



August 18, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (Department) on January 19, 2023, alleging that the National Association of Broadcast Employees and Technicians, Communication Workers of American (“NABET-CWA” or “the Sector”) violated Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) when it ordered a rerun of NABET-CWA Local 41’s (“Local 41”) March 26, 2022 election of officers.

The Department investigated your allegations. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred. Following is an explanation of this conclusion.

On September 16, 2022, the Sector issued a decision addressing protests received relating to the March 26, 2022 officer election and ordering that Local 41 conduct a new election. You alleged that the Sector’s decision to rerun the March 16, 2022 election was improper because the number of ineligible members permitted to vote would not have affected the outcome of the election. Section 401(e) of the LMRDA provides that every member in good standing shall be entitled to one vote, and that elections shall be conducted in accordance with the constitution and bylaws of the labor organization. 29 U.S.C. § 481(e). Section 401(e) of the LMRDA requires unions to conduct elections in accordance with their constitutions and bylaws. 29 U.S.C. § 481(e). The Department will accept the interpretation consistently placed on a union’s constitution by the responsible union official or governing body unless it is clearly unreasonable. 29 C.F.R. § 452.3. Article XV, Section 4d of the CWA National Constitution states that “Only members of the Union in good standing shall be eligible to vote. . .” Article II, Section 2.4 B of the NABET-CWA Sector Bylaws states in part that members remain in good standing by paying their required financial obligations in a timely manner. Article II, Section 4d provides that members not in good standing are ineligible to vote. Local 41’s Bylaws also contain a provision in Article IV, Section 4a stating that a member loses their good standing if they are in arrears on dues, fines, initiation fees, or assessments.

Article IV, Section 5a and 5b of the Local's Bylaws further require that ballots are mailed to eligible voters. Finally, Article IV Section 6c of Local 41's Bylaws require that the election committee cross check the returned ballots against the voter eligibility list to ensure that all returned ballots are from eligible voters.

Section 402(a) of the LMRDA requires that a union member exhaust internal union remedies before filing a Title IV complaint with the Department. 29 U.S.C. § 482(a). This internal exhaustion requirement was included in the LMRDA to give unions a chance to correct election problems and deficiencies themselves, thereby preserving a maximum amount of independence and encouraging responsible self-governance. In furtherance of this legislative objective, the Department accords a certain degree of deference to a union's decision to hold a new election in response to internal union election protests. The Department will not seek to reverse a union's remedial decision to hold a new election unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the LMRDA and holding a new election was unreasonable.

The Department's investigation found that the Sector ordered Local 41 to rerun the March 16, 2022 election because members who were ineligible to vote were mailed ballots and had their votes counted in the election. The Department's review of the election records revealed that ineligible members were permitted to vote in the election. The records showed that 344 ballots were returned in time for the tally. The Department compared Local 41's Dues Outstanding List, the Initiation Fee Outstanding List, and the ballots mailing labels and determined that 184 ineligible members were mailed a ballot. Of the 184 ineligible members who were mailed a ballot, 47 returned a ballot that was included in the tally. Though the union stated additional reasons for ordering the rerun election, specifically that Local 41 mishandled election protests, it is unnecessary to determine whether those reasons were sufficient to order a rerun election because the violation of permitting ineligible members to vote established a sufficient basis for ordering the rerun election.

It is likewise irrelevant whether the Sector established that the violation would have affected the outcome of the election. The requirement that the violation may have affected the outcome of the election is only imposed on the Secretary when the Secretary files suit to overturn an officer election. *See* 29 U.S.C. § 482(c). This statutory mandate is not imposed on unions that choose to order a remedial election when a violation is found. There is no dispute in this case that ineligible members were permitted to vote, which is both a violation of the LMRDA and the union's constitution and bylaws. Accordingly, the Sector had a reasonable basis upon which to exercise its broad discretion in remedying that violation, regardless of whether a

court would have found that the violations may have affected the outcome of the election.

The Department's investigation found that the Sector's decision to rerun the election was not based on the application of a rule that violates the LMRDA, nor was it contrary to the LMRDA's principles supporting union democracy. Moreover, the investigation did not reveal any evidence that the decision was made in bad faith. The pending litigation you cite as evidence of bad faith is related to a separate question about the validity of the trusteeship imposed on Local 41. The question of whether the rerun election was ordered in bad faith is a separate matter, and, given the established violation, the Department finds no such evidence that it was. Accordingly, the Sector's decision to rerun the election does not provide a basis for action by the Department.

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


Sincerely,



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Chief, Division of Enforcement

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