

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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October 6, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on May 10, 2011, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the Boilermakers International Union, AFL-CIO, Local 19, on April 19, 2011.

The Department of Labor 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 there was no violation that may have affected the outcome of the election.

You alleged that ineligible members were permitted to vote. You specifically identified [REDACTED] as an ineligible voter. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate of his choice. The investigation established that members who paid dues through November 18, 2010 were eligible to vote. A review of Local 19's dues records revealed that [REDACTED] was properly listed on the voter eligibility list as an eligible voter because his dues were paid through November 18, 2010. The investigation did not reveal any evidence that the union permitted ineligible members to vote. There was no violation.

You further alleged that challenged ballots and absentee ballots were not handled properly and verified prior to being put in the ballot box during the election. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided. Pursuant to this provision, a labor organization's wide range of discretion regarding the conduct of elections is circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110.

The investigation revealed that there were challenged ballots that were not handled properly by the election officials. In particular, the Department examined the challenged ballots and found that there were 10 challenged ballot envelopes that did not contain any information related to the voter on the outside envelopes. Once the envelopes were opened, the review of these ballots revealed that nine of them were ineligible to vote, so their ballots were properly not included in the tally. The tenth voter was eligible to vote, but his challenged ballot was not included in the tally because the election committee confused his name with another member who was not eligible to vote. Therefore, the Department included this one vote in the total challenged ballots counted. The failure of the local to provide adequate safeguards to properly handle and resolve the challenged ballots was a violation of section 401(c) of the LMRDA. This violation, however, did not affect the outcome of the election because the one vote that was improperly excluded was less than the margin of victory for the winning candidates. 29 U.S.C. § 482(c)(2).

With regard to absentee ballots, the investigation established that four members requested absentee ballots. Their eligibility to vote was verified as their dues were paid through November 18, 2010. The office manager mailed ballots to them which were returned and placed into the local's locked ballot box. There was no violation.

You alleged that campaign literature critical of you was produced and distributed at union expense. Section 401(g) of the LMRDA provides that no union funds may be contributed or applied to promote the candidacy of any person in an election subject to Title IV. The Department's investigation did not substantiate this charge.

The investigation revealed that while in the union office you saw a piece of campaign literature with negative remarks about you on the union's office manager's desk. The investigation did not reveal any evidence that the office manager produced, drafted or copied any campaign literature using union resources or time. The office manager denied any knowledge of any campaign literature being produced, drafted or copied at the union office. Also, a computer search of the office manager's computer did not reveal any evidence of campaign literature [REDACTED] a candidate for secretary treasurer, indicated that he was responsible for the material. A computer search of [REDACTED] computer revealed that all of the pieces of his campaign literature were located on his hard drive. [REDACTED] further stated that all of his campaign literature was produced and copied at his residence on his personal computer and not at the union office. There was no violation.

You alleged that the local failed to treat you equally with respect to campaigning in that international representative Phil Evans and Local President Dave Gaillard were

campaigning on union time at a newly organized plant in Camden, New Jersey, and that you were not given the same opportunity to address these members. Union resources may not be used to promote the candidacy of any person in an election subject to Title IV. *See* 29 C.F.R. § 452.73. The union may not discriminate between candidates with respect to campaigning. *See* 29 C.F.R. § 452.79.

Investigation did not substantiate your allegation. The investigation revealed that both officers attended a grievance hearing at the facility and after the meeting the President took a tour of the facility with one of the managers. The international representative invited Gaillard to the grievance meeting because the members at the facility were scheduled to be transferred to Local 19 and Local 19 would be responsible for handling their grievances. The investigation revealed that 18 members were transferred into Local 19 before the election, but none of the 18 voted in the election. The investigation did not reveal any evidence of campaigning or discussion of the election during the visit. There was no disparate candidate treatment. There was no violation.

You alleged that you were denied the right to observe the registration table on the day of the election. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls.

The investigation revealed that witnesses saw you sitting at the registration table until you were asked by the election committee to step away from the table. You were asked to leave because candidates were not permitted to sit at the registration table. The investigation did not reveal any evidence that the election committee interfered with your right to observe the balloting and tally process. There was no violation.

You alleged that international representative Evans parked his car conspicuously outside the polling site on election day, in a “a show of force.” Section 401(g) of the LMRDA provides that no union funds may be contributed or applied to promote the candidacy of any person in an election subject to Title IV.

The investigation revealed that Evans is a member of Local 19 and as such was entitled to be present during the election and cast a vote just like every other member of Local 19. The investigation established that Evans’ car did not display any campaign signs, bumper stickers or any other campaign material. There was no evidence that Evans engaged in any campaigning outside of the polling site on election day. There was no violation.

Your protest to the union included other matters which would not violate the LMRDA even if true and, consequently, were not investigated. For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA affecting the outcome of the election. I have closed the file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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