



May 11, 2017

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on October 11, 2016, 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 UNITE HERE Local 5, on June 30, 2016.

The Department of Labor (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 Act that may have affected the outcome of the election.

You alleged that, on a wide variety of occasions, the incumbent slate or its supporters used union funds or employer funds to advance the slate's campaign. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. Under section 401(g), union officers and employees may not campaign while being paid by the union and cannot use union funds to assist them in campaigning. 29 C.F.R. § 452.76.

You alleged that the incumbent financial secretary/treasurer promoted his candidacy during a union-sponsored membership forum. The investigation disclosed that the union held a membership forum on April 15, 2016. The forum was authorized and scheduled by the incumbent financial secretary/treasurer in response to a petition that you and your supporters filed with the union. The petition demanded that members be permitted to debate certain claims made by you, including the claims that the incumbent financial secretary/treasurer had misappropriated \$1 million in union funds and that the union's pension fund was insolvent. Notice of the forum, which was posted at employer properties, invited all members to provide documents supporting their position for display at the forum.

The OLMS investigation found that the forum provided a free and open discussion of your claims. You did not attend the forum but your supporters in attendance at the forum were afforded an opportunity to present their views. In turn, the union presented information showing that no union funds had been misappropriated and that the union's pension fund was solvent. Such information concerned legitimate issues of interest to the union membership and did not involve the candidates' re-election to office or the solicitation of members' votes. The LMRDA was not violated.

You next alleged that a union staff retreat that was sponsored and funded by the union included sessions on how to effectively strategize against your campaign. The investigation found conflicting evidence concerning whether union staff discussed campaign strategies at the retreat sessions. However, there was no evidence indicating that any such strategy was implemented. Section 402(c) of the LMRDA provides that an election may only be overturned where a violation may have affected the outcome of the election. Thus, even if section 401(g)'s prohibition against the use of union funds to promote the candidacy of any person in an election of union officers was violated by a discussion of campaign strategies at the retreat, there was no evidence that the attendees took any further action related to the election. Only 30 staff members attended the retreat, and the smallest vote margin was 1,533 votes. Therefore, any violation could not have affected the outcome of the election.

You further alleged that an International Union representative traveled to campaign for the incumbent financial secretary/treasurer while being paid by the union and that the union paid the representative's travel expenses. The investigation disclosed that the representative used four weeks of personal vacation time to travel to Hawaii and campaign for the incumbent slate. The investigation showed that the representative used her personal funds to pay for her travel expenses, and the incumbent slate used its campaign fund to reimburse her for those expenses. The investigation further showed that the representative stayed with a friend while she was in Hawaii campaigning for the slate and that the representative paid her own personal expenses. The LMRDA was not violated.

You also alleged that the slate headed by the incumbent financial secretary/treasurer (incumbent slate) used the Musicians union hall for campaign meetings free of charge. The Department's review of the incumbent slate's receipt for use of the union hall showed that the slate rented the union hall three times during the campaign period and paid a total of \$300.00 for the rental. The LMRDA was not violated.

You alleged that Local 5 used union funds to pay the travel expenses of union officials to travel to various islands and campaign. The investigation disclosed that union officials routinely traveled to various islands during the campaign period to conduct regular union business. There is no evidence that they campaigned during these visits while on paid union time. The investigation showed that a Local 5 organizer traveled to Maui, Hawaii on April 25, 2016, and campaigned for the incumbent slate while on that island. However, the Department's review of the organizer's airline tickets, hotel receipts, and work attendance log showed that he was on vacation time when he campaigned, paid his own hotel expenses, and used his frequent flyer miles to cover his travel expenses. The LMRDA was not violated.

You next alleged that Local 5 used union funds to pay for an advertisement that appeared in a Honolulu newspaper and promoted the incumbent slate's candidacy. The investigation disclosed that a union-sponsored advertisement appeared in the newspaper a couple of days prior to the election. The union placed the ad in the newspaper after the newspaper's readership voted Local 5 the "Best Union," and the newspaper recommended that the union purchase ad space to acknowledge the award. The Department's review of the advertisement disclosed that it featured photographs of the incumbent financial secretary/treasurer and a union organizer. The advertisement did not reference the election, identify the incumbent officers as candidates for reelection, or solicit members' votes. The LMRDA was not violated.

You further alleged that a union employee used a union-owned camera to take pictures during a fundraiser for the incumbent slate while the employee was being paid by the union. The investigation showed that the camera used by the employee to take pictures during the incumbent slate's fundraiser was the employee's personal camera and that he was on personal time during that event. The LMRDA was not violated.

