



September 21, 2022



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on September 8, 2021, with the U.S. Department of Labor ("Department") alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act ("LMRDA" or "Act") occurred in connection with the election of officers of Laborers International Union of North America (LIUNA) Local 270, conducted on June 17, 2021.

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

You alleged that Local 270 unlawfully collected mail-in ballots in the union office on June 3, 2021. Section 401(c) of the LMRDA, provides, among other things, that "adequate safeguards to insure a fair election shall be provided." 29 U.S.C. § 481(c). As part of that requirement, ballots must be adequately safeguarded to prevent ballot fraud or tampering. Specifically, you alleged that the election committee improperly collected four ballots at the union office rather than requiring them to be mailed in. The investigation confirmed that the election committee gathered four ballots left in the union's outgoing mailbox, placed them in the mail, and counted them in the election tally after they were returned by mail. This constituted a failure to provide adequate safeguards because these four ballots could have feasibly been tampered with prior to their mailing and the tally. However, there was no evidence of ballots being collected at the union office and counted towards the tally without being processed in the mail. Additionally, the investigation disclosed that the election committee immediately instructed office staff: a) not to accept any more ballots at the union office, and b) to advise members that they needed to mail their own ballots in. The smallest margin of victory in the election was in the race for executive board seat at 748 votes. Therefore, no violation of the Act occurred that may have affected the outcome of the election.

Next, you alleged that the union failed to provide adequate safeguards when former Union Vice President [REDACTED] was observed collecting ballots in the union parking lot. However, the former officer denied collecting ballots, stating that he only had possession of his own ballot at the time of the alleged incident. No witnesses confirmed that ballots were being collected in the union parking lot. There was no violation of the Act.

You further alleged that Business Manager and Secretary-Treasurer [REDACTED] improperly offered to collect two ballots from a retired member's home. Similarly, you alleged that Union member [REDACTED] and his cousin improperly collected ballots. However, you did not provide evidence to substantiate these allegations. Further, the Department's investigation did not disclose any evidence of these individuals collecting ballots from members. There was no violation of the Act.

Next, you alleged that the union failed to provide adequate safeguards when Business Manager [REDACTED] improperly completed member [REDACTED] ballot while in the union office. However, Business Manager [REDACTED] denied that he assisted any members in filling out ballots. Member [REDACTED] attested that he merely asked Business Manager [REDACTED] about the ballot voting instructions. There was no violation of the Act.

You alleged that the union improperly used union funds, equipment, supplies, or time to campaign. Section 401(g) of the LMRDA prohibits the use of union or employer resources to promote the candidacy of any person in union officer elections. 29 U.S.C. § 481(g). Specifically, you alleged that Business Manager [REDACTED] campaigned through the union's automated "robocalls" to the membership informing them that COVID-19 vaccinations were available at the union office. In determining whether a union publication promotes a person's candidacy, courts evaluate the communication's timing, tone, and content. With respect to timing, the robocalls you alleged to be campaign calls were made during the two-week period before the election. However, you admitted that Laborers 270 regularly uses robocalls to notify members of events, and Arguello always identifies himself in these calls. Further, the tone of the robocalls did not promote the incumbent officers and was not critical of any potential opposition nominees. Robocall scripts dated May 23 and 24, 2021, indicated that Business Manager [REDACTED] identified himself by title before informing members about the vaccine availability. In one script, Business Manager [REDACTED] thanked members on behalf of the Laborers 270 executive board for being part of the solution to end the pandemic, but there were no other references to union officers in the scripts. The content of the robocalls did not encourage or endorse the re-election of the incumbent officers or election of any other candidates. Thus, the robocalls did not constitute campaign material. Consequently, union resources were not unlawfully used in the distribution of robocalls. The LMRDA was not violated.

You further alleged that union resources were unlawfully used on behalf of Business Manager [REDACTED] to make campaign phone calls to individual members. Specifically, you alleged that union telephones, the union's "active member phone" list, and the Union Office Manager on Union-paid time – or another individual hired with union funds – were used to campaign. Although three members recalled that they received calls encouraging them to vote for Business Manager [REDACTED] and/or offering assistance with completing ballots, most of these calls occurred after union office hours. Only one member recalled receiving a campaign call during union office hours. However, none of these members were able to confirm the phone number that they received campaign phone calls from. Business Manager [REDACTED] attested that he did not use union telephones, member phone numbers from union records, or union staff for his campaign calls. The Office Manager denied making campaign calls, using a union contact list to make campaign calls, and offering to help members fill out their ballots. The investigation did not find any other individuals paid by union funds that may have made campaign calls for Business Manager [REDACTED]. To the extent that these three campaign calls at issue may have constituted a violation of the LMRDA, they did not affect the outcome of the election.

