



April 14, 2016



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor dated September 14, 2015, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act) occurred in connection with the election of officers conducted by UNITE HERE, Local 100 (Local 100), on May 20, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the Act that may have affected the outcome of the election.

You alleged that the Solidarity Team slate's campaign sample ballot improperly featured the UNITE HERE logo, and that the use of the logo violated the UNITE HERE Constitution. Section 401(g) prohibits the use of union funds to promote any candidate for union office. "Funds" has been broadly interpreted as almost anything of value including the use of a labor organization's logo, in certain circumstances. Specifically, a union logo may not be used where the union has taken steps to restrict the use of the logo (such as copyrighting the logo or requiring permission before using the logo for any purpose), where the logo is used in a manner that implies that the union has endorsed the candidate or where candidates are treated disparately with respect to use of the logo. The Department's investigation showed that before the election, the election committee provided all candidates a sample ballot that had the UNITE HERE logo. You and the Solidarity Team both used the sample ballot as campaign literature; however, you redacted the logo. Although the Solidarity Team did not redact the logo on the sample ballot, the Department has concluded that the flyer was clearly campaign material and there was no implication that the union had endorsed the Solidarity Team for office. Moreover, the union does not prohibit the use of the logo in this manner. There was no violation of the Act.

You next alleged that union organizers and members of the Solidarity Team campaigned on union time. Review of Local 100's payroll records showed that each individual you identified took vacation time to campaign. In particular, the union's payroll records confirmed that: incumbent President William Granfield used vacation time on May 20; Director of Organizing Dennis Diaz used vacation time for May 15, 18, 19, and 20; and other organizers used vacation time from May 11 through May 24. There was no evidence that any supporters of the Solidarity Team campaigned on union time. Accordingly, there was no violation of the LMRDA.

You alleged that the Solidarity Team campaigned in prohibited areas at the polling sites on the day of the election. Department of Labor regulations provide that there must not be any campaigning **within** a polling place. The regulations allow unions to prohibit campaigning within a specified distance of the polls, but the regulations, themselves, contain no such prohibition. 29 C.F.R. § 452.111. (Emphasis added.) During the investigation, the Department determined that there were four polling sites: Manhattan, Queens, Yonkers, and Newark. At the four polling sites, both sides campaigned outside of the polling areas; however, there was no evidence that campaigning occurred within the polling areas at any site. Any member inside the polling areas who was not in the process of voting was instructed to leave immediately. There was no violation of the Act.

You alleged that the Local 100 election committee failed to keep control of the ballot boxes by allowing them to be transported to Manhattan from the Newark, Yonkers and Queens polling sites without the election committee or observers. The Department's investigation discovered that Global Election Services (GES) staff secured the ballot boxes at the conclusion of polling in Newark, Yonkers, and Queens by taping, sealing, and placing a signed letter on each of the ballot boxes. The GES staff transported the sealed boxes to the Manhattan polling site to be tallied. Upon arrival, the seals remained intact. The Department found no evidence of ballot box tampering. Furthermore, when the Department recounted the ballots, the outcome of the election remained the same. There was no violation of the Act.

You alleged that Local 100 provided you an inaccurate list of jobsites, which hampered your ability to effectively campaign. Section 401(c) of the LMRDA provides that a labor organization may not discriminate in favor of or against a candidate in the use of membership lists. However, a right of access to a list of employer worksites is only required if another candidate uses such a list for campaigning. The investigation showed that Local 100 is composed of members from over 200 jobsites. Local 100 typically does not, nor is it required to, maintain a list of jobsites for candidates to use for campaign purposes. Nevertheless, upon your request, the union's office manager, [REDACTED], pulled administrative contact information out of Local 100's system to compile a list of the jobsites and provided you with that list within 10 days of receiving your request. Furthermore, the investigation revealed that Delgado was responsive to any inaccuracies you noted and continuously provided you with updated information. There was no violation of the LMRDA.

