



December 20, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to your May 11, 2022, complaint to the Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of Local 722 (local or Local 722), Service Employees International Union (International), conducted on January 15, 2022.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged the January 14, 2021 date printed on the return ballot was incorrect, causing members to be confused and potentially discouraging members from voting. Section 401(e) provides, in relevant part, that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). Section 401(c) provides, in relevant part, that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c). Such safeguards are not required to be in the union's constitution and bylaws but must be observed nevertheless as the union's wide range of discretion in conducting its elections is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

The Department reviewed the ballot package as part of its investigation. The ballot package envelope addressed to each member stated in large print at the top of the envelope: "Official Ballot Enclosed-2021-2022 SEIU Local 722 Election Open immediately! Your ballot must be received by January 14, 2022 or it will not be counted." That same correct date is reiterated at the top of the ballot itself. However, directly below the caption on the ballot, at No. 5 of the voting instructions with the caption "Filling out this Ballot," is the following: "all ballots must be received by Jan 14, 2021 or they will not be counted."

Although the local's inadvertent error violated both section 401(e) and section 401(c), there was no effect on the outcome of the election. The error was obvious given that the January 14, 2021, date had already passed and could not have been the ballot return

date. Further, the correct date was printed on the ballot package envelope and at the top of the ballot itself. Consequently, your assertion that members may have been confused was not substantiated by the Department's investigation. Further, you failed to identify any member who did not vote because he or she was confused. There was no violation that may have affected the outcome of the election.

You alleged the local failed to list candidates' names in alphabetical order on the ballot, although required to do so by the local's past practice. A determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and other provisions of the LMRDA. *See* 29 U.S.C. §§ 481(c), (e); 29 C.F.R. § 452.112. As an initial point, the Department's investigation did not establish that listing candidates' names in alphabetical order was the local's past practice. Regardless, neither the International Constitution nor the local bylaws, require nominees' names be printed in alphabetical order. The local acted reasonably in listing candidates on the ballot generally in the order in which they were nominated. There was no violation.

You alleged the local's address list was inaccurate, resulting in some members not being mailed a ballot. Your allegation was based on your experience of receiving an October 2021 membership list rather than a more current November membership list when you used that list to sell December 2021 holiday tickets to the membership. Section 401(e) provides, in relevant part, that every member in good standing shall be eligible to vote. 29 U.S.C. § 481(e). In a mail ballot election, the LMRDA requires unions to mail a ballot to every member in good standing at his or her last known home address. 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.115 (any method of distribution of ballots which actually provides each eligible voter with one blank ballot would be in conformance with the law).

Article VIII, Section 7 of the Local 722 Constitution and Bylaws states: "each member in good standing whose dues are paid up through the month preceding the nomination meeting is held shall have the right to nominate, second, or otherwise support the of candidate of his or he choice." The local interprets this provision to mean that members who had paid their dues through October, the month preceding the November 20, 2021 nominations meeting, were eligible to vote. The local's interpretation is accepted because it is not clearly unreasonable. 29 C.F.R. § 452.3 (the interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless it is clearly unreasonable.) The investigation disclosed that the local's two employers each supplies the local, on a monthly basis, with updated information concerning each member's dues payments and addresses, including change of addresses. The local provided MK Elections with the October 2021 membership list, which included members in good standing that were eligible to vote in the election.

The investigation disclosed that on November 19, 2021, the local emailed its October 2021, membership list to MK Election Services, the election company hired to prepare, mail, and tally the ballots.

Using the appropriate membership mailing list, the election company mailed 2,592 ballot packages; 368 ballots were returned for the tally. Only 16 ballot packages were returned as undeliverable – less than 1% of all ballots. Given the accuracy of the membership list and the fact that the local used the correct list (October 2021), there is no violation of the Act.

You alleged candidates were denied the right to observe or have an observer during ballot preparation, mailing, and collection of ballots from the post office. Under the provisions of section 401(c), candidates have a right to an observer at the preparation and mailing of the ballots, among other things. 29 U.S.C. § 481(c); 29 C.F.R. § 452.107.

