 2020, the date of the election. It was appropriate not to count these ballots because they could not have arrived at the post office in time for the election deadline. There was no violation.

Second, you contested Local 290's initial decision not to count the ten ballots that were not postmarked. As explained above, Local 290 ultimately did open and tally these ballots, and they did not affect the outcome of the election. As such, to the extent the union's decision not to tally these ballots could constitute a violation, such violation could not have affected the outcome of the election.

Third, you expressed concerns about the accuracy of the union's mailing list and the union's efforts to send replacement ballot packages. You stated that you had heard that many union members did not receive a ballot package in the initial mailing and were unable to obtain replacement ballots in time to vote. You provided the names of two members who requested duplicate ballot packages but did not receive them in time to vote.

The investigation found that Local 290 made reasonable efforts to ensure all members in good standing were mailed a ballot. The union regularly updates members' addresses on record based on returned mail and information received from members. Only 95 ballot packages out of 4,701 mailed in the election were returned as undeliverable, indicating the membership list was approximately 98 percent accurate.

Additionally, Local 290 and True Ballot had procedures in place for handling ballots returned undeliverable and requests for replacement ballots. The records show that True Ballot forwarded information about undeliverable ballot packages to Local 290, and the union made calls and sent emails to members requesting updated addresses. The union sent replacement ballots to 40 members over the course of the election, with 36 of those mailed at least 11 days prior to the deadline and four sent within one week

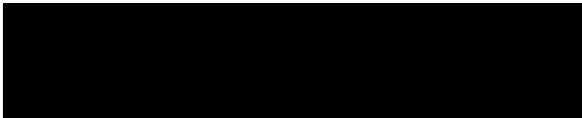
Canada (UA). Any challenge to their election is moot because the delegates have already voted at the UA Convention and completed their Title IV functions.

of the deadline. The investigation confirmed that one of the members you named as receiving a replacement ballot too late was one of those members who was mailed a replacement ballot close to the election deadline. The replacement ballot was mailed on December 9, 2020, five days before the December 14, 2020 deadline. Neither of the two members you named spoke to the investigators. The investigation revealed no evidence that Local 290 delayed in sending out duplicate ballots in response to requests or otherwise failed to process returned undeliverable ballots in a prompt manner. The investigation did not substantiate your allegations. There was no violation.


Lastly, you expressed concerns about the accuracy of the ballot count because True Ballot's equipment had difficulties scanning the ballots, resulting in the manual counting of votes. This allegation also implicates Section 401(c)'s requirement that unions provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). A comparison between the Department's recount of the votes with the votes tabulated by Local 290 showed only minor discrepancies that did not change the outcome of any races. Therefore, there was no violation that could have affected the election outcome.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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