You alleged that Local 100 failed to update its membership address list, and did not deliver election notices to members whose addresses were not current. Section 401(e) requires that unions mail an election notice to members' last known home addresses. Section 452.99 of the Department's regulations allows unions to use a single notice for both nominations and the election. 29 C.F.R. § 452.99. The Department's investigation found that Local 100 sent a combined nominations and election notice on April 8, 2015, in accordance with the LMRDA and its corresponding regulations. The investigation also showed that prior to the election, Local 100 took reasonable steps to maintain and update the membership list. At least quarterly, Local 100's office manager updated the membership list when mailing postcards to advise the membership of upcoming meetings. Additionally, the office manager relied on the shop lists submitted by employers and information from UNITE HERE's healthcare system and other sources to obtain updated member addresses. The Department found that out of the 14,000 nominations and election notices mailed, 600 (or approximately 4 percent) were returned as undeliverable. Local 100 provided the Department with a log of all the resent notices. There was no violation of the LMRDA.

You alleged that some members, primarily at the Newark polling site, were turned away and not offered challenged ballots. Section 401(e) provides that every member in good standing is entitled to one vote. The Department's investigation disclosed that members not on the list at the polling sites were offered challenged ballots. The Department did not find, and you did not provide, any evidence of members who were turned away from the polls by GES or Local 100. Rather, the Department learned that some members walked out immediately after being told they owed dues, did not pay the amount owed, nor request to vote a challenged ballot. A review of the election records showed that 78 persons voted challenged ballots, but since the smallest vote margin was 118, there was no need resolve the eligibility of those persons whose votes were challenged. There was no violation of the Act.

You also alleged that there was confusion at the Newark polling site and that some members were asked to give the last four digits of their social security numbers. The Department's investigation revealed that only members with common names were asked for the last four digits of their social security numbers to verify their identity. The list did not contain addresses or any other unique identifying information for members to verify their identity. There was no violation of the Act.

You alleged that Local 100 failed to follow the UNITE HERE Constitution by: not including a check box next to unopposed candidates' names; listing candidates as the Solidarity Team even though they may not have submitted a written request to be listed as a slate; and failing to provide you with procedures for conducting a campaign mailing in advance of the campaign. Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the constitution and bylaws of the union insofar as they are not inconsistent with the provisions of the LMRDA.

Article 8, Section 4(e) of the UNITE HERE Constitution provides that each candidate on a slate must have a space or box printed opposite his or her name to allow for an individual vote. After reviewing the ballots used in the election, the Department concluded that the ballot format was acceptable. The ballot allowed voters to vote for individual candidates or the one slate. It was not necessary for Local 100 to include a box next to a nominee who had been automatically elected because he or she was running unopposed. There was no violation of the Act.

With respect to the candidate requests to be listed as a slate, Article 8, Section 4(a) of the UNITE HERE Constitution requires requests to be listed as a slate on the ballot to be written and submitted at least ten days before the election. Local 100 provided the Solidarity Team's written request to be listed as a slate to the Department. The request was made on May 6, 2015 in advance of the May 10, 2015 deadline. There was no violation of the Act.

The UNITE HERE Constitution is silent concerning advance notice to candidates of procedures for campaign mailings. Unions do not have a duty, under the LMRDA, to provide such notice. However, section 401(c) of the LMRDA provides that unions are to comply with all reasonable requests of any candidate to have campaign literature distributed by the labor organization, at the candidate's expense. The investigation revealed that on May 8, 2015, the office manager responded to your May 7, 2015 email request. She provided the contact information of the mailing house, and, as an estimate, the price Local 100 paid for the recent mailing of the

nomination and election notice. There is no indication that you ever followed up after receiving this information. There was no violation of the Act.

You also made several allegations that, even if true, would not constitute violations of Title IV of the LMRDA and were therefore not investigated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA 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

cc: D. Taylor, President
UNITE HERE
275 Seventh Avenue
New York, New York 10001-6708

William Granfield, President
UNITE HERE Local 100
275 Seventh Avenue, 10th Floor
New York, NY 10001

Beverly Dankowitz, Acting Associate Solicitor
Civil Rights and Labor-Management