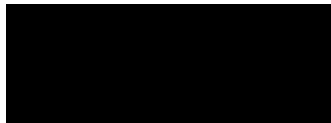




March 24, 2017



Dear [REDACTED]:

This Statement of Reasons is in response to your October 19, 2015 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of local officers of the Laborers International Union of North America, Local 270, which was conducted on June 18, 2015.

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

First, you allege that the incumbent slate, known as the A-Team slate, used a union list in making campaign calls and sending text messages to members, in violation of Section 401(g) of the LMRDA. That provision prohibits the use of union resources to promote the candidacy of any person. You identified some of these campaign calls as being made by a woman named [REDACTED]. You point to the fact that members who had not given out their personal numbers other than for official union use still received campaign calls and texts as evidence that these calls were made using a union list.

The Department's investigation revealed that the phone numbers from which the campaign calls and texts originated were not connected to any union phone. The Department interviewed the incumbent officers who acknowledged making campaign calls, but all stated that they only made calls using personal lists and on personal time using their personal cell phones. They denied knowing [REDACTED].

The Department traced the campaign calls and texts you presented to three phone numbers and reviewed the records for each of these numbers. The Department determined that 979 unique outgoing calls were made from the number belonging to [REDACTED] between June 3 and June 16. Of these, a maximum of 269 calls were made to Local 270 members who may have voted in the election. The second number

you provided was traced to member [REDACTED]; 246 unique phone numbers were called from that number between May 1 and June 17. Of these 246 calls, only 17 were to Local 270 members who voted in the election. The last number you provided was traced to [REDACTED], the wife of organizer [REDACTED]. Six unique phone numbers were called from this number. [REDACTED] did not know that his wife had this account or whether she used it to make campaign calls. Based on all of the phone records, the Department concluded that a maximum of 292 Local 270 members who voted in the election had been contacted using one of these numbers.

It is not clear that any of these calls were made using a union list. You identified ten members who had received campaign calls or texts, and you claim that these members had not given out their phone numbers for other than official union business, and that this constitutes evidence that the incumbent slate used a union list when making their campaign calls and texts. Some of these members, however, admitted to having given out their number to other members. Even assuming that a union list had been used, section 402(c) of the LMRDA provides that an election may only be overturned where a violation of the law may have affected the outcome of an election. Here, the smallest margin of victory in any race contested during this election was 316 votes in the race between [REDACTED] and [REDACTED] for Executive Board. This margin is larger than the number of people identified as having received campaign calls or texts. Additionally, not all of the members who had received these calls voted in the election. Accordingly, the Department determined that, even if a violation of section 401(g) had occurred, the violation would not have affected the outcome of the election.

Next, you allege that the incumbents campaigned at various job sites on union time, and used union cars and gear when campaigning, in violation of Section 401(g)'s prohibition on the use of union funds. Specifically, you claim that campaigning took place at the Martina Landscaping site, the Albanese site, the Stanford Children's Hospital site, the Waste Management site, and the BART extension site, and that incumbent officers distributed union gear, including t-shirts, jackets, and sun gear, while campaigning at these sites.

During the Department's investigation, members acknowledged that incumbent candidates had campaigned to them at various worksites, and the incumbent candidates admitted to campaigning on certain days. However, the interviews and evidence indicated that, in virtually all cases, any campaigning took place on dates when the incumbents were on leave and occurred during break times. Although some members claimed that campaigning took place during employer time and while the incumbent candidates were on union time, other members denied ever having been campaigned to at the work site. Accordingly the evidence does not establish probable cause to believe that illegal campaigning occurred. The investigation revealed that

union officers did visit worksites on official union business during the election/campaign period. To the extent any incidental campaigning occurred at the worksites while the incumbent officers were conducting union business, such campaigning would not constitute a violation. 29 C.F.R. § 452.76.

The Department's review of the local's gas credit card statements determined that no one had purchased gas while campaigning. All candidates who were interviewed stated that they used their personal cars when campaigning. Business Manager Enrique Arguello stated that the t-shirts that the incumbent candidates distributed were A-Team shirts that were printed on the A-Team's own time and using their own funds. Local 270 did not report any irregularities in the inventory logs with regards to union t-shirts or jackets. Foreman Campusano reported that candidates [REDACTED], and [REDACTED] campaigned at the Albanese site to approximately thirteen members and distributed sun supplies and t-shirts. According to Local 270, it is customary for business agents to distribute sun gear at work sites, and the Department did not uncover any evidence indicating that these supplies were distributed as a form of campaigning. Even if the campaigning at these worksites had constituted a violation, not enough members would have been impacted to have affected the outcome of the election.

