



October 3, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor (the Department) on May 1, 2023, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or the Act) occurred in connection with the elections of officers conducted by the International Longshoremen's Association Local 1291 (Local 1291) in Philadelphia, Pennsylvania on December 8, 2022 and December 29, 2022.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there were no violations of the LMRDA that may have affected the outcome of the elections. Following is an explanation of this conclusion.

First, you alleged that Local 1291 President Boise Butler failed to adhere to the Union's constitution and bylaws when he assembled a second election committee after the membership had already voted for several members in good standing to serve on the election committee.

Section 401(e) of the LMRDA provides that elections shall be conducted in accordance with the union's constitution and bylaws as long as they are not inconsistent with the law. 29 U.S.C. 481(e). Article III, Section (d) of the Local 1291 Bylaws states, in relevant part: "... *after nominations have been made*, an Election and Contract Vote Committee consisting of (4) members shall be elected by the membership." (Emphasis added).

The Department's investigation revealed that, during the October 20, 2022 regularly scheduled membership meeting, Local 1291 Business Agent David Saunders erroneously held a vote for the election committee despite the fact that no nomination meeting had yet been held. At a subsequent November 16, 2022 nomination meeting, Business Agent Saunders addressed the error and a "clean slate" was declared. A new election committee was then selected. Thus, the Act was not violated.

You also alleged that Local 1291 Secretary-Treasurer Martin Mascuilli improperly campaigned on union time. Specifically, you alleged that he printed a variety of communications promoting his candidacy on union letterhead, and that he engaged in campaigning when he visited the Local 1291 hiring center.

Section 401(g) of the LMRDA, 29 U.S.C. 481(g), prohibits candidates from campaigning while they are being paid by the union or by an employer. It also prohibits the use of union funds to finance a candidate's campaign. *Id.*

The Department's investigation determined that on November 11, 2022, Secretary-Treasurer Mascuilli went to the Local 1291 hiring center to post a notice about the upcoming election. The Department uncovered no evidence that Mascuilli engaged in campaigning during this visit. Additionally, the Department reviewed letters from Secretary-Treasurer Mascuilli to the membership dated November 9, 2022 and November 14, 2022. Though these letters were printed on union letterhead, they were official union communications containing, *e.g.*, information regarding an upcoming nomination meeting and candidate eligibility requirements. Several witnesses confirmed that Secretary-Treasurer Mascuilli never distributed campaign literature printed on union letterhead. There was no violation of the LMRDA.

You also alleged that Local 1291 failed to follow Article III(e)(1) of its Bylaws, which states, in relevant part: "Election of officers shall be by secret vote on voting machines, and shall be held on the second Thursday of December of each election year[.]" Specifically, you alleged that a December 13, 2022 letter to the membership informing them that a new election would be held on December 29, 2022 did not provide them with sufficient notice. You claimed that one particular member was unavailable to vote in the December 29th election due to the date change.

Again, Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the union's constitution and bylaws to the extent they are consistent with the law. 29 U.S.C. 481(e). Additionally, Section 401(e) of the LMRDA requires that an election notice be mailed to each member at their last known address at least 15 days prior to the election. *Id.* The notice must be reasonably calculated to inform the members of the impending election. 29 C.F.R. 452.99.

The investigation revealed that the December 8, 2022 election was scheduled for the second Thursday of December as required by the Bylaws. Local 1291 contracted with the City of Philadelphia Commissioner's Office to provide, program, and staff voting machines and conduct the election. The election was promptly halted and ultimately shut down after a voting machine defect was discovered. By letter dated December 8, 2022, the City of Philadelphia Commissioner's Office claimed responsibility for the error. On December 13, 2022, Local 1291 sent a letter to the membership notifying them that a new election would be held on December 29, 2022 (sixteen days later) and

appended the December 8 letter from the City of Philadelphia. The investigation disclosed that there were no absentee ballot inquiries due to the change in election date and that, on December 29th, 322 out of 508 members (64% of the membership) voted. The Department also interviewed the member you identified as having missed the rerun election due to the date change. The member informed the Department that he did not attend either of the officer elections held by the local in December 2022, and that it was “his choice” not to attend the rerun election. The Act was not violated.

You further alleged that Local 1291 violated the LMRDA when it did not acquire backup voting machines for the election. Relatedly, you alleged that voting machines utilized on December 8, 2022 failed to display the proper number of candidates, and that members were not informed regarding which positions the candidates were running for during either election.