The investigation disclosed that at the November 10, 2021 local executive board meeting, which you attended, you requested to know the ballot preparation date. In your December 1, 2021 email to the local executive board, you requested to be present at the mailing of the ballots. The local treasurer, by email dated December 9, 2021, misspoke when she informed you that the ballots were mailed on November 8, 2021, by the election company MK Election Services, from Pennsylvania. You stated you understood that the November 8 date provided should have been December 8, 2021, because the nominations meeting was not held until November 20, 2021. Nevertheless, by the time the local responded to your request (December 9), your right to observe the preparation and mailing of the ballots had already been denied. This was a violation of section 401(c) of the LMRDA. However, this violation did not affect the outcome of the election. You stated that the main reason for requesting to attend the mailing of the ballots was to ensure that the membership list used was accurate and all members were mailed a ballot. The investigation confirmed that the membership list was accurate, as addressed above. Further, the preparation and mailing of the ballots were performed by a third party hired for the purpose of ensuring a fair election. The Department's review of the ballots showed no irregularities, and all members were mailed a ballot. There was no evidence of ballot tampering or fraud. As such, there was no evidence that the violation may have affected the outcome of the election.

You alleged your right to observe was further violated when Local 722 failed to inform you of the time the voted ballots would be collected from the post office box. On December 1, 2021, you emailed the local executive board members requesting the date, time, and place of the ballot pickup and tally. Treasurer Banks informed you by email that the pick-up was going to be conducted by MK Election Services on January 15, 2022 at the Brentwood Post Office, but the time had not yet been determined. Once MK Election Services determined the time, Banks said she would pass that information to

you. However, Banks did not follow through on providing that time. Consequently, you did not know what time to arrive at the designated post office. The local denied you the right to observe the collection of the ballots, in violation of section 401(c). However, that violation did not affect the outcome of the election because, as noted above, the Department's review of the ballots showed no irregularities to indicate any evidence of fraud. Further, it is notable that the ballot collection was conducted by MK Election Services, a neutral third party. As such, there was no violation that may have affected the outcome of the election.

You alleged a candidate for office was in possession of keys to the post office box rented for the purpose of receiving voted ballots. Section 401(c) provides, in relevant part, that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c). Such safeguards are not required to be in the union's constitution and bylaws but must be observed nevertheless as the union's wide range of discretion in conducting its elections is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation disclosed that Treasurer Banks, a candidate for re-election, rented the post office box used in this election to hold the voted ballots. The Post Office provided her with two keys, one of which she retained and placed in a locked box, and the other she provided to MK Election Services. The local violated section 401(c) by failing to provide adequate safeguards when it permitted a candidate for office to rent and receive the keys to the post office box used for holding voted ballots. However, that violation did not affect the outcome of the election. Representatives of MK Election Services collected the voted ballots from the post office box on January 15, 2021, and transported those ballots to the tally site. Further, as noted above, the Department's review of the ballots showed no evidence of fraud and no evidence that anyone access the P.O. box prior to the date ballots were collected. There was no violation that may have affected the outcome of the election.

You alleged the Election Committee's failure to verify the eligibility of nominees and nominators resulted in unqualified nominators making nominations that should not have been accepted. You specifically identified Karen Johnson as a nominator who was ineligible to nominate or be nominated for office but whose nomination was nevertheless accepted. Section 401(e) provides in relevant part, that a reasonable opportunity shall be given for the nomination of candidates, but prescribes no particular form of nominations procedures, except that the procedures must be reasonable and conform to the union's constitution and bylaws, and not be inconsistent with Title IV. 29 U.S.C. § 481(e); 29 C.F.R. § 452.55

The nominations and election of officers is set forth in Article VIII of Local 722's Constitution and Bylaws (bylaws). The right of members to nominate candidates is set forth in Section 7, which provides "Each member in good standing whose dues are paid through the month preceding the nomination meeting is held shall have the right to

nominate, second, or otherwise support the candidate of his or her choice. No member shall be declared ineligible to nominate or participate in an election if his or her employer has failed to remit his or her dues that were withheld from his or her salary." Section 4 sets forth the qualifications of nominees and candidates, stating: "No member shall be eligible for nomination or election as an officer, member of the Executive Board, delegate or any other office in this Local Union, unless he or she had been a member in continuous good standing in the Local Union for at least two (2) years immediately preceding the nomination and has during all that time paid the full dues required for working members of Local Union within each month when due." The method and time limitations for accepting nominations are set forth in Section 8: "Candidates must accept nominations at the time made, either in person, or if absent, by certified mail to the Local Union office by five o'clock on the third business day following the day in which the nominations meeting took place."