You further allege that incumbent candidates collected voted ballots from members, in violation of Section 401(c), which requires unions to employ proper safeguards to insure a fair election. Specifically, you claim [REDACTED] gave his ballot to Vice President Hector Heredia, and that multiple members, including [REDACTED], gave their ballots to Executive Board Member Pablo Sencion while he was campaigning at the Martina Landscaping site. You further claim that Sencion threatened not to give [REDACTED] a work dispatch if he did not provide his ballot to Sencion.

The Department's investigation revealed that [REDACTED] had asked Heredia to mail in his voted ballot for him, and that Heredia initially agreed but later returned the ballot to [REDACTED]. [REDACTED] did not end up voting in the election. With regard to your allegation that Sencion collected members' ballots, [REDACTED] stated that he provided his unvoted ballot to Sencion, and the Department confirmed that Sencion's ballot was counted in the election. Adequate safeguards were not maintained with respect to Sencion's ballot, in violation of the LMRDA. Your allegations that other members gave their ballots to Sencion were not substantiated by the investigation, and [REDACTED] could not be reached to confirm any allegations of coercion. Even though this conduct constituted a violation of the LMRDA, the investigation only confirmed one instance of a ballot being collected by an incumbent officer and then counted in the election. Therefore, this violation did not affect the outcome of the election.

You also allege that the incumbent slate campaigned in the union office and parking lot on May 30 and June 4, 2015, and that Business Manager Arguello used the local's robo calls to campaign, again in violation of Section 401(g). The Department's investigation uncovered no evidence showing that the incumbents campaigned in the union parking lot on May 30. Although the incumbents acknowledge campaigning in the union parking lot on June 4, the Department's investigation established that the incumbents took leave on that date. The union requires that all campaigning taking place in the union parking lot be conducted more than 20 feet from the union access way. There is no evidence that the incumbents violated this rule, or that they campaigned inside the union office. Furthermore, the Department determined that robo calls are regularly used by Local 270 to communicate with members, and that there is no evidence that the robo calls made during this time were campaign related.

Next, you allege that regional organizers engaged in campaigning on behalf of the incumbent slate, in violation of Section 401(g) and Local 270's bylaws. You claim that [REDACTED] campaigned on behalf of the incumbent slate. You specifically allege that [REDACTED] used a union list to make campaign calls, and that [REDACTED] delivered a campaign speech at the A-Team picnic. You further claim that [REDACTED], who worked for [REDACTED], also participated in campaigning on behalf of the incumbent slate.

The Department reviewed a list of members' names and phone numbers that was in [REDACTED] possession, but no evidence was uncovered to support the contention that this list was used to make campaign calls on behalf of the A-Team slate. The Department determined that part of [REDACTED] responsibilities include organizing rallies for candidates in public elections, and that members who assist in organizing receive a gift card. [REDACTED] membership list contained notations indicating the value of the gift card each member was owed. [REDACTED] stated that the list was used to track which members participated in a Pacific Southwest Regional Organizing Department event.

[REDACTED] denies that he engaged in any campaigning, and further denies attending the A-Team picnic. No evidence was uncovered to substantiate your claim concerning [REDACTED]. With regards to [REDACTED], the Department confirmed that he did participate in campaigning by pasting labels on A-Team campaign literature, but that he did so on his personal time. [REDACTED] also submitted a letter to the Department indicating that [REDACTED] was not her employee, but volunteered for her. Accordingly, there was no violation.

Finally, you allege that ballots had been tampered with, in violation of Section 401(c), because the original vote on many of the ballots had been taped over and re-voted. During the Department's investigation, California Elections Company (CEC), the firm

responsible for conducting the election, indicated that it was not uncommon for some ballots to be duplicated by the election company when the original ballot contained a problem that would jam the voting machine. The Department reviewed all 42 of the duplicated ballots. Three of these ballots had been duplicated because the original vote had been taped over. CEC indicated that there are normally a few ballots in each election that are taped over because the voter made an error. All duplicate ballots were created in the presence of observers. The investigation revealed no evidence of ballot fraud. Accordingly, there was no violation.

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,

[REDACTED]

[REDACTED]

Division of Enforcement
Office of Labor-Management Standards

cc: Terry O'Sullivan, General President
Laborers' International Union of North America
905 16th Street, Northwest
Washington, DC 20006

Enrique Arguello, Business Manager
Laborers, Local 270
509 Emory Street
San Jose, CA 95110

Beverly Dankowitz
Associate Solicitor, Civil Rights and Labor-Management

[REDACTED]