Next, you alleged that union resources were used for campaigning because a non-member allowed Business Manager [REDACTED] to place a campaign billboard on his property in exchange for a Laborers 270 union jacket. The investigation disclosed that the individual received a Laborers 270 union jacket about six or seven years ago, and there was no evidence to indicate that this gift was related to the 2021 election. Business Manager [REDACTED] testified that he placed a campaign billboard on a different property, and denied giving any union resources in exchange. There was no violation.

You also alleged that employer resources may have been improperly used for campaigning. Specifically, you alleged that a campaign sign for Business Manager [REDACTED] was displayed on or near a lunch truck at the Google Bayview worksite for one day. No witnesses were able to confirm the owner of the sign or the lunch truck, nor whether employer resources were otherwise used to procure the sign or truck. You stated that eighty to one hundred Laborers 270 members may have been at the worksite on any given day. Again, the narrowest margin of victory in the election was 748 votes. Thus, to the extent that employer resources may have been used to campaign in violation of the Act, they did not affect the outcome of the election.

You further alleged that members were denied the right to vote in the election because the union failed to provide them with a ballot. Section 401(e) of the Act provides that every member in good standing has the right to vote for the candidate or candidates of her choice. 29 U.S.C. § 481(e). Specifically, [REDACTED] were identified as

members that did not receive a ballot. [REDACTED] ballot package was returned as undeliverable from the mailing address in the union's records. [REDACTED] ballot package was re-mailed to the address listed on the USPS forwarding address label on his returned ballot package envelope. [REDACTED] ballot appeared to be mailed to the correct address. There is no evidence to indicate that [REDACTED] did not receive a ballot, or that he contacted the union to request a replacement ballot. [REDACTED]. [REDACTED] ballot was returned as undeliverable from his last known mailing address. An undeliverable ballot list showed a notation indicating that the union called [REDACTED] for a corrected mailing address and left a voice message. However, it appears that [REDACTED] did not respond to the message. [REDACTED] stated that he did not receive a ballot. He attested that the union called him multiple times to obtain a correct address to mail his ballot, but he never returned their call. Records indicate that [REDACTED] was not an active member of the union and thus not eligible to receive a ballot. [REDACTED] ballot package was returned as undeliverable, but a duplicate ballot was sent by over-night mailing on June 14, 2021. Thus, the evidence showed that the union made reasonable efforts to obtain current mailing addresses for its members. The investigation revealed no other evidence that members were denied the right to vote in the election for failure to obtain a ballot. There was no violation of the LMRDA.

You next alleged that the union failed to provide adequate safeguards when it did not count certain ballots. Specifically, you alleged that the union did not count nine or ten voted ballots that were dropped off at the union office on the date of the tally. However, the ballot instructions stated, in part: "BALLOT MUST BE RECEIVED AT THE PO BOX BY 10:00 A.M. JUNE 17, 2021 TO BE COUNTED." Thus, these ballots were correctly voided and not tallied because they were not received in the Post Office Box. There was no violation of the Act.

Finally, you alleged that the union unlawfully pressured member [REDACTED] to vote in the election. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of her choice. 29 U.S.C. § 481(e). During the investigation, member [REDACTED] denied that anyone pressured him to vote, stating that he was able to mail his ballot himself. There was no evidence that the union interfered with his right to support the candidate or candidates of his choice. Therefore, there was no violation of the Act.

In sum, as a result of the investigation, the Department has concluded that there was no violation of the Act that may have affected the outcome of the election in connection with your allegations that were properly filed. As to allegations in your complaint to the Department not addressed in this Statement of Reasons, those issues were not considered because the allegations, even if true, were withdrawn during, or not properly exhausted under, the union's internal protest procedures. See 29 U.S.C. § 482. Accordingly, I have closed the file on this matter.

Sincerely,



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