

U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143



June 9, 2023

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the June 22, 2021, election of officers conducted by LIUNA Local 79.

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

First, you alleged that LIUNA Local 79 improperly denied your request to use the "Clean Slate" name for your slate. Section 401(c) of the LMRDA contains a general mandate that unions must provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed. 29 C.F.R. § 452.110.

The Department's investigation revealed that both you and the incumbent Business Manager Mike Prohaska applied to use the same name "Clean Slate" at the close of nominations, but the judges of election only allowed Prohaska's slate to use the name on the ballot. In accordance with the union's past practice, Head Election Judge [REDACTED] and the other judges determined that a single candidate could not run as a slate. [REDACTED] also stated that the union's past practice was to allow the slate with the most candidates that had previously used the Clean Slate name to use it, but in this case, you were the only individual on your slate. Further, you did not present to Head Judge [REDACTED] and the other judges of election any documentation of your service mark.

The investigation revealed that the "Clean Slate" name has been used by incumbent candidates at Local 79 since 1996. As a former officer and business agent for the

Local, you were elected recording secretary on the Clean Slate in 2015 and 2018. In March 2021, you obtained a New York State service mark, (*i.e.*, state trademark) for the Clean Slate name, which you claimed gave you exclusive rights to the name. The Department's investigation revealed that you filed suit to protect the New York service mark, but the matter was still in litigation at the time of the election. You also unsuccessfully sought a temporary restraining order to stop the election and prevent the use of the Clean Slate name on the ballot.

The ballot listed all races in the election, however, your race against Prohaska for Business Manager was the only contested race. You and Prohaska were the only two candidates for that position. Although the ballot identified Prohaska and his running mates as members of the Clean Slate, there was no slate voting option on the ballot. Therefore, voters had to vote individually for either you or Prohaska. There was no violation.

Next, you alleged multiple violations of Section 401(g) of the LMRDA, which provides that union funds may not be contributed or applied to promote the candidacy of any person in an election subject to Title IV of the LMRDA. 29 U.S.C. § 481(g). First, you asserted that Business Manager Prohaska used his union vehicle to campaign when he and other Clean Slate members and business agents travelled to two Clean Slate meetings in their union vehicles. You also asserted that another Clean Slate supporter, LIUNA Benefit Fund official Bernard Callegari, drove to a worksite in his union vehicle during the election to campaign. The Department's investigation revealed, however, that Local 79 provides vehicles to every local officer and explicitly allows for personal use of the vehicles and that each officer must declare the value of that use as taxable income. There was no showing that the Clean Slate violated this policy or that they campaigned while on union time, or on union or employer property. There was no violation.

You next alleged a violation of Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), when you asserted that Prohaska gave Local 79 jackets to members in the union hall while his Slate held a rally outside the hall on the same days. As you are aware, the jacket giveaway, which is paid for with union funds, is an annual event that normally occurs over three days in January or February. The Department's investigation confirmed that due to manufacturing and shipping delays the jacket giveaway was delayed until April and May during the election period. Local 79 held its jacket giveaway at the union office on two days in April and one day in May before the June 22 election. To receive a jacket a member simply had to be in good standing.

The Department's investigation revealed that on days the jackets were given away, the Clean Slate campaigned on the street outside the union hall to members who came to receive a jacket. The investigation did not reveal any evidence that anyone

campaigned inside the union hall during the giveaway. Moreover, the investigation revealed that you were aware of the jacket giveaway and were not prevented from campaigning outside the union hall at the same place and time. There was no violation.

Your third assertion of a violation of Section 401(g) of the LMRDA, 29 U.S.C. § 481, involved Prohaska allegedly holding a campaign meeting prior to the jacket giveaway with Local 79 business agents and organizers. You asserted that during this meeting Prohaska told the business agents and organizers what to say to members at the Clean Slate campaign tent. The Department's investigation confirmed that Prohaska held a meeting on one of the April jacket giveaway dates, but your witness to the meeting, [REDACTED], stated that Prohaska did not overtly campaign or instruct the attendees how to campaign. Rather, he addressed issues regarding Local 79's pension fund that you had raised and that Prohaska believed were inaccurate. You were campaigning about issues that involved member pensions and benefits. Prohaska stated that he wanted the officials present to be able to answer questions from members working in the field, not to proactively campaign. Under these circumstances, Prohaska could inform business agents and organizers about the legitimate union business of Local 79's pension fund and benefits without violating Section 401(g) of the LMRDA. There was no violation.

Your fourth allegation of a violation of Section 401(g) of the LMRDA, 29 U.S.C. § 481, involves your assertion that Prohaska campaigned in the union office during a February meeting with Local 79 business agents four months prior to the election. Prohaska stated that he held the meeting to inform the other business agents that your territory would be divided because you had been terminated. The investigation revealed that both of your witnesses, [REDACTED] and [REDACTED], confirmed that that was the purpose of the meeting. Prohaska informed the gathering that you would be running against him but did not campaign or otherwise mention the election. There was no violation.

Finally, your fifth allegation of a violation of Section 401(g) of the LMRDA, 29 U.S.C. § 481, involves your assertion that lawyers paid by Local 79 provided legal services to Prohaska and the Clean Slate. The Department's investigation revealed that you filed multiple lawsuits against Prohaska personally and against Local 79 regarding your termination and use of the Clean Slate service mark. The evidence revealed that Prohaska hired a law firm to represent him and the Clean Slate. Prohaska provided the Department with invoices showing payments from the Clean Slate campaign to the law firm. Local 79 engaged other firms to handle the election and suits filed by you. There was no evidence that union attorneys were doing work for the Clean Slate or for Prohaska individually. There was no violation.

For the reasons set forth above, the Department 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 this matter.

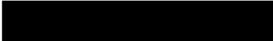
Sincerely,



Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers International Union of America
905 - 16th Street, NW
Washington, DC 20006

Michael Prohaska, Business Manager
LIUNA Local 79
131 West 33rd Street
New York, NY 10001

, Associate Solicitor
Civil Rights and Labor-Management Division