



October 6, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor on February 17, 2022, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the regularly scheduled election of union officers conducted by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Boston Journeymen Plumbers, Gasfitters and Apprentices Local Union No. 12, on December 11, 2021.

The Department of Labor (Department) conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to the specific allegation, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the union mailed approximately 450 retirees a check (Thirteenth Check) in the amount of \$1,475 from the Thirteenth Check Fund (Fund) only days before the election and that the check and the accompanying cover letter may have improperly influenced retirees to vote for the incumbent candidates. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. 29 U.S.C. § 481(g). Accordingly, the provisions of section 401(g) prohibit any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members. 29 C.F.R. § 452.75.

The investigation found that the Thirteenth Check and the accompanying cover letter did not promote or discourage the nomination or election of any candidate in the election. The investigation found that the union created the Fund approximately two decades ago to supplement retirees' pension payments. Retirees have received a Thirteenth Check each year since the Fund was created. The Fund is governed by policy guidelines, which dictate that retirees, or their surviving spouses, who receive 12

pension payments in a given year and maintain good standing are eligible to receive a Thirteenth Check. So long as the Fund's governing committee determines that sufficient funds are available, the guidelines mandate annual distribution of Thirteenth Checks and, therefore, the union is required to issue the checks.

The investigation found that the union has a practice of distributing Thirteenth Checks to retirees in late November or early December every year. Consistent with that practice, the union distributed Thirteenth Checks to retirees on or around November 30, 2021, about a week and a half prior to the election on December 11, 2021. The investigation did not disclose any evidence that the timing of the distribution of the checks was an attempt by the union to influence retirees' votes.

Further, the Department's review of the cover letter accompanying the checks found that the letter did not constitute a union-financed campaign letter that promoted the candidacy of the incumbent officers. In determining whether a written communication constitutes campaign material, consideration is given to the tone, content, and timing of such communication and whether the communication effectively encouraged or endorsed any person's candidacy.

The investigation found that the tone of the letter was not promotional in that it did not encourage the reader to vote for the incumbent candidates or disparage the candidacies of opposition candidates. The content of the letter included a greeting to the recipient, the amount of the check, and stated that the hard-working members, officers, and staff at Local 12 thanked the retirees for their service. The letter did not mention the election, solicit retirees' votes, or deviate from prior cover letters. Further, the timing of the distribution of the letter, about a week and a half prior to the election, was consistent with the annual distribution of that letter in prior years. On these facts, the tone and content of the letter, and the timing of its dissemination did not constitute campaign material. The LMRDA was not violated.

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

Sincerely,

A solid black rectangular redaction box covering the signature area.

Tracy L. Shanker
Chief, Division of Enforcement

cc: Marcus McManus, General President
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