Section 401(c) of the LMRDA, 29 U.S.C. 481(c), requires that adequate safeguards to ensure a fair election be provided. This provision has been interpreted as imposing a general rule of fairness during the conduct of union officer elections. *See* 29 C.F.R. 452.110.

The investigation revealed that, the day before the election, Secretary-Treasurer Mascuilli discovered a mistake when reviewing the ballot proof. The ballot instructed members to vote for one business agent when it should have said to vote for two business agents. Mascuilli immediately contacted Philadelphia City Commissioner Executive Director [REDACTED] by phone to fix the mistake, and [REDACTED] sent a corrected ballot proof to Mascuilli, leading him to believe the issue had been resolved. On December 8, 2022, however, a member noticed the mistake on the final ballot. The Commissioner’s office was again contacted and they informed the Local that they could not get to the polling site to fix the mistake for another two hours. Mascuilli therefore made the decision to halt the December 8, 2022 election, fix the ballot issue, and hold a new election on December 29, 2022. As described above, the City of Philadelphia claimed responsibility for the voting machine error. Additionally, the investigation confirmed that there were no problems with the voting machines or the ballots used during the December 29th election. The Act was not violated.

You also alleged that certain members in good standing were denied the opportunity to vote when they were removed from the voting roster.

Section 401(e) of the Act requires that a union provide its members with a reasonable opportunity to vote. 29 C.F.R. 452.94 provides that “. . . there is an obligation on the labor organization to conduct its periodic election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots.” Article XIII, Section 1(b) of the ILA Constitution states: “For voting purposes, any member who is delinquent in paying

his dues may pay his dues owed on the election day, and that member shall subsequently be permitted to vote in that day's election."

The Department's investigation revealed that, in accordance with the union's Constitution and Bylaws, every member had the opportunity to pay their union dues (if owed) on the day of the election and vote. The Department also conducted a thorough review of the election records, which confirmed that no members in good standing were removed from the voter eligibility list. In fact, the records review showed that twelve members paid back dues on the day of the election, restoring their eligibility, and voted. Thus, there was no violation of the LMRDA.

You also alleged that Local 1291 members faced voter suppression at the polling place, as the voting environment was intimidating and distracting. Specifically, you alleged that there was no line control at the polling site to prevent members in line to vote from mixing with other members seeking to pick up their pay checks or bid on jobs. You claimed that this environment provided a cover for candidates to stand near voters and potentially campaign.

Again, Section 401(c) of the LMRDA requires that adequate safeguards to ensure a fair election be provided. 29 U.S.C. 481(c). The LMRDA also requires that covered local union elections be conducted by secret ballot. 29 U.S.C. 481(b). The requirement of secrecy extends to the conditions under which votes are cast and to the handling of the ballots. Article III(e)(1) of the Local Bylaws provides that "Election of officers shall be by secret vote on voting machines" Article III(e)(3) requires the Union "to obtain and place a sufficient number of voting machines." The Bylaws are otherwise silent with respect to requirements for the polling place.

The investigation found that the front half of the hiring hall was allocated to the election, and the election committee set up partitions to separate members in line to vote from any other lines in the hiring center. Witnesses interviewed by the Department stated that voters were directed to exit immediately through the back door once they finished voting and that, though candidates were allowed to enter the hall periodically to shelter from the weather, they were kept in a partitioned area next to the door more than 50 feet away from the voting machines. The investigation further revealed that voting machines had attached curtains that were closed for each voter, and that no members were permitted to share a voting booth or to vote side-by-side. The Act was not violated.

You further alleged that company foremen—specifically, incumbent candidates Keith Browning and James Byard—conducted job hiring during polling hours in an effort to intimidate voters and remind them that incumbent officers had the authority to affect hiring decisions.

As described above, Section 401(c) of the LMRDA requires that adequate safeguards to ensure a fair election be provided. 29 U.S.C. 481(c). The investigation revealed that Local 1291 foremen are not supervisors and are permitted to hold union office. The investigation disclosed that foremen do not have the authority to subvert the seniority list or certification requirements, which are the basis for hiring, and foremen have no control over when jobs open or how many job openings there will be. The investigation uncovered no evidence that any foreman-based hiring decisions on the election, or that any foreman was able to discover how a particular member voted. The Act was not violated.

Additionally, you alleged that you and other members in good standing were denied the opportunity to run for office in violation of the Section 401(e) of the LMRDA, 29 U.S.C. 481(e).

