U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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August 25, 2015

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your November 3, 2014 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 (LMRDA), occurred in connection with the election of officers of International Brotherhood of Electrical Workers (IBEW), Local 1505 (Local 1505), completed on June 3, 2014.

The Department of Labor (Department) investigated your allegations and has concluded, with respect to your specific allegations that no violation occurred which may have affected the outcome of the election.

You alleged that the employer, Raytheon Corporation, provided incumbent candidates with a list of members who accepted voluntary buyouts from the company, and the incumbents used this list to send absentee ballots, which may have included campaign literature, to these individuals. Section 401(g) of the LMRDA prohibits the use of any employer or union resources to promote any candidate for union office. Further, section 401(c) of the LMRDA prohibits disparate candidate treatment. 29 C.F.R. §

452.66. During its investigation, the Department compared the union's membership mailing list with the employer's mailing list and found 160 individuals affected by the voluntary buyouts. At a membership meeting, incumbent Vice President Bob Garnhum, who also serves as Local 1505's benefits counselor, told members who accepted voluntary buyouts that they would be eligible to vote in the upcoming election and provided them with absentee ballots. Because of his position as union benefits counselor, Garnhum had access to the names of the 160 individuals who accepted voluntary buyouts. While incumbent officers made sure that members affected by the buyouts knew they were eligible to vote using absentee ballots, there was no evidence that any campaign literature was included with the absentee ballot packages. Further, there is no evidence that the incumbent candidates had any involvement with or control over which members were offered voluntary buyouts. This was the employer's exclusive decision. Accordingly, there was no violation of the Act.

You next alleged that while on union or employer time, incumbent Business Manager David Johnson, local stewards, and the incumbents' supporters were permitted to campaign to newly-hired members in violation of section 401(g) of the Act. You failed to provide any specific instances of incumbent officers campaigning on union/employer time. As part of its investigation, the Department interviewed Business Manager Johnson, and he denied all allegations of campaigning during union or employer time. Further, the investigation revealed that during the election period, the employer notified all candidates of the campaign rules, and also posted these rules on bulletin boards throughout the employer's facilities. The employer's supervisors were also notified of the election rules and were required to maintain a log of any election-related incidents or complaints. As part of the log, the employer tracked all stewards' use of union time because it is charged to the employer. Review of the employer's logs established that there was no excessive use of union time during the election period. Finally, the election rules do not prohibit campaigning to newly-hired employees. There was no violation.

You also alleged that challenging candidates were treated unfairly by union stewards and that the employer failed to properly enforce campaign rules, which denied challenging candidates the opportunity to campaign. In addition to prohibiting all disparate candidate treatment, section 401(c) of the LMRDA requires that the union provide adequate safeguards to insure a fair election. *See* 29 C.F.R. § 452.66. Specifically, the Department investigated an April 16 incident involving candidate for [redacted]. [redacted] was campaigning at Raytheon's Andover facility and was confronted by union steward [redacted]. [redacted] stated that the confrontation interrupted his ability to campaign to members in this particular cafeteria. [redacted] stated that he spoke to 25-30 members at the facility, but there may have been as many as 100 people in the cafeteria whom he did not campaign to during his April 16

visit. It appears that [redacted] conduct violated the LMRDA's general requirement that the union provide adequate safeguards to insure a fair election.

In order for the Department to file a case challenging the election, the Department must establish by a preponderance of the evidence that the violation may have affected the outcome of the election. *See* 29 U.S.C. § 482. The investigation determined that the Business Manager election was decided by 87 votes. [redacted] estimated that there were 100 people in the cafeteria that he did not campaign to during his visit to the Andover facility. This incident occurred on April 16, 2014, but the election did not occur until June 3, 2014, leaving more than a month for [redacted] to campaign to workers at the Andover facility. [redacted] stated that after the incident he was able to return to the Andover facility to continue his campaigning without interference. Considering the time and opportunity that [redacted] had to offset, or mitigate, [redacted] interference, the evidence does not indicate that there is a preponderance of the evidence that the violation may have affected the outcome of the Business Manager's election.

You further alleged that the union and employer restricted voting times and left the voting rules unclear as a means of discouraging members from voting during the election. Specifically, you alleged that new members did not vote for fear of reprimand. Section 401(e) of the LMRDA requires that all members in good standing have the right to vote for or otherwise support the candidate of their choice without being subject to penalty, discipline, or improper interference. The Department's investigation found that the union sent the election notice to the last known home address of every member. The notice informed members that the permitted voting times at each of the employer's facilities would be posted at the facility. The election notice also informed members that they could request an absentee ballot if they were not able to vote at the facility. Finally, both union officials and employer representatives confirmed that employees have never been permitted to vote during work hours. They are permitted to vote during breaks and while off-duty. The union confirmed that this has been the election rules since at least 2002. There is no evidence that members were denied the opportunity to vote or discouraged from voting.

