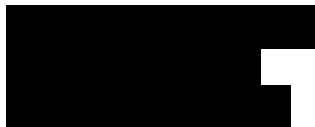




May 16, 2016



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint dated October 9, 2015, and filed with the U.S. Department of Labor ("the Department") alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("the LMRDA") occurred in connection with the election of officers conducted by the Laborers International Union of North America (LIUNA), Local Union 79 ("the Local") in June 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation occurred that may have affected the outcome of the election. Following is an explanation of this conclusion.

First, you alleged that it was improper under LMRDA section 401(c) for the Local not to count ballots that were not returned in a secret envelope. This is not a violation of the LMRDA, as the ballot instructions stated: "Place your ballot in the small white envelope labeled **SECRET BALLOT** on the front, and seal the envelope." (Emphasis in original.) These instructions were sufficiently clear. Moreover, our analysis of these excluded ballots showed that the failure to count these ballots had no effect on the outcome of the election.

Next, you alleged that the repeated breakdown of the ballot counting machines violated section 401(c) of the LMRDA. There is no evidence to substantiate your speculation that this led to any ballots not being counted or incorrectly counted. OLMS has recounted all of the ballots, and concluded that any mechanical difficulties with the machines did not hamper the integrity of the election, nor did they have any impact on the outcome of the election.

Your third allegation relates to how ballots were counted if voters had marked both a "slate" box, and the box for a candidate on another slate; specifically, you protested the fact that where a voter had marked a slate box, no other votes marked on the ballot were counted. The investigation disclosed that both pages of the ballot instructions clearly stated, in bolded letters, that if a voter marked a slate box, no other marks would be counted. In light of these explicit warnings, there was no violation of the LMRDA.

To the extent that you allege there was confusion as to what slate certain candidates belonged to, the slate identification was printed next to the candidate's name on the ballot. Lastly, the Department's review of the ballots indicated that 262 voters marked a slate box in addition to marking votes for individual candidates on the opposing slate. 176 voters marked the "Clean Slate" box and also marked the names of individual candidates on the "Integrity Slate;" 86 voters marked the box for the "Integrity Slate," and also marked the names of individual candidates on the "Clean Slate." Even if 262 voters were confused by the instructions, any such voter confusion did not affect the outcome of the election. The smallest margin of victory was 439 votes for the position of Business Manager, and, in that race, only 75 voters marked a vote for an individual candidate after marking the slate box for the opposing slate. As such, there was no violation of the LMRDA.¹

Your fourth, fifth, and sixth allegations concern the allegedly discriminatory use of membership contact lists. You allege that the "Clean Slate" had access to (1) a list of shop stewards; (2) a list of retiree contact information; and (3) a list of apprentice contact information, while the Election Judges denied the "Integrity Slate's" request for these lists. You claim this allowed unequal access to work sites for campaigning. The investigation did not substantiate that any such lists were used for campaign purposes; the fact that Clean Slate supporters contacted individual retirees and apprentices does not indicate that any list was used or even existed. Nor did the investigation reveal that any shop stewards provided any candidates or their supporters' access to work sites for campaign purposes. As such, there was no requirement that the Election Judges provide such lists to the Integrity Slate, and there was no violation of the LMRDA.

Seventh, you alleged that the placement on the ballot of the box for the Clean Slate before the box for the Integrity Slate violated section 401(c) of the LMRDA. The investigation revealed that the Election Judges made the decision to place the Clean Slate box before the Integrity Slate box based on Article VI, section 2(g) of the Local's constitution, which requires names of candidates be listed in the order in which they were nominated, and the fact that each Clean Slate candidate was nominated prior to the Integrity Slate candidate for the same position. As this is a reasonable, nondiscriminatory reason for the placement of the slate boxes, and it was not inconsistent with any local or international rule, there was no violation of the LMRDA.

Eighth, you alleged that Clean Slate candidates "act[ed] as the providers" of a lunch sponsored by the Laborers-Employers Cooperation and Education Trust ("LECET"), and thereby violated the LMRDA's prohibition on the use of union resources for

¹ Your letter also mentions dissatisfaction about the length of time it took for the Election Judges to provide you with copies of the ballots. This was not a violation of the LMRDA that may have had an effect on the outcome of the election.

campaign purposes. The investigation revealed that LECET lunches occurred regularly, and did not reveal that any campaigning occurred at the lunch. Merely wearing campaign buttons, without more, does not constitute prohibited campaign activity. Accordingly, we cannot conclude that any union resources were used to support one or more candidates in violation of the LMRDA.

The ninth allegation was that the 22-day deadline for the return of mail ballots was too short. The investigation revealed that the initial 15-day deadline was extended by one week in order to address concerns about the return time. In light of the circumstances of this election, including the May 6, 2015 notice of elections, the 22-day return period was reasonable, and thus did not constitute a violation of the LMRDA.

Finally, you alleged that the termination of a business agent for accepting a nomination to run for office was a violation of the LMRDA. In *Finnegan v. Leu*, 456 U.S. 431 (1982), the U.S. Supreme Court held that the LMRDA does not protect a member's rights as an *employee*. While the LMRDA prohibits retaliatory actions affecting a union member's rights or his status as a union member, the Act does not protect his rights as an *employee* of the union. Accordingly, the allegedly retaliatory termination of an individual from his union employment was not a violation of Title IV of the LMRDA. Although you also assert that the Local violated the individual's rights under the National Labor Relations Act, OLMS does not enforce that statute. To the extent you maintain that the Local violated the individual's rights under Title I of the LMRDA, OLMS does not enforce Title I, with the exception of Section 104, which deals with a member's right to copies of collective bargaining agreements.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Sharon Hanley, Chief
Division of Enforcement
Office of Labor-Management Standards

cc: Terry O'Sullivan, General President
Laborers International Union of North America
905 16th Street, NW
Washington, D.C. 20006-1765

Kenneth Brancaccio, President
Laborers Local 79
520 8th Avenue, Suite 679
New York, NY 10018

Robert M. Cheverie, Esq.
333 East River Drive, Suite 101
East Hartford, CT 06108

Walter Kane, Esq.
1350 Broadway, Suite 1400
New York, NY 10018

Beverly I. Dankowitz
Acting Associate Solicitor for Civil Rights and Labor-Management