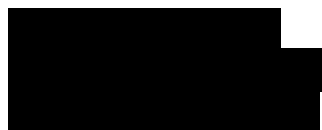




December 9, 2022



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 177 or Union), conducted on September 25, 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. Therefore, even if the three allegedly improperly cast ballots were violations of the LMRDA, they would not have changed 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 the winner of the race for President and 105 members voted for his opponent, for a margin of 16 votes. Therefore, this one vote could not have affected the outcome of the presidential runoff election.

Further, you alleged that the Union discriminated against a candidate in its administration of a union Facebook page by censoring the materials that the candidate posted on that page. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in union officer elections. 29 U.S.C. § 481(g). A Facebook page that is controlled and administered by a union may constitute a union resource. Thus, a union may not use its Facebook page to promote the candidacy of any

person. In addition, a union may prohibit or restrict a candidate's use of its Facebook page for campaigning as long as this prohibition is applied in a uniform manner.

The IBEW Constitution and the IBEW Local 177 Bylaws are silent concerning the use of a union Facebook page for campaigning. The IBEW U.S. Local Union Election Guide provides guidance concerning the use of the union "website" for campaigning but does not address the use of a union Facebook page for that purpose. However, the investigation disclosed that at the time of the 2020 election, approximately 485 IBEW Local 177 members were followers on the IBEW Local 177 Facebook page. The investigation is inconclusive as to how that Facebook page originated. However, the investigation showed that the Election Judge took over the administration of the page in advance of the election. Though the page may or may not have been an official IBEW page, it was administered by the Election Judge in his capacity as such, and the Union therefore had a duty to refrain from using that page to promote any one candidate over another.

You alleged that during the election, the Election Judge removed several of candidate [REDACTED] posts from the Union's Facebook page and finally blocked [REDACTED] access to the page. You claimed that the posts were harmless and should not have been deleted from the Facebook page. During the investigation you stated that you were aware of no other candidates' posts that were removed from the page and that [REDACTED] posts did not violate any rules. However, during the investigation [REDACTED] admitted that during the election he posted a partisan campaign slogan, "Vote for [REDACTED]," on the Union's Facebook page, promoting his candidacy. The Election Judge removed the post because it constituted campaigning and, thus, violated the rules governing candidates' use of the Facebook page. In addition, the Election Judge stated during the investigation that [REDACTED] was removed from the Facebook page during the election for posting materials during work hours and posting misleading information. The investigation found that such information informed members that they could give postal workers at a certain post office \$5.00 to place their ballot directly in the Union's post office box at that location. The Election Judge deleted that post from the Facebook page because it was incorrect and misleading.

The investigation found that the manner in which the Election Judge administered the Union's Facebook page did not promote or disparage the candidacy of any person. The Department's investigation found that the union rules concerning candidates' use of the Facebook page during the campaign period prohibited candidates and their supporters from using the page to campaign, from posting materials on the Facebook page during work hours, and from posting misleading information on the page. The investigation showed that the Election Judge applied these rules to all candidates and their supporters in a uniform manner.

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

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