



July 1, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to your October 4, 2021 complaint filed with the 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 Laborers' International Union of North America (LIUNA) Local 78 (Union or Local 78) election of officers, completed on June 24, 2021.

The Department conducted an investigation of the complaint. As a result of the investigation, the Department has concluded, with respect to the allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the Union failed to provide adequate safeguards for the ballots because it did not use separate, segregated P.O. Boxes for the return of voted and undeliverable ballots, as required by LIUNA's "Guide for Union Judges of Election." Specifically, you alleged that because Elections USA – the service hired by the Union – used its P.O. Box in Richlandtown, Pennsylvania, to receive voted ballot packages, and a mailbox on its property in Quakertown, Pennsylvania, for return of undeliverable ballots, it departed from the election guide and compromised the integrity of the process. Section 401(c) of the LMRDA, provides, among other things, that "[a]dequate safeguards to insure a fair election shall be provided." 29 U.S.C. § 481(c). Adequate safeguards refer, among other things, to the mechanical, procedural aspects of running an election. As part of that requirement, ballots must be adequately safeguarded to prevent ballot fraud or tampering. Additionally, Section 401(e) requires unions to conduct their elections in accordance with their constitutions and bylaws, insofar as consistent with the LMRDA. 29 U.S.C. § 481(e).

Regarding election safeguards, the investigation disclosed that Elections USA used its P.O. Box in Richlandtown to conduct elections, including for the return of voted ballots. During the relevant period, Elections USA was not conducting a mail ballot election for any entity besides LIUNA 78. Elections USA had one key to the P.O. Box and did not open the P.O. Box during the voting period prior to the ballot retrieval. The Department examined the ballots and found no evidence of ballot fraud or tampering.

The Department also conducted an onsite visit to the location of the Quakertown mailbox for undeliverable ballots, confirming that it was on Elections USA private property, and subject to video surveillance. The mailbox was located on a street in a residential area, close to the Elections USA building. When the mail carrier delivered mail, it was deposited into a locked box behind a gated fence on private property.

The investigation established that Elections USA regularly checked the Quakertown mailbox, notified the Union when it received undeliverable ballot packages, obtained new addresses for the undeliverables, and resent ballot packages to members at their updated addresses. The investigation revealed no evidence that any unauthorized persons accessed Elections USA's Quakertown mailbox, or that anyone from the Union other than you and your observers visited the address during the election. Elections USA maintained a log of duplicate ballot requests. The investigation revealed that no member's vote was counted twice and that no one ineligible to vote participated in the election.

The investigation further found that the "Guide for Union Judges of Election," which sets out the segregation requirements you cited in your complaint, has not been adopted by the Union convention and not incorporated in the Union's constitution and is therefore not binding in these circumstances. The Union constitution and bylaws are silent on the subject of P.O. Box requirements for mail elections. There was no violation of the Act.

In a related allegation, you stated that Elections USA had access to the Richlandtown P.O. Box for returned voted ballot packages, and thus undermined ballot secrecy. Section 401(b) of the Act requires that local labor organizations conduct officer elections by secret ballot. 29 U.S.C. § 481(b). This allegation also implicates Section 401(c)'s requirement that the Union provide adequate safeguards. 29 U.S.C. § 481(c). The investigation revealed that on June 24, 2021, Elections USA personnel picked up the ballots from the Richlandtown post office with observers present. Because the P.O. Box was too small to hold all the returned ballots, post office employees were required to empty ballots into postal trays prior to the ballot retrieval, which is standard procedure.

The investigation did not disclose evidence that there was any unauthorized opening of the box during the voting period, or that Elections USA accessed the P.O. Box prior to the ballot retrieval. Further, Elections USA was not conducting any other mail ballot election during the same period as Local 78's election. In its investigation, the Department examined the ballots and found no indication of ballot tampering. The Department reconciled the ballots used with the total number printed and examined all of the business reply envelopes that members used to return voted ballots. No ballots were unaccounted for. There was no violation.