In a separate but closely related claim, you alleged that some second-shift members were restricted in their ability to vote, making it difficult for them to vote at the polls. You did not provide any specific details or names of individuals working the second shift who were restricted from voting. Again, the Department's investigation found that the employer's policy was clear: it is not permissible to vote during shift hours, but voting was permitted during breaks and after/before shifts. The polls were open from 6:00am to 6:00pm, and absentee ballots were available, which provided members with ample opportunity to vote in the election. There was no violation.

You also alleged that the union and employer permitted stewards at the Andover facility to bring "60 or more Asian members" to the polls for voting, but these members largely voted challenged ballots. The essence of your allegation is that the union was bringing large groups of uninformed members to the polls to vote for incumbent candidates during work hours, constituting disparate application of the election rules. You did not provide the names of any stewards who are alleged to have brought members to the polls in large groups, nor were you able to identify any of these members. A review of the employer's surveillance tapes of the polling site areas, did not provide evidence of the alleged activity. Further, the Department reviewed the challenged ballot logs for the Andover facility and found that of 299 challenged ballots, there were approximately 20 members with apparently Asian surnames. There were no groups of ten or more in any order throughout the logs. There was no violation of the Act.

You next alleged that the employer permitted incumbents and their supporters to campaign during the workday and later clock-in to work overtime. As mentioned above, the LMRDA requires that a union provide adequate safeguards to ensure a fair election and, as a related matter, prohibits disparate treatment among candidates. *See* 29 C.F.R. § 452.66. Your complaint did not provide any details regarding which incumbent candidates campaigned during work hours and were later permitted to work overtime, nor did you identify individual supervisors who permitted this activity. The Department investigated the allegation and found that the employer has a strict policy that does not permit a person to leave for a period of time during their shift and later clock-in to receive overtime. According to Raytheon, such activity would only be permitted under extraordinary circumstances – when the member had a medical appointment or some other urgent matter. Accordingly, if challenging candidates were denied requests to use sick leave and to later return to work overtime, this would be consistent with the employer's leave policy. The investigation did not establish any violation of the Act.

You also alleged that the union permitted one of the incumbent slate's observers to campaign at the Andover polling place during the election in violation of the adequate safeguards requirement. During the Department's investigation, your witness (who was also an observer at the Andover polling place) stated that the incumbent's observer was not campaigning, but rather, was merely talking to members at the polls. The election judge was notified that this observer was talking to members, and the election judge instructed him to stop. The observer complied with this instruction. The investigation did not reveal that this observer was campaigning.

You further alleged that the union failed to provide adequate safeguards when the election judge improperly marked ballots during a hand count of ballots that the ballot-counting machine rejected. The Department found that there was a group of ballots

rejected by the ballot-counting machine because the marks were not dark enough. The election judge set aside these ballots and counted them by hand. Representatives from both slates reviewed the ballots and agreed that the voter's intent was visible. As such, the election judge darkened the voter's selection so that it could be put through and counted using the ballot-counting machine. During the tally, neither slate raised any concerns that the ballots were improperly counted or tampered with. There was no violation.

You next alleged that during the election, an election teller distributed ballots before verifying eligibility, constituting a violation of the union's duty to provide adequate safeguards. The Department's investigation found that all ballots were accounted for. Further, you conceded that the number of ballots at the tally matched the number of voters that checked-in at the polls. There was no violation.

You also alleged that the union failed to provide adequate safeguards when it permitted incumbent Business Manager David Johnson to stand within 20 feet of the voter check-in and ballot box during the election at the Andover polling place. During the Department's investigation, you stated that Johnson was not campaigning, and that your complaint was merely "procedural." The election rules only permit voting members and official observers to stand within 20 feet of the voter check-in and ballot box. However, the investigation (including your own statement) establishes that Johnson was not campaigning. While Johnson's standing within 20 feet of the voter check-in and ballot box may constitute a technical violation of the election rules, there is no violation of the Act.

You further alleged that an ineligible member was allowed to vote. Section 401(e) of the Act requires that only members in good standing are permitted to vote in the election. In this instance, the union required that the temporarily laid-off member vote a challenged ballot. The union later confirmed the member's eligibility and counted his ballot. There was no violation of the Act.

You also alleged that the union failed to provide adequate safeguards when one member voted a ballot at the poll and also cast an absentee ballot. The Department's investigation revealed that this incident involved a father and son with the same name ([redacted]). The evidence established that [redacted] voted a challenged ballot and his father, [redacted] voted an absentee ballot. After inspection, the union properly counted both ballots. There was no violation of the Act.

