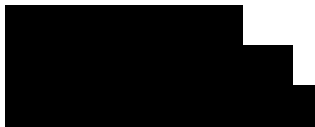




December 6, 2023



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Office of Labor-Management Standards, U.S. Department of Labor (Department, or OLMS) on June 13, 2023, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the February 25, 2023 election of officers that was conducted by Local 1-2 of the Utility Workers Union of America (Local 1-2).

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded with respect to each of your specific allegations that no violation occurred which may have affected the outcome of the election.

You alleged that Local 1-2 denied candidates the right to have an observer present at the printing and mailing of ballot packages. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires a union to implement adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. The Department's interpretive regulations provide that observers also have a right to witness the preparation and mailing of ballots. 29 C.F.R. § 452(c). The investigation determined that the union's printer did not allow any candidate or observer to witness the printing and stuffing of ballot packages inside their facility. Instead, the printer provided a video of the process and allowed candidates to inspect the assembled packages outside the facility before they were mailed. The printer later provided a post office receipt to confirm that the ballots were mailed. Denying candidates the ability to fully observe the mailing of ballots violated section 401(c) of the LMRDA. However, the investigation did not find any evidence of ballot tampering or fraud, and Local 1-2 received a low number of undeliverable ballot packages. Therefore, the violation did not affect the outcome of the election.

You also alleged Local 1-2 denied candidates an opportunity to inspect the membership list at least 30 days prior to the mailing of ballots. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), provides that candidates have a right to inspect the membership list within 30 days prior to a union election. The investigation found that no candidate made a request or an appointment to inspect the membership list prior to the day of ballot printing and mailing. Instead, you and other members of your slate first requested to inspect the

membership list while at the printer the day the ballots were printed and mailed. Local 1-2's election committee attempted to satisfy the request by retrieving a portion of the list and allowed candidates to inspect it side by side with the printed ballot packages. However, the election committee was unable to retrieve a full copy of the list due to a lack of notice that candidates wanted to perform an inspection at the printer. On these facts, there was no violation of the LMRDA.

You also alleged that Local 1-2 obstructed your ability to send campaign emails and text messages using the union's membership list. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), requires a union to comply with reasonable requests to distribute campaign literature at a candidate's expense to all members in good standing. The investigation found Local 1-2 regularly communicated with members by email and text message. On January 20, 2023, your slate requested that Local 1-2 facilitate distribution of campaign literature by email and text. Election Committee Chairperson [REDACTED] forwarded the request to Local 1-2's attorney. Attorney [REDACTED] attempted to find third-party vendors to distribute the materials because Local 1-2 did not have procedures in place to distribute campaign material by email and text, and Local 1-2's existing contracts with email and text vendors would not support campaign material. On January 30, 2023, ballots were mailed to members. Your request to send campaign literature through communication methods regularly used by Local 1-2 was reasonable. Local 1-2's failure to send your campaign emails and texts prior to ballots being mailed is therefore a violation of the LMRDA.

This violation did not, however, affect the outcome of the election. Local 1-2 provided your slate with an email vendor on February 1, 2023. Your slate's first campaign email was sent on February 2, 2023. Local 1-2 kept reports from the U.S. Postal Service, which indicated the number of ballots received on specific days throughout the balloting period. Local 1-2 covers a small geographic area (portions of New York City) and postal ballots did not need to travel far distances to be delivered. Under the particular facts and circumstances of this case, the postal records were a reasonable proxy for the number of voted ballots on any particular date. As of February 2, three ballots were returned according to postal records. Your slate's second campaign email was sent on February 6, 2023. As of that date, 509 ballots were returned according to postal records. The smallest margin of victory in the election was 771 votes. Because your campaign emails were sent before the number of returned ballots exceeded the margin of victory, the violation did not affect the outcome of the election.

On February 6, 2023, Local 1-2 provided your slate with a text message vendor. As of that date, 509 ballots were returned according to the postal records. Your slate did not produce a message for publication until February 12, 2023. As of that date, at least 1003 ballots were returned (more than the margin of victory in any race) according to the postal records. In other words, your slate was provided with a text message vendor before the number of returned ballots exceeded the margin of victory, but your slate did not act on

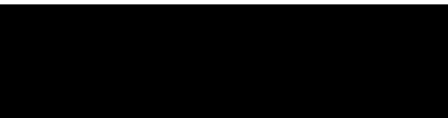
that information until after the number of returned ballots exceeded the margin of victory. Accordingly, the violation did not affect the outcome of the election.

You also alleged that Local 1-2's incumbent officers used union funds to campaign by sending a self-laudatory email to the union membership prior to the election. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), provides that labor union funds shall not be used to promote the candidacy of any person. The investigation found that the email you complained about did not constitute campaigning. The email discussed relevant union news and did not explicitly advocate for or against any candidate in the election. Accordingly, there was no violation of the LMRDA.

You also alleged that Local 1-2 disparately applied the election rules by allowing the incumbents to campaign from inside work facilities, while prohibiting your slate from doing the same. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), prohibits the disparate treatment of candidates. The investigation found that, while the election rules prohibited campaigning from inside work facilities, witnesses observed campaign literature and apparel for both your slate and the incumbent slate inside work facilities. To the extent that such conduct was a violation of the LMRDA, the effect was mutually distributed across both slates. Accordingly, there was no violation that affected the outcome of the election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaint and closed its file in this matter.


Sincerely,



Tracy L. Shanker
Chief, Division of Enforcement

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