You also alleged that the incumbent slate and its supporters solicited donations from members and distributed campaign pledge cards to them while the candidates, supporters, and members were on paid work time. The investigation disclosed that Local 5's campaign rules permitted campaigning at work facilities in the public areas, including the cafeteria and the sidewalks in front of and near such facilities, during break, lunch, and personal time. During the investigation, one member employed at the Kaiser Moanalua Hospital stated that a union steward gave the member a pledge card while the member was at his work station. Other than this one incident, the investigation disclosed that the solicitation of donations and the distribution of pledge cards by supporters of the incumbent slate occurred while they were on personal time or on approved leave of absence from their employers. The investigation further found that any campaigning occurred in hotel cafeterias, on the sidewalks in front of or near hotels, and in other public places outside and inside the hotels. To the extent that a

violation occurred regarding the one incident at the Kaiser Moanalua Hospital, the smallest vote margin was 1,533 votes and, thus, this violation did not affect the outcome of the election.

Additionally, you alleged that campaigning supportive of the incumbent slate occurred during union-sponsored coffee hours. The investigation disclosed that union-sponsored coffee hours were held in cafeterias or other public areas at employers' work facilities and at members' homes. During the investigation, members who attended coffee hours during the election period stated that union-related matters were discussed at the coffee hours and that no campaigning occurred at these meetings. The members who you stated witnessed campaigning at the coffee hours stated during the investigation that they never attended these meetings. The LMRDA was not violated.

You next alleged that the incumbent financial secretary/treasurer and the successful Local 5 presidential candidate used union funds to travel throughout Hawaii and campaigned at employer facilities while being paid by the union. During the investigation, the president elect stated that she campaigned at the Royal Hawaiian and Sheraton Waikiki hotels in public areas near the loading docks and on the public sidewalks while on personal time. The investigation disclosed that members witnessed the incumbent financial secretary/treasurer campaigning at the Hilton Hawaiian Village hotel and the Kaiser Moanalua facility in the cafeteria, a public area, during break and lunch times. The LMRDA was not violated.

You further alleged that supporters of the incumbent slate wore and distributed campaign buttons to workers and encouraged them to wear the buttons during work hours. The investigation disclosed that supporters of the incumbent slate distributed campaign buttons to workers while the supporters were on personal time or on leave of absence from their employers. The investigation further showed that this distribution occurred while workers were in public areas, on break or lunch time, and between shift changes. The LMRDA was not violated.

You also alleged that union employees campaigned at hotels while being paid by the union. The Department reviewed the attendance logs for eight employees that you alleged campaigned at the hotels. This review disclosed that they were on personal time or approved leave of absence from their employer when they campaigned at the hotels. The investigation showed that such campaigning occurred in public areas at hotels, including the cafeterias, public sidewalks, public areas near the loading docks and other public areas. The LMRDA was not violated.

Additionally, you alleged that the incumbent slate's campaign materials were posted on union bulletin boards located at various employer facilities. During the investigation, a

member provided the Department with an undated photograph of incumbent slate campaign flyers posted on a bulletin board at the Sheraton Kauai hotel. In addition, a member stated during the investigation that he saw the campaign flyers posted on a bulletin board at the Sheraton Maui hotel. Another member stated that he and [REDACTED] saw the slate's campaign flyers posted on the union bulletin board at the Waikiki Beach Marriott hotel.

The evidence is inconclusive as to the date that the materials were posted at the Sheraton Kauai and the Sheraton Maui hotels. Also, it is not clear whether the bulletin boards were locked or unlocked at the time of the postings. Further, the investigation did not substantiate that a member and [REDACTED] saw the incumbent slate's campaign flyers posted on the union bulletin board at the Waikiki Beach Marriott hotel. [REDACTED] stated during the investigation that all of the materials she saw posted on that bulletin board concerned union-related matters. To the extent that the LMRDA was violated concerning the posting at the Sheraton Kauai and the Sheraton Maui hotels, 97 voters were employed at the Sheraton Kauai hotel and 73 voters were employed at the Sheraton Maui hotel, for a total of 170 voters. The smallest vote margin was 1,533 votes. Therefore, any violation that may have occurred could not have affected the outcome of the election.

You next alleged that the incumbent slate's campaign literature contained the union's logo and the logo for Aikea, a non-profit organization operated by Local 5. You also alleged that supporters of the incumbent slate distributed official union and Aikea stickers to members along with their campaign materials. The Department's review of the logos showed that the Aikea logo consists of the word "Aikea" with the Hawaiian flag as its background. Local 5's logo included the words "UNITE HERE LOCAL 5 HAWAII" printed in a circular pattern. The Department's review of the incumbent slate's campaign materials showed that its logo included two palm trees, the name of the slate, and the words "Local 5" and "Aikea." The campaign materials did not contain the union logo or the Aikea logo. In any event, the Local 5 bylaws are silent regarding the use of the words "Local 5" or "Aikea" on campaign materials. Further, there is no evidence that supporters of the incumbent slate distributed official union and Aikea stickers to members along with their campaign materials. The LMRDA was not violated.

