U.S. Department of Labor

Office of Labor-Management Standards
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Washington, D.C. 20210
(202) 693-0143

February 16, 2023

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (Department) on October 21, 2022. Your complaint alleges that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the June 24, 2022 election of officers of UNITE HERE Local 54 (Local 54 or the union).

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

You alleged that incumbent officers were unfairly advantaged in that they had unequal access to employers' casino properties to campaign. Specifically, you alleged that incumbent officers and their representatives, including business agents, were permitted to access and campaign to members in both the public areas and employee-only areas.

Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate for office. 29 U.S.C. § 481(g). The use of union or employer funds is broadly construed and can include the use of union or employer resources and facilities as well as union- or employer-paid time. 29 C.F.R. §§ 452.76, 452.78. Under the LMRDA, employers may determine for themselves whether to permit or prohibit campaigning on their premises, as long as the employer's policy is uniformly imposed. *Id.* § 452.78. Campaigning incidental to regular union business or legitimate work assignments is not a violation of section 401(g). *Id.* §§ 452.78, 452.78. Additionally, section 401(c) of the LMRDA requires that adequate safeguards to ensure a fair election be provided. 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. *See* 29 C.F.R. § 452.110.

The investigation did not substantiate your allegations that the incumbent slate was unfairly advantaged. Local 54's Secretary-Treasurer Donna DeCaprio explained that

candidates were not permitted to campaign in the non-public areas of employer properties (like employee cafeterias and breakrooms), and many employers stated that campaigning was not allowed anywhere on their properties. The evidence supported that incumbents and union representatives visited the casinos during the election period, but that their presence was related to legitimate union duties like engaging in contract negotiations, handling grievances, attending meetings, monitoring working conditions and conducting walk-throughs. The evidence allowed that there may have been some campaigning by supporters incidental to regular union business on employer properties. The investigation, however, established that members of your slate campaigned and handed out flyers in non-public areas of the casinos. Thus, to the extent that incumbents and their supporters engaged in some incidental campaigning on employer properties, any effect on the outcome of the election was offset by your slate's campaigning on employer properties. The violations would not provide a basis for litigation by the Department. *See* 29 U.S.C. § 482(c)(2) (providing that an election will only be overturned where a violation may have affected the outcome of the election).

You alleged that Local 54 failed to send out election notices to all potential voters, including certain newly eligible members who were working pursuant to J-1 visas. You also alleged that Local 54 representatives incorrectly told certain eligible voters that the election was on Saturday instead of Friday, June 24, 2022.

Section 401(e) requires unions to mail an election notice to every member not less than 15 days prior to the election. 29 U.S.C. § 481(e). Further, as noted above, section 401(c) imposes a general mandate that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c). Adequate safeguards include providing voters with adequate instructions to properly cast their ballots. 29 C.F.R. § 452.110.

The investigation did not disclose any evidence to support the allegation that Local 54's provision of notice was deficient. An accurate combined notice of nominations and election was mailed to members on May 13, 2022, and the investigation did not indicate that the membership list was outdated or otherwise problematic. The notice was also posted by business agents on union bulletin boards at all worksites over the course of a few days around May 13, 2022. The investigation indicated that some seasonal workers may not have received a notice simply because they had not yet started their employment at the time the combined notice was mailed. The investigation also did not uncover any members who were unable to vote because a union representative gave out inaccurate information about the election. There was no violation.

You also alleged that members working pursuant to J-1 visas should not have been allowed to vote in the election because they may not have intended to remain members after completion of their temporary, seasonal work.

Section 401(e) of the LMRDA requires unions to conduct elections of officers in accordance with their constitution and bylaws and provides that every member in good standing has the right to vote in such elections. 29 U.S.C. § 481(e). Local 54's governing documents do not make distinctions in membership rights based on a worker's visa status, and temporary, seasonal workers are eligible to become full members with voting rights. Local 54 did not violate the LMRDA in accepting ballots from members who were working pursuant to J-1 visas.

You alleged that Local 54 President Robert McDevitt wrongfully interfered in the nomination process by preventing you from nominating a candidate for the position of Rank and File Executive Board Member. Section 401(e) of the LMRDA requires that members have a reasonable opportunity to nominate candidates prior to an election. 29 U.S.C. § 481(e). Under the Department's regulations, a union may employ any method of nomination of candidates that will provide a reasonable opportunity to make nominations. 29 C.F.R. § 452.57(a).

The nominations meeting was held on June 6, 2022, and was chaired for the most part by President Bob McDevitt. Nominations followed the same pattern: McDevitt opened the nominations for the position, the incumbent slate nominated its candidate(s), your slate nominated its candidates, McDevitt would ask three times if there were any more nominations, and then McDevitt would close nominations for that position. You explained that the issue arose during the nominations for the five Rank and File Executive Board Member positions. You were standing at the microphone and nominated four candidates for the position. You wanted a moment to decide who to nominate for the fifth position because you believed the candidate you had in mind might not be in good standing. You put your finger in the air to indicate that you needed a moment and walked about 30 feet away to the back of the room where your teammates were sitting to check records and discuss. As you were returning to the microphone, McDevitt closed nominations for the position, and you were unable to nominate a fifth candidate.

The investigation did not support that you were denied a reasonable opportunity to nominate candidates under the circumstances. Although you desired an extra moment to consider an additional nomination for a position and intended your hand gesture to signal as much, Local 54's failure to recognize your request and/or give you extra time for that position did not constitute a failure on the part of the union to provide a reasonable opportunity to nominate candidates for office. The weight of the evidence indicated that McDevitt followed Robert's Rules of Order in conducting the nominations meeting, that members were given a reasonable time period to nominate candidates for each position, and that McDevitt asked three times if there were further nominations before closing nominations. There was no violation.