Section 401(e) provides that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. *Id.* Section 401(e) also recognizes that labor organizations may have a legal interest in prescribing standards for candidacy and office holding. Article III(b) of the Local 1291 Bylaws prescribes such standards. Specifically, it provides: "Members of this Local who at time of nomination . . . have been in continuous good standing for one (1) year prior to nomination shall be eligible for office." Article II(c) of the Bylaws defines a "member in good standing" as "one who is not in arrear[s] in the payment of dues and assessments for more than fifteen (15) days of each quarter and who has no unpaid fine against him." Article XIV, Section 5 of the ILA Constitution provides that "Any member who is thirty (30) days or more in arrears in the payment of dues shall be automatically, and without notice, suspended from all rights and privileges of membership."

The investigation revealed that you did not pay dues for the period spanning January 1 through March 31, 2022. As a result, as of April 1, 2022, you owed the Local \$25 in dues. As described above, under the ILA Constitution, members are suspended without notice after 30 days of delinquency. The investigation showed that your membership was suspended because you were delinquent on your dues for more than 30 days. As a result, you did not meet the continuous good standing requirement for candidacy in the 2022 election. The investigation also revealed that two other members were properly excluded from candidacy: one because his dues were in arrears, and another because he was disqualified under Section 504 of the LMRDA, 29 U.S.C. 504. The Department reviewed the dues history records of every candidate as well as their nomination acceptance forms and found that all candidates maintained their continuous good standing for at least one year, as required by the Local Bylaws. There was no violation of the LMRDA.

You also alleged that Local 1291 officers did not properly inform members of the election. Again, Section 401(e) of the LMRDA requires that an election notice be mailed

to each member at their last known address at least 15 days prior to the election. 29 U.S.C. 481(e).

The investigation revealed that the Local 1291 executive board sent an election notice to the membership on November 22, 2022, sixteen days prior to the December 8, 2022 election. And as described above, after the December 8, 2022 election was cancelled, a new election notice was mailed to all members on December 13, 2022 informing them that the new election would be held on December 29, 2022 – sixteen days later. Both notices were also publicly posted where members could see them. Several witnesses interviewed by the Department attested that they were not aware of any member who did not receive the new election notice or who were not aware of the date change. There was no violation of the Act.

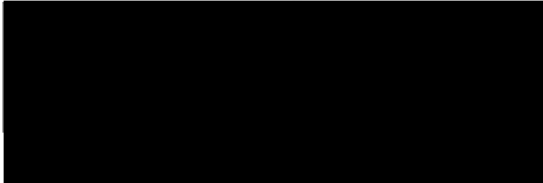
Finally, you alleged that nominations should have taken place at a special meeting in order to treat all members equally and avoid any acts of favoritism or the appearance of favoritism. You claimed that the incumbent candidates chaired the nomination meeting and were able to immediately nominate each other and ensure that incumbent candidates were listed first on the ballot.

Section 401(e) of the LMRDA provides that, in any election subject to Title IV, a reasonable opportunity shall be given for the nomination of candidates. 29 U.S.C. 481(e). A union may employ any method for nomination of candidates that will provide a reasonable opportunity to make nominations. 29 C.F.R. 452.57(a). Article XIII(b) of the ILA Constitution states that “Nominations shall be made at a regular or special meeting ...” Article III(c) of the Local 1291 Bylaws provides that “Nominations of candidates for office shall be made at the business meeting in November of each election year,” and Article VIII of the Bylaws clarifies that “Regular business meetings of this Local Union shall be held on the third Thursday of each month”

The investigation revealed that, in a letter dated October 6, 2022, Local 1291 announced that a special meeting would be held on November 16, 2022 to nominate members in good standing to serve as officers as well as four members for the Election/Contract Vote Committee. Additionally, in letters dated November 9, 2022 and November 14, 2022, Local 1291 referenced the October 6, 2022 letter and stated that there would be a special meeting on November 16, 2022 for the purpose of nominating executive board candidates and “ancillary elected personnel.” The investigation also disclosed that the nomination meeting was properly chaired by the incumbent officers, because the election committee was not selected until after nominations to ensure no candidates would be on the committee. Finally, the investigation revealed that it is longstanding practice of the Local to list candidates on the ballot in the order they are nominated, and that incumbent officers are not identified on the ballot. Notably, several nonincumbent candidates won against incumbents during the election. The Act was not violated.

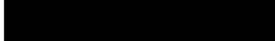
For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



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