



November 29, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on August 10, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the regular election of officers for Local 602 of International Brotherhood of Electrical Workers, AFL-CIO (IBEW) completed on June 25, 2011.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA that was not remedied or that affected the outcome of the election.

You allege that contractors/employers were allowed to vote in the election. Specifically, you allege that [REDACTED] and [REDACTED] were allowed to vote. The investigation confirmed this allegation. Section 401(e) of the LMRDA provides, among other things, that covered elections shall be conducted in accordance with the constitution and bylaws of the union in so far as they are not inconsistent with the provisions of the LMRDA. Both Article XV, Section 5 of the IBEW Constitution, dated September 2006, and the IBEW Basic Laws and Policies, dated October 2005, state that contractors/employers are not eligible to hold office, attend membership meetings, vote on collective bargaining agreements, or vote in elections. Consequently, the Local violated the LMRDA by allowing [REDACTED] and [REDACTED] to vote in the election.

However, in order for a violation to be actionable there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2); *see also*, 29 C.F.R. § 452.5. In this case, there is no such evidence. Given the vote margins in the election, the votes of [REDACTED] and [REDACTED] could not have affected the outcome of the election. Thus, there was no violation of the LMRDA that would provide a basis for overturning the election.

You also allege that members were denied the right to vote because they did not understand that they had to vote again when they received a second, corrected ballot package. Additionally, you claim that other members decided not to vote again out of annoyance. The investigation found that the company the Local hired to mail the ballots, Panhandle Presort Services, put the wrong delivery address on the return envelopes for the mail ballot election. Pursuant to Article III of the Local's bylaws and the IBEW election guide, the delivery address should have been a post office box dedicated solely to return ballot delivery in the election, but was instead the Local's mailing address and post office box.

After the initial ballot mailing on May 25, 2011, the Local discovered that the wrong address was on the return ballot envelopes when the Local began to receive them at the union hall. The first election judge resigned his post soon after this occurred and another was appointed. On May 31, 2011, the newly appointed election judge sent members a letter explaining that the original ballot was invalid and that members would soon receive a second ballot on colored paper that was to be returned by June 25, 2011. The replacement ballots were mailed on June 2, 2011.

Section 401(c) of the LMRDA requires that a union provide adequate safeguards to insure a fair election. Adequate safeguards, as contemplated by the LMRDA, specifically refer to the mechanical, procedural aspects of running an election. The Local's initial failure to ensure that the ballot return envelopes contained the correct address violated Section 401(c). However, in order for the Department to seek to overturn an election, there must be evidence that a violation occurred that has not been remedied and that may have affected the outcome of the election. In this case, the Local remedied the violation by sending members a letter clearly explaining the error and replacement ballot procedure. Thus, there was no violation of the LMRDA that would provide a basis for overturning the election.

You also allege that the Local did not approve the use of an outside entity to prepare and mail ballots, which is in violation of the Local's constitution and bylaws. Article XVII, Section 1(g) of the IBEW Constitution, dated September 2006, states that the President shall, "see that no disbursements are made except on an order countersigned by the recording secretary and himself after action of the local union. However, no action of the local union is necessary to pay regular or standing bills." Article XVII, Section 7 states that the treasurer shall make no disbursements without the sanction of the local union except for payments of regular or standing bills. In this case, the Executive Board voted at the May 18, 2011 Executive Meeting to support all of the election judge's decisions. There was no violation of the LMRDA.

You also allege that members were not mailed ballots and were denied the right to vote. The Local takes the position that this allegation is not covered by your internal protest and that the allegation is not properly within the scope of your complaint to the Secretary. However, even if this allegation is properly before the Secretary, it would not provide a basis for overturning the election. Article III, Section 4(d) of the Local's bylaws, dated October 18, 1991, states that all members in good standing and qualified shall be entitled to vote. The investigation found that four members who joined the Local and became eligible to vote between the dates of the original ballot and replacement ballot mailings were not mailed ballots. None requested a ballot from the Local. Neither the LMRDA nor the regulations require a union to update its list of eligible voters when a list is used within a short period of time for a second ballot mailing. Further, even if the Local constitution were interpreted to require such precision, the four votes at issue would not have affected the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that was not remedied and affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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