Next, you alleged that Elections USA denied your right to have an observer (or “watcher”): (1) when it failed to notify candidates of their right to have an observer present for pick-up and re-mailing of returned undeliverable ballots; and (2) by failing to show the observers the electronic count of the vote tabulation machine following the tally. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), provides that candidates have the right to “have an observer at the polls and at the counting of the ballots.” 29 U.S.C. § 481(c). In any secret ballot election conducted by mail, this right includes permitting candidates the opportunity to have an observer at the preparation and mailing of the ballots. 29 C.F.R. § 452.107(c).

The investigation found that although the Union did not send candidates specific dates for the pick-up and re-mailing of undeliverable ballots, the Union explained the election process at the May 2021 membership meeting. The investigation also revealed that neither you nor any other candidates for office inquired about the mailing date for replacement ballots or requested to have an observer present for the pick-up and re-mailing of undeliverable ballots. The Union solicited lists of observers from candidates for the ballot tally approximately one week in advance of June 24, 2021. Each slate sent observers to the pick-up of voted ballots and the tally. Further, the investigation revealed no evidence of ballot tampering or manipulation surrounding the preparation of ballots or the pickup of undeliverable ballots.

Regarding the failure to show observers an electronic tabulation of the votes, the investigation revealed that the projector and scanner malfunctioned, so Elections USA and the Union switched to a hand count of the ballots. Elections USA counted each ballot and announced the tally in the presence of observers. The Department found no indication of fraud, and successfully reconciled the number of ballots printed. There was no violation of the Act.

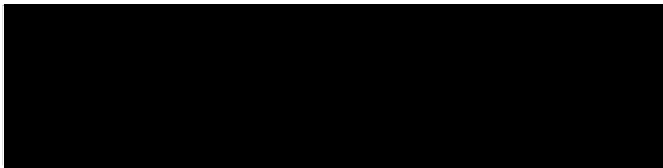
You further alleged that the prepaid business reply envelopes in the ballot packages contained members’ names and home addresses and that this could undermine ballot secrecy in violation of Sections 401(b) and (c). Section 401(b) of the Act requires that local labor organizations conduct officer elections by secret ballot. 29 U.S.C. § 481(b). Section 401(c) requires the union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The Department’s regulations do not require a “particular method” to assure secrecy in mail ballot elections, but they indicate that “secrecy may be assured by the use of a double envelope system[.]” 29 C.F.R. § 452.97(a). Using this system, members insert their voted ballots in an inner secret ballot envelope and then place the secret ballot envelope into the outer envelope for mailing. Voter identification, which the union uses to verify voter eligibility, appears only on the outer envelope which is separated from the inner secret ballot envelope after eligibility has been verified. In this case, the Union used the double envelope method, with an inner secret envelope that did not contain identifying information, and an outer business reply envelope with the voter’s name, return address, and a unique scannable barcode.

Elections USA used the barcode to confirm eligibility of returned ballots and to check for duplicate ballots. If a barcode was damaged and could not be scanned, the return name and address served as back-up identifiers. The investigation revealed that, after confirming eligibility, Elections USA opened and separated all outer envelopes, mixed the inner secret ballot envelopes, then opened the secret ballot envelopes and counted the ballots, maintaining secrecy. Observers and video of the tally confirmed that Elections USA followed this process. There was no violation.

Finally, you alleged that the Union failed to provide ballot reconciliation. Section 401(c)'s adequate safeguards requirement, 29 U.S.C. § 481(c), is interpreted as imposing a general rule of fairness on union elections of officers. 29 C.F.R. § 452.110(a). Neither the LMRDA nor the Union's constitution and bylaws require a formal ballot reconciliation. Elections USA announced the ballot counts during the tally, in the presence of observers. The Union also provided the membership with the election certification in its July 27, 2021 Final Report of Judges of Election, including the numbers of ballots which were undeliverable, timely voted, and voided. As part of its investigation, the Department conducted a ballot recount and a reconciliation of the 3,200 ballots that Elections USA printed for the election. The recount found only a discrepancy of one vote in the contest for Delegate to the District Council, which did not affect the outcome of the election. The reconciliation revealed that Elections USA mailed 2,832 ballots on May 21, 2021. After this initial ballot mailing, it mailed 98 duplicate, replacement ballots to members who requested them. It received 1,216 voted ballots returned before the deadline, eight of which were voided based on ineligibility or as duplicates. The Department reconciled the ballots used to the total number printed. No ballots were unaccounted for. There was no violation of the Act.

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

Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

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