You alleged that Local 54 disqualified potential candidates from being eligible for a nomination on the basis that the members had not paid their dues for the preceding 24 months despite having previously advised them that they were in good standing and would be eligible for nominations.

Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate for office, subject to "reasonable qualifications uniformly imposed." 29 U.S.C. § 481(e). Continuous good standing requirements are considered to be a reasonable qualification for office. 29 C.F.R. § 452.37(b). Additionally, as noted above, section 401(c) imposes a general mandate that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c).

Article V, section 1(a) of Local 54's bylaws states, "To be eligible to be nominated for office, a member must have been an active member in continuous good standing with the Local union for a period of twenty-four (24) calendar months immediately preceding nominations." Local 54's longstanding practice has been to find candidates eligible to run so long as they pay any outstanding dues and restore themselves to good standing. Local 54 followed this practice during the election by giving all candidates the opportunity to pay outstanding dues.

The investigation confirmed there was some initial confusion about the amounts of dues owed by nominees on your slate. Contributing to this situation was Local 54's change to a new dues recordkeeping system in May 2020, and many members being temporarily out of work during closures related to the COVID-19 pandemic, which led to missed dues payments. After the nominations meeting on June 6, 2022, the election committee reviewed the continuous good standing status of the nominees, and then emailed you a spreadsheet containing their eligibility rulings for your slate's nominees. The election committee also provided letters to the nominees who were found ineligible. The ineligibility ruling letters included printouts of the nominees' dues history, which reflected balances owed that did not always match the actual amount owed. These notifications allowed nominees until June 13 to cure any unpaid dues balances. The letters also provided the name and contact information of an individual at the union who could answer any questions.

The investigation did not establish that this initial lack of clarity about amounts owed denied candidates an opportunity to run for office. Some nominees on your slate paid outstanding dues and were then found eligible. Some nominees reported that they had not been planning to run for office and did not accept their nomination. Some nominees had not checked on their good standing status prior to the nominations meeting and were indifferent toward paying their outstanding dues afterward. One candidate did not appear on the ballot because she paid outstanding dues after June 13, 2022, the deadline for paying outstanding dues and the date that ballot positions were finalized. A number of nominees you identified did not speak with investigators.

Additionally, the investigation did not uncover any evidence that a candidate was incorrectly found to owe dues and ultimately excluded from the ballot in error. As such, the investigation did not establish a violation affecting the outcome with respect to your allegations concerning misapplication of the good standing requirement.

You alleged Local 54's incumbent officers interfered with the election by extending the collective bargaining agreement's expiration date to May 31, 2022. You alleged that this allowed incumbent officers to use bargaining-related discussions with members as an opportunity to campaign and to win over your supporters by including them on negotiating committees.

As noted above, section 401(g) of the LMRDA prohibits the use of union resources to promote a candidate for office. 29 U.S.C. § 481(g). The prohibition is construed to prohibit the use of union-paid time, although campaigning incidental to regular union business is not a violation of section 401(g). 29 C.F.R. §§ 452.76, 452.78.

The investigation did not support your allegations of improper use of union resources related to bargaining. The evidence indicated that the timing of the bargaining negotiations was influenced by the COVID-19 pandemic and seasonal fluctuations in business for the casinos. The evidence also did not support that bargaining decisions or negotiation committee selections were made in such a way as to violate Title IV.

You alleged Local 54 representatives, including shop stewards, intimidated, harassed, and threatened to retaliate against voters if they did not vote for the incumbent leadership. Specifically, you said that a housekeepers shop steward told members in an employee cafeteria not to vote for you because you were "an Arab terrorist." You said that housekeepers were intimidated by this steward and feared losing their job or physical retaliation. You also alleged that an international organizer created a fake account on Facebook and posted negative statements about you and other candidates on your slate.

Section 401(e) of the LMRDA provides that "every member in good standing . . . shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." 29 U.S.C. § 481(e); *see also* 29 C.F.R. §§ 452.82, 452.105.

The investigation did not uncover evidence of intimidation, harassment, or threats of retaliation. The statements allegedly made by the steward, while derogatory and offensive, could not reasonably be construed as threats to retaliate against members for supporting your candidacy or as improper interference within the meaning of Title IV's protections. Likewise, statements on Facebook that you complained about could not reasonably be construed as threats. There was no violation.

You alleged that Local 54 and its incumbent officers interfered with the election by offering to convert certain core members to full members. You explained that once a member crosses a picket line, the member becomes a core member and loses the right to vote or otherwise participate in the union unless the union forgives them. You said that around the time of the election, officers paid visits to certain core members and insinuated that if the core member voted for the incumbents, they could become full members again and could receive amnesty from any fines relating to a possible upcoming strike. You identified one member who was made such an offer. As noted above, section 401(g) of the LMRDA prohibits the use of union resources to promote a candidate for office. 29 U.S.C. § 481(g).

The investigation did not support your allegation that incumbent officers offered to restore core members' rights in exchange for their votes. The evidence supported that union representatives spoke to certain core members who had previously crossed the picket line and mentioned the possibility of restoration of membership rights if the core members supported a possible strike on July 1, 2022. Union representatives did not offer amnesty from possible strike fines. The possibility of restoration of rights was not tied to supporting the incumbent slate in the officer election. Ultimately, the union did not restore any core members to full membership status in 2022. When interviewed, the member you identified as having received such an offer from incumbents stated that incumbents did not explicitly offer to trade restoration of rights in exchange for her support of their candidacy. She did say, however, that you explicitly made her an offer of amnesty if you were elected. There was no violation.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on the matter.

Sincerely,

[redacted]

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Chief, Division of Enforcement

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