U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

May 12, 2015

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your October 20, 2014 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 election of officers of the International Brotherhood of Electrical Workers (IBEW), Local 1269 completed on June 18, 2014.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations that no violation occurred, which may have affected the outcome of the election.

You alleged that Local 1269 failed to follow its constitution and bylaws when it amended its bylaws replacing the Executive Board Clerical Group III position with a newly-created Executive Board Digital Group III position. You specifically alleged that the ballot listed [redacted] as the unopposed nominee for Executive Board – Digital Group III, when that position previously had been designated as Group III – Clerical, and Local 1269 made this change without following the above-cited constitution provision.

Section 401(e) of the LMRDA requires that union officer elections be conducted in accordance with the union's constitution and bylaws. Article XIV, Section 2(a) of the Local's bylaws provides that "these bylaws may be amended or changed by any such proposal being submitted in writing and read at two regular meetings of the Local Union, and decided at the second meeting by a majority vote of the members present and voting."

The investigation revealed that on January 24, 2014, Local 1269 presented this proposed bylaw amendment to the International President, and he approved the change on March 18, 2014. While it is clear that the union failed to follow the process laid-out in

Article XIV, Section 2(a) of its bylaws, the investigation revealed that there was no effect on the election. That is, all candidates were aware that the Executive Board Group III Clerical position was now a Group III Digital position, and all eligible members were afforded the opportunity to be nominated and to run for this open position.

You alleged that Local 1269 violated the LMRDA when Election Teller [redacted] used employer funds to copy the incumbent candidates' campaign flyer. Section 401(g) of the LMRDA prohibits the use of employer resources to promote any candidate for union office. The investigation revealed that Election Teller [redacted] used the employer's computer and copier to make 60 copies of the incumbent candidates' campaign flyer, which invited members to meet with the incumbent candidates at Vito's Express Pizza. Dunton distributed the flyer at the Pleasanton workplace.

The investigation found that approximately 15-20 members attended the candidates' meeting. During the election, you raised this issue in a protest to Election Judge [redacted], and [redacted] found that [redacted] use of the employer's computer and copier violated the LMRDA. [redacted] required that the incumbent officers reimburse the employer for the copies. Incumbent candidate for Vice President, [redacted] reimbursed the employer by writing a personal check for $6.00 (this $6.00 amount was determined by [redacted] – 10 cents per copy). A controlling principle of the LMRDA is that unions should retain independent authority to remedy violations before the Department's intervention into internal union matters. As such, the union's Election Judge remedied the violation pre-election, and therefore, there is no violation of the LMRDA that may have affected the outcome of the election. See 29 U.S.C. § 482(b)("The Secretary shall investigate such complaint and, if he finds probable cause to believe a violation of this title occurred *and has not been remedied*, he shall … bring a civil action against the labor organization…").

You alleged that candidate [redacted] violated the LMRDA by distributing a campaign email that included an endorsement from a former CWA International vice president. The investigation revealed that on June 6, 2014, [redacted] sent a campaign email through the Constant Contact email list that Local 1269 established for candidates' campaign communications. The subject of the [redacted] email was "Please see endorsement from CWA International," and it included former CWA Vice President [redacted] endorsement, along with the CWA logo. All candidate communications sent through the Constant Contact account contained the heading "Election Candidates Communication" and also included a disclaimer that the content in the email represented the views of the candidate and not the views of Local 1269.

You protested [redacted] campaign posting to Election Judge [redacted], who found an infraction and required that [redacted] resend the email without the CWA logo. On June 11, [redacted] resent the campaign email through the union's Constant Contact

account. The subject of the June 11 email was "PLEASE SEE ENDORSEMENT FROM *FORMER* CWA INTERNATIONAL," and this communication did not include the CWA union logo.

Under the LMRDA, officers are free to support the candidates of their choice, but may not use union resources in doing so. *See* 29 C.F.R. § 452.76. Section 401(g) prohibits the use of union resources to promote a candidate for union office. The use of the union logo may constitute use of a union resource where the union claims a proprietary interest in the logo and prohibits unofficial use. Here, pursuant to the IBEW Local Election Guide, "the use of…the IBEW logo by a candidate is forbidden." However, the Department of Labor investigation did not reveal a similar prohibition on the use of the CWA logo. [redacted] did not use the IBEW logo; rather, her June 6 campaign email contained the CWA logo. Accordingly, there was no violation of the LMRDA. However, even if this were to be viewed as a violation, the Election Judge remedied this infraction during the course of the election. As such, action based upon this allegation is not warranted.

You also alleged that [redacted] violated the LMRDA by traveling out-of-state to campaign at other worksites while on union time and by using union resources. Specifically, you challenged [redacted] trips to Albuquerque, NM (May 21, 2014), Denver, CO (May 22, 2014), and Charlotte, NC (May 27, 2014).

