



December 9, 2022



Dear [REDACTED],

This Statement of Reasons is in response to your complaint filed on February 24, 2021 with the United States Department of Labor 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 International Brotherhood of Electrical Workers Local 177 (IBEW Local 177 or Union), conducted on September 25, 2020, and the runoff election for the position of President of IBEW 177, conducted on October 17, 2020.

The Department's Office of Labor-Management Standards 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 IBEW Local 177 violated Section 401(c) of the LMRDA by failing to maintain an accurate voter eligibility list and permitting ineligible union members to vote who were not subject to a collective bargaining agreement requiring union membership in the Union as a condition of employment. As a general matter, the LMRDA does not prescribe the criteria for voter or membership eligibility. Nor does the LMRDA provide that only those members subject to a collective bargaining agreement requiring membership therein as a condition of employment are eligible to vote. Under the LMRDA, it is generally recognized that a labor organization has a legitimate institutional interest in prescribing its own standards for voting and membership eligibility.

However, Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. In addition, Section 401(e) of the LMRDA provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of his choice. 29 U.S.C. § 481(e). Section 401(e) of the LMRDA

further requires a labor organization to conduct its election of union officers in accordance with the constitution and bylaws of such organization. *Id.*; see also 29 C.F.R. § 452.2. Article XV, Section 5 of the IBEW Constitution prescribes the requirements for voter eligibility and prohibits certain members from voting, including members who become electrical employers. This provision states,

No L.U. [(Local Union)] shall allow any member who becomes an electrical employer, a partner in an electrical employing concern, a general manager, or other managerial position to hold office in the L.U. or attend any of its meetings, or vote in any election of a L.U.

The investigation disclosed that IBEW Local 177's membership mailing list generally contains the names of eligible active members as well as those members who are prohibited by Article XV, Section 5 of the IBEW Constitution from voting. In preparation for the 2020 election, the Union's Financial Secretary compiled a membership mailing list that included the names of active union members in good standing and then gave it to the Union's Office Manager to remove the names of any members who were company owners and were not eligible to vote.

During the investigation, you and another candidate provided the Department with lists containing the names of a total of 35 members who were on the membership mailing list that you believed were contractors or managers, and thus, ineligible to vote. The Union also provided the Department with a list of the names of an additional 10 members that were on the membership mailing list that the Union believed were contractors and ineligible to vote. In addition, an observer for the election provided the Department with a list containing the names of 12 individuals who were allegedly ineligible voters. The Department reviewed the names of these 12 individuals and determined that none of the ballots cast by these individuals were counted in the general election.

The Union's interpretation of its constitution is that Article XV, Section 5 requires the consideration of a member's actual job duties and responsibilities, not merely his or her job title. The IBEW Basic Laws and Policies provides as follows:

Because of the wide variety of employment practices in the industry, the determination of who is and who is not an employer must be made by the local union. Members who form their own electrical contracting business, control and operate these businesses, or make policy and management decisions will be considered employers and deemed ineligible to participate in local union affairs or elections.

Based on the Union's interpretation of its own governing documents, it determined that several names on the lists of allegedly ineligible voters are individuals who were eligible to vote. There were 45 individuals (35 + 10 = 45) on the lists of allegedly ineligible members provided to the Department by candidates and the Union. These 45 individuals were mailed ballots. Of these 45 individuals, the Department found that only three (3) of these individuals voted ballots that were included in the general tally.

On these facts, the outcome of the general election would remain unchanged. The IBEW Local Union Election Guide provides as follows.

All elections shall be decided for the candidate receiving the most votes, unless local union bylaws provide otherwise. When bylaws provide that a majority of votes cast is required and no candidate receives a majority vote, a runoff election between the two candidates receiving the most votes for the specific office must be conducted.

The Local 177's bylaws provide that "In the event the candidate does not receive a majority of the votes cast for a specific office, then a run-off election will be held between the two (2) candidates receiving the highest number of votes."

The investigation showed that, with the exception of the presidential election, all races were won by a majority or a plurality of the votes by a margin of more than three votes or were unopposed. In fact, the smallest margin of victory was eight votes in the vice president's race. As such, to the extent the Union violated Section 401(e) by allowing three ineligible members to vote in the general election, those three ballots could not have affected the outcome of the election.

Similarly, the Department's investigation of the runoff election for president found no evidence of any improprieties that may have affected the outcome of the election. The investigation found that the six members who may have been ineligible to vote were mailed ballots and returned voted ballots. However, all of these ballots were challenged, and none of these ballots was included in the vote tally for the runoff election. The Union informed the Department that one of these voters was eligible to vote and that his ballot should have been included in the vote tally for the runoff election but was not. Even assuming this one member was eligible to vote but was denied that opportunity, the Department's recount of the ballots for the runoff election revealed that 121 members voted for your opponent and 105 members voted for you, for a margin of 16 votes. Therefore, this one vote could not have affected the outcome of the presidential runoff election.

As a result of the investigation, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election in connection with your allegations. Accordingly, this file is closed.

Sincerely,

[REDACTED]

Tracy L. Shanker
Chief, Division of Enforcement

cc:

[REDACTED]
Law Offices of Sherman Dunn, P.C.
900 Seventh Street, Suite 1000
Washington, D.C. 20001

[REDACTED], International Vice President
International Brotherhood of Electrical Workers Fifth District
100 Concourse Parkway, Suite 300
Birmingham, AL 35244

[REDACTED], Associate Solicitor
Civil Rights and Labor-Management