



January 30, 2017



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on September 17, 2015, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by Local 1, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, on June 6, 2015.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation that could have affected the outcome of the election. Each allegation is addressed in turn.

You first alleged that on the day of the election observers were denied the right to observe the tallying of votes. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. Department of Labor regulations provide that this right encompasses every phase of the election process, including the counting and tallying of the ballots and the totaling, recording, and reporting of the tally sheets. 29 C.F.R. § 451.107.

The investigation disclosed that Electec Election Services, Inc., the election services company hired by Local 1 to conduct the polling site election, conducted the tally of votes on a five-foot elevated stage approximately thirty feet from the designated observer area. This arrangement prevented observers from effectively observing the tally. Your observer, [REDACTED], left the designated area immediately after the polls closed and mounted the stage in an attempt to observe the tallying of votes, but election committee member [REDACTED] ordered that he leave the stage. The LMRDA's adequate safeguards provision was violated when observers were denied the right to observe the tally of the machine votes.

However, the investigation disclosed no evidence of errors in the tallying process. The Department reviewed the election records and found that the physical paper tape printout from each voting machine matched the results of the voting cartridge tally. Accordingly, the Department finds that the violation did not affect the outcome of the election.

Relatedly, you alleged that the union failed to provide adequate safeguards when Electec used solid cloth bags to transfer voting cartridges from the voting machines to the tallying area instead of the transparent bags advertised on its website. You contended that election workers could have switched the voting cartridges with cartridges from the last officer election. You did not point to, nor did the investigation reveal, any evidence that the voting cartridges were tampered with or mishandled. [REDACTED], president of Electec, stated that the voting machines' software makes it impossible to switch voting cartridges or to use cartridges from a prior election. As previously stated, the Department's review of the election records revealed no discrepancies with regard to the vote tallies. The LMRDA was not violated.

You next alleged that the union denied observers the right to inspect the voting machines on the day of the election and that Electec did not follow the proper testing procedures prior to the start of voting. The LMRDA does not require a union to test every voting machine on the morning of the election. Where testing is performed prior to the election, the union must comply with a candidate's request to have an observer present. However, the LMRDA imposes no affirmative duty on the union to notify candidates of the testing of election machines. Candidates must request to have observers present.

The investigation disclosed that Electec technicians performed logic and accuracy tests on the voting machines on June 1, 2015, at the company's facility in Mount Holly, NJ. These tests are designed to ensure that votes are registered as selected by the voter. Electec officials advised that this process is too lengthy to be performed on the morning of the election. There was no evidence that any candidate requested to have observers present at this testing prior to the tests being performed.

The investigation further revealed that at approximately 7:45 a.m. on the morning of the election [REDACTED], Electec's General Manager, allowed all candidates and observers, including you, to inspect the permanent paper tape on each of the twenty-two voting machines to verify that the public counters were set to zero. [REDACTED] then provided a demonstration of two sample voting machines stationed in the lobby. This demonstration covered how votes are validated, counted, and voided. You provided no evidence that any of the twenty-two voting machines were manipulated or malfunctioned. The LMRDA was not violated.

Next, you alleged that former Financial Secretary Treasurer ██████████ engaged in campaigning within the polling area by wearing a campaign sticker supporting the incumbent slate. Section 401(g) of the LMRDA prohibits the use of union funds to promote a candidacy. Accordingly, officers and employees of a union may not campaign on time that is paid for by the union or use union funds to assist them in campaigning. Furthermore, Department of Labor regulations specifically prohibit campaigning within polling places. 29 C.F.R. § 452.111.

The investigation revealed conflicting evidence regarding ██████████ conduct at the polling place. Election committee teller ██████████ stated that he witnessed ██████████ inside the polling place wearing a sticker that read "Administration Team." A number of other witnesses stated that they saw ██████████ in the polling place but did not notice a campaign sticker. ██████████ himself stated that he wore a campaign sticker outside the polling area, but removed the sticker whenever he entered the polling station. Finally, a photo taken inside the polling place showed ██████████ without the campaign sticker. Section 402(b) of the LMRDA provides that the Department may bring a civil action seeking Title IV remedies only where the Department's investigation finds probable cause to believe that a violation occurred. Here, the Department did not find probable cause to believe that ██████████ engaged in prohibited campaigning within the polling place. There was no violation.

You also alleged that election committee teller ██████████ engaged in prohibited campaigning when he misdirected voters by stating falsely that "row B was not working" on his voting machine. Row B represented your slate in the election.

The investigation again revealed conflicting evidence on this point. Your observer, ██████████, stated that he overheard ██████████ make a comment regarding the right side of his machine being broken at approximately 10:00 a.m. as voters passed by him. ██████████ later changed his statement, stating that the time was between 1:00 and 2:00 p.m. and that voters were not entering ██████████ machine at the time. ██████████ himself acknowledged that he joked that the machine was not working, but contended that he referenced the left side of the machine, representing the incumbent slate, because the entire slate had just walked into the room to vote. He stated that this occurred at 3:30 p.m. The Department did not find probable cause to believe that a violation of the LMRDA occurred.

You next alleged that some candidates were harassed and threatened by union officers for participating in the election process. Section 401(e) of the Act prohibits a union from subjecting a member to "penalty, discipline, or improper interference or reprisal" for participating in or supporting a candidate in an election.

You identified two candidates who allegedly faced retaliation from union officials. One candidate, [REDACTED], declined to speak to the investigator to confirm or deny the allegation. During the investigation conducted by the union, [REDACTED] alleged that union officials harassed her on account of her gender, nationality, and sexual orientation. To the extent these allegations concern conduct unrelated to the June 6, 2015 election they are outside the scope of your election complaint. The Department's investigation did not reveal any evidence that would establish probable cause to believe that [REDACTED] suffered harassment or retaliation for her election-related activities.

You also alleged that [REDACTED], who ran unsuccessfully for the Business Agent position, suffered harassment from union officials for participating in the election. According to [REDACTED], two of his managers at Breslaw Plumbing Co. stated that they had been approached by an unnamed union official who told them to "get rid of [REDACTED]" and that he was "no good." However, Breslaw Plumbing did not fire him. [REDACTED] further claimed that he was "blackballed" by the union following his candidacy in the 2012 election and that, if he were laid off from Breslaw Plumbing, he would be unable to find work.

Regarding the alleged retaliation following [REDACTED] nomination for the 2015 election, neither you nor [REDACTED] was able to identify the union official who allegedly approached his employer. [REDACTED] remains employed with Breslaw Plumbing, and the investigation did not reveal any adverse personnel action taken against him. The investigation revealed no evidence that would establish probable cause to believe that any official or member of the union harassed or threatened [REDACTED] for his election-related activities. [REDACTED] allegations of retaliation following the 2012 election do not relate to the June 6, 2015 election and are therefore outside the scope of your election complaint.

You next alleged that the union ignored candidates' request to convene a meeting of the election committee prior to the nominations meeting and that the union withheld information on the election machine company and did not allow members to be a part of the election company selection process. Even if true, these allegations would not constitute violations of the LMRDA.

Finally, you alleged that eleven election committee members were improperly disqualified from serving on the committee and that some candidates were improperly disqualified from running for office. Section 402(a) of the LMRDA requires that a member exhaust the remedies available to him or her under the union's constitution and bylaws before filing a complaint with the Secretary of Labor. These allegations were not properly exhausted because you failed to raise them in your protest letter to union officials.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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