The investigation revealed that [redacted] traveled to these three worksites to conduct legitimate union business. [redacted] confirmed that while on these trips, she attended union meetings, but stated that she did not campaign to members. The investigation did not reveal that [redacted] used union resources to campaign. The investigation revealed that [redacted] attempted to hold a union meeting after work hours in Denver (on May 22, 2014), but only one steward showed up, so the meeting was cancelled. After the meeting had been cancelled, two members showed up and accompanied [redacted] and the union steward for a drink. While [redacted] did discuss some work issues with these two members, there is no evidence that [redacted] campaigned as a candidate in the upcoming election. Accordingly, there was no violation of the LMRDA.

You alleged that [redacted], candidate for Business Manager, campaigned on union time to members in the Pleasanton YP facility lunchroom, but you were denied access to campaign within this facility. Section 401(c) of the LMRDA prohibits disparate candidate treatment. 29 C.F.R. § 452.66.

The investigation revealed that the employer did not grant a request from [redacted] for access while denying a similar request from you. The investigation revealed that, without employer knowledge or permission, [redacted] campaigned for approximately one hour to 30 – 40 members at the Pleasanton facility. There was no disparate

treatment on the part of the employer. Because [redacted] violated employer policy and lacked employer permission when he gained access to a group of employees at the facility lunchroom, there is no disparate treatment of candidates. Additionally, the investigation revealed that although your request for access was not granted, you were able to campaign to members at this facility. You were permitted to campaign in an adjacent parking lot. You talked to members in the adjacent parking lot and sent at least 31 separate campaign email communications to members – including those members at Pleasanton. Based on these factors, the investigation did not establish a violation that may have affected the outcome of the election.

You alleged that [redacted], candidate for President, campaigned on union time to members working on employer time at the Watsonville YP facility. The investigation revealed that [redacted] took vacation days (approved leave) on May 22 and 23, 2014, which were the two days that you alleged he campaigned while on union time. Further, the Department found that while campaigning at the Watsonville facility, [redacted] only spoke to two members after work hours in the break room. These members were not on employer time. Accordingly, there was no violation.

You alleged that [redacted], candidate for Business Manager, had videos produced using misappropriated union equipment, and that he took videos posted on Local 1269's official website and reposted them on his own campaign website. You raised this issue as a pre-election protest to Election Judge [redacted].

Neither the Department's nor the union's investigation of this allegation produced any evidence that the videos at issue were produced using misappropriated union equipment. The union did, however, determine that the videos at issue on [redacted] campaign website were originally posted on the Local 1269 website. These videos were available to anyone with access to the website and could have been used by others in a similar manner. There was no violation of the LMRDA. In any event, Election Judge [redacted] ordered that [redacted] immediately remove the videos from his campaign website. [redacted] complied with [redacted] decision and removed the videos.

You alleged that [redacted] (unopposed candidate for Executive Board Digital Group III), used an official union list, a union resource, to campaign for [redacted]. Section 401(g) prohibits the use of union resources to promote candidacy. The investigation substantiated that [redacted] used this union resource to campaign in violation of section 401(g). However, the investigation also revealed that you protested [redacted] use of a union list to Election Judge [redacted] during the course of the election. [redacted] ordered that [redacted] make his list (which only included email addresses of 16 stewards) available to all candidates. [redacted] immediately complied, providing all candidates with his list. Accordingly, this violation was remedied, and would not provide a basis for litigation by the Department.

You also alleged that [redacted], candidate for Business Manager, used an official union list, to which you did not have access, for campaign communications. During the Department's investigation, [redacted] revealed that he used an official union list containing 259 email addresses to send campaign communications. He sent these emails beginning in February 2014 (before Constant Contact was available to other candidates for campaign emails). [redacted] use of a union membership list to send campaign communications constitutes a violation of the LMRDA.

However, the Department of Labor investigation did not provide probable cause to believe that the violation affected the outcome of the election. First, [redacted] list contained only 259 email addresses, compared to the more than 700 member email addresses provided to and used by all candidates through Constant Contact. The Constant Contact membership mailing list was far more comprehensive. Second, you, as [redacted] opponent, took full advantage of your opportunity to send campaign communications throughout the election period, using the comprehensive Constant Contact database. In fact, you sent at least 31 separate campaign communications through Constant Contact leading up to the election. To put this in perspective, the union sent out 27 other campaign communications for all other candidates combined. Finally, the emails that [redacted] sent using the official union list were sent in February – at least four months prior to the election. You sent campaign communications from February to June, using a far more comprehensive membership list. There was no violation of the LMRDA that would provide a basis for litigation by the Department.

You alleged that former Business Manager, [redacted], used the local union's newsletter for campaign purposes. Clearly, the newsletter is produced and sent using union funds, but in considering whether a union-funded communication constitutes promotion of a candidate in violation of section 401(g), the Department evaluates the timing, tone, and content of the particular communication. *Chao v. North Jersey Area Local Postal Workers Union*, 211 F.Supp.2d 543, 551 (D.N.J. 2002), quoting, *Donovan v. Metropolitan District Council of Carpenters*, 797 F.2d 140, 145 (3d Cir. 1986).

