



August 13, 2014

[REDACTED]

Dear [REDACTED]

This Statement of Reasons provides a detailed response to your September 10, 2012 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the June 8, 2012 election of union officers held by Local 225 of the Laborers International Union of North America (LIUNA).

The Department of Labor conducted an investigation of each of your allegations. As a result of the investigation, the Department concluded that no violation of the LMRDA occurred that could have affected the outcome of the election.

You alleged that on two occasions (May 18 and May 25, 2012) the election judge, [REDACTED] collected ballots returned as undeliverable from the post office without providing you the opportunity to observe the process. You observed the third and final pickup of undeliverable ballots on June 1, 2012.

The Department thoroughly investigated your allegation and determined that on at least one occasion (May 18, 2012) [REDACTED] drove directly from his home to the post office to pick-up the returned undeliverable ballots, and he forgot to stop by the union hall to check for observers first. [REDACTED] did not recall picking up the returned ballots on May 25<sup>th</sup> and thought one of the other election judges might have done it for him.

Section 401(c) of the LMRDA provides that “[a]dequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.” While you were not given the opportunity to observe all of the post office pickups, you admitted that you did not believe that anyone tampered with any of the returned ballots. LIUNA and the Department conducted independent investigations and neither investigation found erasures, identical markings, or any other evidence of ballot tampering or fraud. The Department reviewed the election records and conducted a ballot recount; the closest margin in the election was 144 votes in the race for sergeant-at-arms. Local 225’s election records indicate that only 25 ballots were returned as undeliverable and a number of those

ballots were re-sent to the members. Even if there was a violation of Section 401(c) of the LMRDA, there was no effect on the outcome of the election.

You alleged that unnamed foremen at Robinette Demolition, Inc. threatened to fire union members if they didn't vote in the election and bring their ballots to the foremen. You heard that two members were fired for not giving the foremen their ballots.

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 or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." *See also* 29 C.F.R. §§ 452.82, 452.105. The Department investigated your allegations and found no evidence to substantiate them. You admitted that you did not personally witness these foremen making any threats. You named member [REDACTED] as your only witness. The Department made numerous attempts to contact [REDACTED] during the investigation, but [REDACTED] was no longer employed by Robinette, and he did not return any of the Department's calls. Furthermore, during LIUNA's investigation of your internal protest, you stated that the foremen had not tried to influence which candidates the members voted for, only that they cast a ballot in the election. Based on these findings, the Department concluded that no violation occurred which could have affected the outcome of the election.

You also alleged that ballots cast by union members who were employed by Sealy Mattress were not counted. You admitted that your allegation was based solely on member [REDACTED] telling you that a female union member at Sealy (whom you do not know) said they all voted for you.

The Department investigated your allegation and found no evidence that ballots were not counted or were tampered with in any way. All the ballots were securely held at the post office until the morning of the election. There were observers for the ballot pickup and tally. No observer, candidate, or election official observed any ballots being mishandled. A voting member's employer (i.e. Sealy) could not be discerned by reviewing the ballot envelopes, ballots, or voter eligibility list. There was no violation of the LMRDA.

Section 401(c) of the LMRDA requires that unions treat candidates equally with respect to the use of membership lists; this means that rules regarding the use of such lists are applied uniformly to all candidates and candidates are given equal access to the lists. *See also* 29 C.F.R. § 452.71(b). While your complaint to the Department alleged that you had to pay for mailing labels with the members' addresses and the recording secretary used a membership telephone list – to which you did not have access - to make campaign calls, you did not include any such allegations in your internal union election protest. Because you did not protest these matters internally, the allegations were not

properly before the Department and could not be pursued in any legal action. *See* 29 U.S.C. § 482 (a); 29 C.F.R. § 452.135(a); 29 C.F.R. § 452.136 (b-1).

For the reasons set forth above, with respect to your complaint, the Department of Labor concluded that no violation of the LMRDA occurred that could have affected the outcome of the Local 225 election. Accordingly, the office has closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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