



May 2, 2017

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the U.S. Department of Labor on December 12, 2016, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the regularly scheduled election of officers conducted by the Operating Engineers Local No. 428 on August 15, 2016.

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

You alleged that incumbent business manager Michael Lee and retired union member [REDACTED] improperly used union resources to mail campaign literature in support of the candidacy of the incumbent officers. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any individual in an election. However, section 401(c) also requires unions to comply with a candidate's reasonable request to distribute campaign literature to the union membership at the candidate's expense and requires that all candidates be treated equally with regard to the expense of such mailings.

The investigation revealed that Local 428 adopted a resolution setting forth its procedures for distributing campaign mailings at a candidate's request. The resolution provides that each candidate shall promptly pay the actual cost to the union for handling and mailing campaign literature. Mr. Lee sent campaign mailings to union members on July 13, 2016 and July 26, 2016. [REDACTED] sent a campaign mailing to union membership on July 25, 2016. Mr. Lee and [REDACTED] printed their flyers at an independent print shop and purchased mailing envelopes at commercial retailers, but used the union's postage meter. Local 428 Office Secretary Annette Mejia affixed the mailing labels and mailed the literature at the local post office. Records indicate that Mr. Lee and [REDACTED] paid the union in cash for the cost of the labels and postage as well as Ms. Mejia's time on the days that the mailings were sent.

Mike Mathis' slate sent a campaign mailing on July 15, 2016. Mr. Mathis printed his flyers at an independent print shop and elected to buy both mailing envelopes and stamps at a commercial retailer, although Mr. Mathis was offered the opportunity to use the union's postage meter and declined. Ms. Mejia also helped Mr. Mathis affix the mailing labels and mailed the campaign literature from the local post office. Mr. Mathis paid the union for the cost of the labels and Ms. Mejia's time on the day the mailings were sent.

The record reveals that all candidates immediately and fully reimbursed the union for expenses incurred in connection with the campaign mailings. Thus, they did not improperly use union resources. Further, the union's mailing procedures were applied equally to all parties who conducted campaign mailings. Accordingly, there was no violation of the LMRDA.

You alleged that the Local's executive board failed to establish dates on which the election committee would meet, causing confusion related to candidate eligibility.

Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election must be in place. Section 401(e) requires unions to conduct their elections in accordance with their constitution and bylaws so long as those provisions are consistent with the LMRDA. Article XXIV, Subdivision 1, Section (b) of the International's Constitution provides that a candidate for local office must have been a member of the Local for the preceding year and a member of the International for the preceding two years. It also provides that the Recording-Corresponding Secretary must notify each nominee of his or her nomination to Local office and the nominee must return his or her acceptance of the nomination within 10 days, and that candidates must attend all regularly scheduled meetings between nomination and election. The Local bylaws, Article VII, Sections 1(a) and 4(b) provide that no individual can run for more than one executive board office, and members of the Advisory Board may not hold other Local office. Regarding election procedures, the Local bylaws, Article X, Section 3 provides that an election committee shall be constituted that will determine candidate qualifications, provide the list of members entitled to vote to the CPA, be present at the mailing and tallying of ballots, investigate the validity of challenged ballots, and certify the election results to the business manager. The Constitution and bylaws are otherwise silent regarding officer elections.

The investigation revealed that the Local's executive board initially planned three meetings to conduct election-related activities: July 12, 2016, for candidate eligibility; July 28, 2016, for voter eligibility and ballot design/packaging/ mailing; and August 15, 2016 for the tally. The committee was unable to determine candidate eligibility at its first meeting, thus decided to split the second meeting into two separate days to allow sufficient time to complete all necessary tasks (July 27, 2016 for candidate eligibility and

ballot design; and July 29, 2016 for voter eligibility and ballot packaging/ mailing). Candidates for office were required to accept their nominations by returning an acceptance letter within 10 days of receipt of the nomination. This deadline was not tied to, and thus not impacted by, the date the election committee was scheduled to consider candidate eligibility. The investigation demonstrated that no candidate's eligibility was affected by the changed meeting date.

You alleged that the certified public accountant (CPA) firm that the Local hired to tabulate and certify its ballots did not have complete control over the meeting room in which election materials were kept, allowing union staff and incumbent officers to add and remove materials from the meeting room. The investigation revealed that any failure to secure the meeting room used to hold election materials did not impact the outcome of the election. No relevant materials were added or removed from the meeting room between sessions. The Office of Labor-Management Standards independently reviewed the CPA's and election committee's determinations regarding candidate eligibility and found no discrepancies. Several candidates were properly disqualified because they failed to resign from the Local's Advisory Board or failed to attend their Local's July 2016 meeting as required by the Constitution and bylaws. All candidate qualification requirements were applied uniformly across the various candidates.

You alleged that the election committee generally failed to follow the Local's bylaws, and election rules were non-existent, too lax, or constantly changing. You did not allege and the investigation did not reveal any specific violation of the bylaws and/or election rules that resulted in a violation of the LMRDA affecting the outcome of the election. Accordingly, there was no violation of the LMRDA that would provide a basis for litigation by the Department of Labor.

For the reasons stated herein, we have concluded that no violation of the LMRDA occurred which 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

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