You next alleged that the union failed to conduct its election by secret ballot. Section 401(b) of the LMRDA requires that a local union conduct its officer elections by secret ballot. You alleged that voters were showing their voted ballots at the polls. The Department's investigation revealed that many voters received slate cards – a form of

campaign literature – which some voters took with them to the polls. While member may have walked around the polls with these slate cards, there is no evidence that members showed their actual ballots. There was no voter secrecy violation.

You further alleged that the union failed to provide adequate safeguards because members were told that they could only vote by slate and not by individual candidate. During the investigation, you were not able to identify any member who was told that only slate voting was permitted, nor were you able to identify any election official who gave such instructions. The Department reviewed the voting instructions and ballot and confirmed that members had to individually vote for each candidate – there was no slate voting. Accordingly, there was no violation of the Act.

You also alleged that union stewards used official union time to campaign for the incumbent slate in the days prior to the election and on election day in violation of section 401(g) of the LMRDA. During the investigation, you were not able to identify any specific union stewards that engaged in this conduct, any union members campaigned to, nor were you able to identify any specific times or places that this campaigning occurred – you made general assertions. During the election period, the employer strictly monitored stewards' official time to make sure no one was abusing official time for campaign purposes. The employer reviewed stewards' official time leading up to the election and did not find any spike in the hours of union time. Some union stewards did take paid leave, which is permitted for campaign purposes. The Department's investigation did not reveal any evidence substantiating your general claims of unlawful campaigning by union stewards. There was no violation of the Act.

You next alleged that the employer transferred candidate for [redacted] and three of his supporters so that they would not have a physical presence in their prior respective worksites. The Department's investigation revealed that this was exclusively an employer decision that had nothing to do with the election. The evidence showed that the employer often moves employees from facility to facility and there was nothing suspect about these particular transfers. There was no violation of the Act.

You further alleged that the union denied member [redacted] a reasonable opportunity to be nominated and run for union office in violation of section 401(e) of the Act. Specifically, you alleged that [redacted] submitted a self-nomination letter to officials at the union office the day before the nominations meeting, but was denied the opportunity to run as a candidate because his letter was never presented during the meeting. The Department's investigation found that [redacted] intended to run for a position of the Executive Board on the [redacted]. Leading up to the election, [redacted] attended at least one slate meeting where nominations and election procedures were discussed. A few days prior to the nominations meeting, [redacted] approached his

union steward for information about running for union office in light of the fact that [redacted] did not plan to attend the nominations meeting. Steward [redacted] explained the nominations and election process, advising [redacted] to provide the union with a letter detailing his intent to run for union office. On the day before the election, [redacted] submitted a hand-written letter to the union office. The letter stated "I will not be able to attend the May 4th, 2014 nominations meeting, I [redacted] accept the e-board nomination."

During the investigation, Business Manager Johnson stated that when [redacted] came to the union hall, he told Johnson that he was going to be nominated for an Executive Board position but could not attend the nomination meeting. As such, Johnson directed [redacted] to write an acceptance letter, which he did. Johnson's description of his meeting with [redacted] is supported by the plain language of [redacted] letter and by statements from candidate [redacted]. [redacted] stated that [redacted] was supposed to run for Executive Board as part of the [redacted] slate, but at the nominations meeting, the slate forgot to nominate [redacted]. Because no one nominated [redacted], the union never acted on his written acceptance. Although [redacted] denies that he told Johnson that he was going to be nominated at the meeting, the weight of the evidence supports a conclusion that [redacted] was supposed to be nominated by his fellow slate-members, but they failed to nominate him. Without the required nomination, the union could not act on his written acceptance. The union did not deny [redacted] a reasonable opportunity to be nominated and run for union office.

You also alleged that the union failed to provide adequate safeguards because there were improper restrictions placed on observers of the ballot tally, and election officials told the incumbent candidate slate that they won before official results were announced. The Department's investigation found that the union used ballot counting machines to tally the ballots. All candidates and observers had equal access to viewing these machines. Incumbents had no greater access to observe the tally. Following the tally, the election judge told the incumbent slate that they won and then immediately announced the results. There was no violation of the adequate safeguards provision.

Finally, you alleged that the union failed to provide voter secrecy because voting booths at Post 1 were too close to members waiting to vote and did not contain sufficient curtains. The Department's investigation found that the voting booths were more than 25 feet from where members were standing, waiting to vote. It was not possible for members to view other members' voted ballots. There is no evidence that members were able to see other members' ballots. The union provided voter secrecy during its officer election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Acting Chief, Division of Enforcement

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