You alleged that you were prevented from accessing certain hotels because the incumbent financial secretary/treasurer sent a letter to the hotels' management in which he indicated that your access to such properties was restricted. Section 401(c) of the LMRDA contains a general mandate that a union provide adequate safeguards to ensure a fair election. Thus, the conduct of a union officer election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation disclosed that at various

times from July of 2014 to August of 2015, the incumbent financial secretary/treasurer sent a letter to the management of certain hotels explaining that he had the authority to determine which union staff members could exercise the union's property access rights under the bargaining contract. The letter stated that your property access privileges were revoked in 2014 and that the hotels' management should deny you access to the properties for union purposes. The letter further stated that, if an employer's policy permitted you to access its property for political purposes, such policy must be extended to all candidates who wanted to access the property for that purpose. Thus, although the letter restricted your access to employers' properties for union representational purposes, the letter did not prevent you from accessing such properties for political/campaign purposes.

In any event, the investigation did not substantiate that the hotels' management prevented you or your supporters from campaigning in designated public areas of the hotels. Specifically, the investigation showed that, although you were prevented from campaigning at the Kahala hotel at the employees' entrance near a loading dock, campaigning was prohibited in that area. After a hotel security officer asked you to leave that area, the officer escorted you and your supporters to a public area of the hotel, and you and your supporters campaigned at that location. There is no evidence that supporters of the incumbent slate were permitted to campaign at the Kahala hotel in non-public areas. In addition, although you stated that you were denied access to an area near the loading dock of the Sheraton Waikiki hotel, your supporters were permitted to campaign in the public areas of that hotel.

Also, there is conflicting evidence regarding your assertion that you were prevented from campaigning in a public area at the Hilton Hawaiian Village hotel near the Alfred Apaka statue. The human resources director for that hotel stated during the investigation that she witnessed both you and your supporters campaigning at that location. The director of safety and security for that hotel stated during the investigation that you were permitted to campaign at the hotel in public areas, including on property located near the employees' entrance of the hotel and at the Alfred Apaka statue. Further, the investigation established that you and/or your supporters were permitted to campaign near the front entrance of a hotel, in the parking lots of hotels, on public sidewalks in front of or near hotels, and in other public areas of the hotels. The LMRDA was not violated.

You also alleged that a union official campaigned in the emergency area of a hospital. During the investigation, a member employed at the Kaiser Moanalua Hospital stated that he witnessed the union official distributing campaign literature to three employees in a non-public area of the hospital's emergency room. The investigation disclosed that the official accessed that area when the locked doors to the emergency room were

opened to allow a patient to enter the area. It appears that the official was on personal time when this incident occurred. However, Local 5's campaign rules prohibit campaigning in non-public areas. Thus, the adequate safeguards provision in section 401(c) of the LMRDA was violated when a union official campaigned in a non-public area at a hospital to three workers and that same opportunity was not afforded to opposition candidates. However, the smallest vote margin was 1,533 votes and, thus, this violation did not affect the outcome of the election.

You further alleged that supporters of the incumbent slate solicited and collected voted ballots from members. During the investigation a shop steward stated that she collected 10 to 15 sealed envelopes containing voted ballots from members and mailed the ballots from the hotel's front desk. The shop steward's possession and control of the ballots compromised the integrity of the ballots. Thus, section 401(c)'s adequate safeguards provision was violated when the shop steward collected voted ballots from members. However, the smallest vote margin was 1,533 votes and these 15 votes did not affect the outcome of the election.

You next alleged that members delivered the voted ballots of other members to the polling site. Staff of the Global Election Services (GES), the company hired by Local 5 to supervise the election, was at the polling site from the time the site opened until after it closed. GES staff stated during the investigation that no ballots were dropped off at the polling site. The LMRDA was not violated.

You alleged that the returned voted ballots were not adequately safeguarded because when the ballots were retrieved from the post office, over 4,000 voted ballots were in open trays. The investigation disclosed that approximately 4,700 voted ballots were mailed back to the post office and to accommodate the ballots, post office personnel stored them in open letter trays. On the day that the ballots were retrieved from the post office for counting, post office personnel inserted each tray into a cardboard sleeve. The investigation did not disclose any evidence of ballot tampering or other election improprieties. The LMRDA was not violated.

