



April 15, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your December 20, 2010 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of the Operating Engineers, Local 520 conducted on August 13, 2010.

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 allege that incumbent officers of Local 520 used union telephone lists to call members to encourage them to vote for the incumbent officers' slate in violation of section 401(g) of the LMRDA. Section 401(g) prohibits the use of union resources to promote any candidate for union office. Specifically, you allege that members of Local 520 informed you that they received calls prior to the election asking them to vote for the incumbents, but that these members had not given their phone numbers to the incumbents. During the investigation, the Department determined that certain Local 520 officers made campaign calls using the contact lists on their union-issued cellular phones. The investigation thus supports a finding that union officers used union lists to promote candidates for office in violation of the Act.

However, section 402(c)(2) of the LMRDA, provides that an election will only be overturned where a violation may have affected the outcome of the election. The Department's investigation determined that Local 520 officers made approximately 66 campaign calls using the contact lists on their union-issued cellular phones. The smallest margin of victory for an incumbent candidate was 225 votes. Accordingly, any violation would not have affected the outcome of the election.

You also allege that Local 520 allowed an owner/operator to nominate election candidates in violation of the International Union of Operating Engineers (IUOE) constitution. Section 401(e) requires that elections be conducted in accordance with a union's constitution and bylaws. Article XXIV, subdivision 1, section (b) of the IUOE constitution provides, "No member owner/operator of an entity that employs operating engineers shall . . . nominate candidates in any Local Union election." The Department's investigation revealed that [REDACTED], the member in question, is the co-owner of an excavation and trucking business. However, that business has no current collective bargaining agreement with Local 520 and has not employed any Local 520 members for at least ten years. The investigation thus supports the conclusion of Local 520 that [REDACTED] is not currently an owner/operator within the meaning of the IUOE constitution. Accordingly, there is no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Vincent J. Giblin
General President IUOE
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Ron Kaempfe
President, Operating Engineers, Local 520

[REDACTED]

Beverly Dankowitz
Acting Associate Solicitor
Civil Rights and Labor-Management Division