The investigation disclosed that all nominees met the continuous good standing requirement, including [REDACTED]. Contrary to your assertion, Local 722 reviewed the dues records for every nominee but did so after November 24, 2021, the close of nominations. All nominees paid dues continuously through the qualifying period from October 2019 through October 2021, except for the months of July and August 2020, for which the local waived dues for all members. Although [REDACTED] had more than sufficient funds for that pay period, the employer failed to deduct her dues for the month of January 2020. The employer's failure to deduct [REDACTED] dues did not affect her continuous good standing and she was eligible to nominate and be nominated for office. 29 C.F.R. § 452.87 (local cannot disqualify member from voting or running for office because of an employer's failure to deduct dues pursuant to a collective bargaining agreement). In addition, [REDACTED] was eligible to nominate candidates for office because she had paid her dues for the month preceding the November nominations month. Consequently, she was eligible to nominate candidates of her choice. Further, the investigation confirmed that all nominees who did not attend the nominations meeting accepted their nominations by certified mail before 5 p.m. on the November 24, 2021 deadline. There was no violation.

You alleged local officers and local employees used union funds to create campaign literature while on union time. Section 401(g) provides, in relevant part, that no moneys received by any labor organization shall be contributed or applied to promote the candidacy of any person in an election subject to Title IV. 29 U.S.C. § 481(g). Although union officers and employees retain their right to campaign with an exception inapplicable here, they may not do so while on time paid for by the union. 29 C.F.R. § 452.76.

The investigation disclosed that Local 722 representative Marshall Jackson created campaign flyers for those candidates who requested it. Some candidates, like Robert

Alston, a member of the Jeter slate, requested Jackson to design and print his personal campaign material. Jackson stated he was not on union time when he designed campaign material for those candidates who requested his assistance. The investigation found no evidence to contradict Jackson's statements. There was no violation.

You also alleged that the Jeter slate received a discount for the cost of printing its campaign materials from the printer whose services the local has used for many years. Section 401(g) also prohibits employers from contributing or promoting the candidacy of any candidate. 29 U.S.C. § 481(g). Such contributions include direct and indirect expenditures. 29 C.F.R. § 452.78. The investigation disclosed that the Jeter slate paid full price for the printing of its slate campaign material. All Jeter slate members contributed money to cover the cost of the printing. No discount was offered by the printer. There was no violation.

In a related allegation, you asserted that the money paid by some executive board members of the Jeter slate to cover the cost of slate campaign literature was taken from their officer stipend and this constituted an expenditure of union funds because that stipend was paid by the union. Union officers retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election, as long as campaigning does not involve the expenditure of funds in violation of 401(g), campaigning on union time, and the constitutional provisions do not prohibit such activity. 29 U.S.C. § 481(g); 29 C.F.R. § 452.76. The stipend was a legitimate payment to individual executive board members for services rendered as an officer. Those executive board members receiving a union stipend are free to use their stipends at their own discretion, including for payment of campaign material. There was no violation.

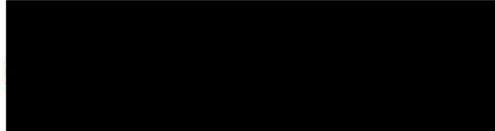
You alleged Marshal Jackson campaigned at an employer cafeteria distributing Jeter campaign materials to union members while he was on time paid for by the union. Specifically, you alleged that [REDACTED], a former Local 722 member, saw Marshall Jackson hand a Jeter campaign flyer to [REDACTED], a member working at the Children's National Medical Center (CNMC) cafeteria. Section 401(g) prohibits the use of union funds to promote the candidacy of any candidate. 29 U.S.C. § 401(g); 29 C.F.R. § 452.73. However, union officers and employees retain their right as members to campaign unless they are on time that is paid for by the union, among other restrictions.

The investigation disclosed Jackson denied handing a Jeter campaign flyer to [REDACTED] or any other union member at the CNMC. Jackson stated he was handing out flyers for the local's holiday party. [REDACTED] confirmed Jackson's statement. [REDACTED] admitted not hearing any of the conversation between Jackson and [REDACTED]. Further, [REDACTED] manager did not witness Jackson passing out campaign flyers at any time at CNMC. There was

no credible evidence that Jackson campaigned while working at the CNMC cafeteria. There was no violation.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred, and I have closed the file in this matter.


Sincerely,

A large black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker  
Chief, Division of Enforcement

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