You also alleged that that the room where the ballots were counted was not secured. A basis for this allegation is your belief that a union employee had the keys to the new locks on the doors to the union hall. The investigation disclosed that the ballots were retrieved from the post office on June 30, 2016, and stored overnight in the hotel room of the GES CEO. After the ballot count was completed, new locks were placed on the doors to the union hall to ensure the security of the stored ballots. The employee stated during the investigation that he did not have a key to the new locks on the doors to the union hall. There is no evidence of ballot tampering or other election impropriety. The LMRDA was not violated.

You further alleged that the area at the union hall that was used for on-site voting was unsecured. The investigation disclosed that on-site voting was conducted at the union hall on June 29. GES staff was present at the polling site from the time the polls opened until it closed. The investigation disclosed that, although an individual who came to the polls to vote attempted to use the wrong door to access to the voting area, GES staff directed the individual to the correct door. Further, there is no evidence that union officials and employees were permitted to remain in the voting area while members voted. The LMRDA was not violated.

Additionally, you alleged that observers were prohibited from observing the results of the ballot scanning process. Section 401(c) of the LMRDA provides that adequate safeguards must be provided, including the right of any candidate to have an observer at the counting of the ballots. This right encompasses observing every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of the tally sheets. The investigation disclosed that during the ballot tallying process the ballots were scanned directly to computers that were located behind closed doors in a room separate from the ballot tallying room. Observers were prevented from accessing this room during the scanning process. Thus, section 401(c)'s requirement that observers be permitted to observe every phase and level of the counting and tallying process was violated. However, there was no evidence of ballot tampering or other election impropriety. This violation could not have affected the outcome of the election.

You alleged that members, particularly those on neighboring islands, did not receive ballots in the mail. Section 401(e) of the LMRDA provides that every eligible member has the right to vote for or otherwise support the candidate of his choice. The investigation disclosed that on June 1, 2016, 10,588 ballots were mailed to members. Of these ballots, only 157 were returned as undeliverable, and duplicate ballots were mailed to 134 of these members. Further, any member who did not receive a ballot in the mail could call the GES hotline and request a replacement ballot. If a GES staff member was unavailable to answer a call, the voice recording on the hotline instructed the caller to leave his or her name and address and a replacement ballot would be mailed to that address. The LMRDA was not violated.

You next alleged that members received ballots late and did not have sufficient time to vote their ballots. The investigation disclosed that ballots were mailed by first class mail to members on June 7, 2016, and that ballots had to be received at the post office before 9:00 a.m., on June 30, 2016, to be included in the ballot count. Thus, voters had approximately three weeks to receive, mark, and return their voted ballots. This three-

week period afforded members a reasonable opportunity to vote. The LMRDA was not violated.

You further alleged that members whose employers had a policy of not collecting back dues were prevented from voting. The investigation disclosed that one employer has a policy of not deducting back dues. However, the investigation disclosed that any member who was delinquent in the payment of back dues was permitted to pay the dues and vote. The LMRDA was not violated.

You alleged that the polling hours for the 2016 election, 12:00 p.m. to 5:00 p.m., were insufficient. The investigation disclosed that the polling site for the 2016 election did not open until noon and closed at 5:00 p.m. In a prior election, polls opened as early as 7:00 a.m. However, shortening the polling hours for the 2016 election could implicate the requirements of the LMRDA if the intent or practical effect of the shortened polling hours deprived members of the right to vote. 29 C.F.R. § 452.94. The investigation showed that members had the option of voting by mail or at the polls. More than 10,500 ballots were mailed to eligible members. Approximately 98 percent of the voters voted by mail ballot; 87 members voted at the polls. there is no evidence that any member was denied the right to vote because of the polling hours. The LMRDA was not violated.

Finally, you alleged that the printer hired by Local 5 to handle the printing and mailing of the slates' campaign literature gave preferential treatment to the incumbent slate when scheduling the campaign mailings. Section 401(c) of the LMRDA provides that, when a union authorizes distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if the candidate requests it. 29 C.F.R. § 452.67. The investigation showed that the printer handled the incumbents' and the challengers' request for campaign mailings in the order in which they were received by the printer. The investigation showed that the incumbent slate requested two campaign mailings. One such mailing was conducted on June 2, 2016, by standard mail and the other on June 7, 2016, by first class mail. The challengers' slate requested that two campaign mailings be conducted on June 6. The mailings were conducted by standard and first class mail. The investigation disclosed that standard mail takes three to four days longer to reach the recipient than first class mail. As a result, members did not receive the challengers' standard rate mailing until after they had received both of the incumbent slate's mailings. The investigation disclosed no evidence of disparate treatment with respect to the printer's scheduling or mailing of the slates' campaign literature. The LMRDA was not violated.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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