In this case, both newsletters (May 22 and June 4, 2014) addressed issues that you raised in campaign communications. While the union cannot use its newsletter to campaign for candidates, it can use its newsletter to communicate to members and to defend itself against allegations of misconduct. In reviewing the content of the newsletters, the union's May 22 and June 4 newsletters do not contain any explicit or subtle references to the upcoming election, let alone any individual candidates. The content of the articles within each newsletter purely addresses allegations made against the union. Regarding tone, the article is neutral, in that it does not promote nor disparage any candidate in the election – it serves the purpose of providing the union's position on certain allegations of misconduct. Although these newsletters were sent during the

election period, timing alone does not create campaign communications. Based on its review, the Department determined that, because only one of the factors used to assess the legality of this type of communication – timing – supports a finding that the newsletters constituted prohibited campaign materials, there was no violation of section 401(g).

You also alleged that winning candidate for Business Manager, [redacted], used union funds to consult with an attorney on campaign-related issues. The investigation did not reveal any evidence that attorneys working for the law firm representing Local 1269 provided any campaign-related advice to [redacted]. The mere fact that the local union has a law firm to represent it in other matters is not sufficient evidence to establish that union funds were paid to the law firm to promote [redacted] candidacy. There was no evidence of such a violation.

You alleged that Local 1269's office staff sabotaged your campaign emails by delaying distribution and changing dates for campaign events, in violation of section 401(c) of the LMRDA. The investigation revealed that the Local's office assistant processed candidates' requests to send campaign communications. While the office assistant acknowledged making clerical errors with your campaign emails, she emphasized that all of your campaign communications were sent in advance of the particular campaign event. Further, the Department found that the union's office assistant made similar clerical errors when processing other candidates' campaign emails – including [redacted] campaign communications. The investigation established that there was no disparate candidate treatment with regard to the union's processing of candidates' campaign communications.

You alleged that incumbent candidates used official photographs and biographies, which were posted on the union's website, on their own campaign websites. During the investigation, incumbent officers explained that for a brief period of time, while their campaign website was under construction, they may have posted the same photographs that appear on the Local 1269 website. They explained that once the website was final, these photographs were replaced with ones that were not on the Local 1269 website. The IBEW's position is that, unlike the union logo, officer's photographs are not union property, and may be used as the officer/candidate wishes. There was no violation of the LMRDA.

You also alleged that incumbent candidates [redacted] used union resources to produce campaign videos. Specifically, you protested the fact that incumbent officers made their campaign videos using the union's office, and that the videographer (Blind Eye Video) produced the incumbent's campaign videos for a slightly discounted rate ($50 less than the normal fee). The Department found that these campaign videos were shot in a conference room in the same building as the

union office, but not within the union's offices. Further, the building manager explained that any tenant has access to these conference rooms at no charge, that is, any union member – provided the conference room is reserved by a tenant, *i.e.* the union. There is no evidence that you, or any other candidate, were denied the opportunity to use these conference rooms to shoot campaign videos.

Regarding the videographer, the LMRDA prohibits the use of "employer" resources to promote a candidate in a union officer election. In order to meet the statutory definition of "employer," that business must employ employees. *See* 29 U.S.C. § 402(e). Blind Eye Video is owned and operated by one individual, [redacted]. [redacted] employs no employees; and thus, is not an "employer" for purposes of section 401(g) of the LMRDA. Based on these findings, the Department found no violation.

In a related allegation, you stated that former Business Manager, [redacted] used his title and position in Local 1269 to endorse [redacted] and other candidates in a video, produced on union time with union funds. Like the videos discussed above, [redacted] video was produced by Blind Eye Video. Blind Eye Video is not an employer, as defined by the LMRDA, and any discounted rate that [redacted] received did not violate the LMRDA. The investigation revealed that [redacted] filmed this brief campaign video while on lunch – not on official union time. In addition, [redacted] video provides a personal endorsement of [redacted] candidacy, not an official union endorsement. The LMRDA permits a union officer to express a personal endorsement during union elections. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 452.76. The fact that [redacted] was the out-going Business Manager does not transform his personal endorsement into a prohibited use of union resources. Accordingly, there was no violation.

Finally, you alleged that former Business Manager [redacted] sent a threatening letter to your campaign manager, [redacted]. Section 401(c) of the LMRDA includes a broad requirement that the union provide adequate safeguards for a fair election. 29 C.F.R. § 452.66. The Department's investigation revealed a letter sent from [redacted] to [redacted] on or around May 21, 2014. This letter instructed Aquilina – a retired member – to "cease and desist from representing [herself] as an IBEW 1269 member…and…a representative of the IBEW Local 1269," and further instructed her not to solicit phone numbers, email addresses, and other information from union members.

The Department found that this letter was in response to complaints about Aquilina's conduct from two union stewards. The Department does not find that the union's letter violated the LMRDA. Moreover, the Department found that the union's letter had no effect on your campaign activities during the course 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 may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Edwin Hill, International President
International Brotherhood of Electrical Workers
900 7th Street, N.W.
Washington, DC 20001

Stefan Guthrie, President
IBEW Local 1269
870 Market Street, Suite 479
San Francisco, California 94102

Christopher Wilkinson, Associate Solicitor
for Civil Rights and Labor-Management