



April 26, 2017

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on December 15, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the International Union of Operating Engineers (IUOE), Local 701, on August 4, 2016.

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

You alleged that [REDACTED] and other candidates used union membership lists to contact members in order to campaign. Section 401(c) of the LMRDA prohibits a union from discriminating in favor of or against any candidate with respect to the use of lists of members. 29 U.S.C. § 481(c). Thus, if a union permits any candidate to use a list of members in any way other than the right of inspection granted under the LMRDA, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. 29 C.F.R. § 452.71(b). Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in an election of union officers. 29 U.S.C. 481(g). In this regard, candidates may not use union funds, facilities, equipment, stationery, etc. 29 C.F.R. § 452.76. This prohibition includes the use of union membership lists and any other membership information obtained by virtue of serving as a union officer or employee.

Prior to the election, an election consultant retained by Local 701 sent a letter to candidates, stating, in relevant part:

federal law prohibits candidates from using either Union or employer resources to campaign. This restriction does not just apply to money; it

applies to any type of resource. For example, lists of members are union resources, and it is important that all candidates have equal access to membership lists. If you have access to a list of members because of your position with the Union, you may not use it to campaign.

The investigation uncovered no evidence establishing that [REDACTED] or any other candidate used union membership lists to campaign. The investigation did find that Local 701's membership database is password-protected and cannot be accessed remotely, that officer and employee access to the membership database is strictly limited, and that the union controlled and accounted for any membership lists that it printed. There was no violation of the LMRDA.

Next, you alleged that [REDACTED] and others received contributions from Positive Advisory Services (PAS), a consulting firm owned by former Local 701 Business Manager [REDACTED]. Section 401(g) of the LMRDA also prohibits the use of employer funds to promote the candidacy of a particular individual in an election of union officers. This prohibition includes any costs incurred by an employer or anything of value used to support the candidacy of any individual. 29 C.F.R. § 452.78(a). The prohibition covers employers who employ members of the labor organization in which the election is being conducted or who have business or contracts with the labor organization, but also extends to all other employers. 29 C.F.R. § 452.78(b).

There was no evidence of contributions from PAS to [REDACTED]. The investigation determined that [REDACTED] started PAS in May 2012, and the business worked only with the Local 701 training trust. PAS operated through August 2013, never had any employees, and had no employer identification number. The company was no longer operating at the time of the 2016 election. There was no violation of the LMRDA.

You alleged that [REDACTED] and others used employer funds to campaign in violation of section 401(g) of the LMRDA. Specifically, you alleged that [REDACTED] and candidates aligned with him campaigned at various employer jobsites in June and July 2016 while members were being paid by their employers to work. As stated above, section 401(g) prohibits the use of employer funds to promote the candidacy of any person in an election of union officers. The Department interviewed witnesses and reviewed the evidence. With respect to each allegation, the investigation found either no violation or no violation that affected the outcome of the election.

The investigation did find two instances where [REDACTED] and/or his supporters may have crossed the line that separates permissible work site campaign activity, i.e., campaign activity that did not interfere with any member's work for the employer, from improper campaigning that slowed or interfered with a member's ability to perform his job.

First, a member working at the Laskey Clifton job site stated that he stopped working when [REDACTED] came to the worksite and spoke to another member about how it was important for A [REDACTED] to win the election. Neither member was on break when [REDACTED] arrived. While this incident appears to have violated section 401(g) of the LMRDA, the effect was contained to two votes, at most. The smallest margin of victory in any race was five votes.

Second, a member at Klamath Irrigation stated that [REDACTED] and other candidates spent more than 45 minutes campaigning to members in a break area adjacent to the maintenance area where members were working. The investigation showed that while the member was on-the-clock when [REDACTED] and others arrived, he did not remain in the area, listening to the campaigning. The investigation did not uncover any conclusive evidence as to whether the work of any other member was interrupted by the campaigning. Thus, even if this incident did violate section 401(g) of the LMRDA, there was no evidence that the violation affected more than the one witness. Accordingly, there was no violation of the LMRDA that affected the outcome of the election.

You further alleged that two candidates sought signatures on nominating petitions from members employed at three worksites: Ness & Campbell Crane, Coffman, and the PG&E Building. The investigation revealed no evidence, however, that any of these efforts to obtain signatures on nominating petitions involved use of employer resources in violation of Section 401(g); the investigation found no evidence that these efforts took employees away from the assigned work for which their employer was paying them.

You alleged that [REDACTED] campaign benefited from an employer contribution in the form of an unpaid balance of \$590.99 that [REDACTED] owed the mailing house for his 2013 campaign mailings. The investigation established that [REDACTED] paid the mailing company in full for the six campaign mailings he sent during the challenged 2016 election. While it is true that [REDACTED] had disputed the amount the same mailing company charged him for campaign mailings during his 2013 losing bid for local business manager, the unpaid amount resulting from the dispute is not relevant to the instant election of officers. There was no violation of the LMRDA.

You alleged that [REDACTED] posted pro-[REDACTED] campaign statements to his personal Facebook page, in violation of the IUOE's Campaign Website Resolution. Section 401(e) of the LMRDA requires that unions conduct their officer elections according to their constitution and bylaws. 29 C.F.R. § 452.2 and § 452.109. The Campaign Website Resolution restricts internet campaigning to an exclusive campaign website that is password-protected to prevent non-members from gaining information that could be used against the union and its members. According to the IUOE, the

Resolution only regulates the conduct of candidates. The investigation revealed that, at the time of the challenged election, [REDACTED] was neither a candidate nor a member of Local 701. In any event, the LMRDA does not prohibit the posting of material to personal Facebook pages. There was no violation of the LMRDA that would provide a basis for litigation by the Department of Labor.

Finally, you alleged that ballots returned to the post office box were not properly secured. You failed to raise this allegation in your internal protest or appeal. Accordingly, it is not properly before the Department.

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

Sincerely,

[REDACTED]

Division of Enforcement

cc: James T. Callahan, General President
International Union of Operating Engineers
1125 17th Street, NW
Washington, DC 20036

Darren Glebe, President
IUOE Local 701
555 East First Street
Gladstone, Oregon 97027

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