



September 29, 2017



Dear [REDACTED]

This Statement of Reasons is in response to your November 23, 2016 and November 29, 2016 complaints filed with the U.S. Department of Labor alleging that violations of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-84, occurred when the International Brotherhood of Electrical Workers (IBEW) ordered a rerun of an election of certain offices filled during Local 48's (local) June 21, 2016 regularly scheduled election.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded, with respect to each of your specific allegations that no violation occurred.

In both complaints, you alleged that [REDACTED] were permitted to run in the rerun election despite being ineligible to run for office. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed, and that the election shall be conducted in accordance with the constitution and bylaws of the union insofar as they are not inconsistent with the provisions of the LMRDA. Article XV, Section 5 of the IBEW Constitution provides: "No L[ocal]U[nion] shall allow any member who becomes an electrical employer, a partner in an electrical employing concern, a general manager, or other managerial position, to hold office in the L.U. or attend any of its meetings, or vote in any election of a L.U...." IBEW considers those who make significant policy and management decisions for the company to be managers.

The Department's investigation determined that [REDACTED] did not have sufficient authority or independence to be considered management. None of the three could hire or fire employees, bid on contracts, or make significant independent decisions regarding company funds. Based on these facts, [REDACTED] were eligible to run for office under IBEW's constitution. There was no violation of the Act.

In both complaints, you alleged that IBEW improperly left ██████████ off the ballot in the rerun election. ██████████ did not file a complaint or otherwise challenge his eligibility to be a candidate after he was disqualified in the initial election. When interviewed by the Department, ██████████ stated that he did not file a protest because he did not want to be included on the rerun ballot. There was no violation.

In your November 23 complaint, you alleged that the decision to rerun part of the first election was biased because the international's investigator, IBEW International Representative ██████████, was permitted to vote. Section 401(e) of the LMRDA provides that every member in good standing is entitled to vote in an election covered by Title IV. The investigation revealed that ██████████ was a member in good standing. Article XV, section 5 of the International Constitution provides in relevant part that no local union shall allow any member who becomes an electrical employer, a partner in an electrical employing concern, or other managerial position to vote in any election. According to IBEW, all other members are permitted to vote, including those employed by the international, because they do not fall within the categories listed in the constitution. In other words, international staff members who are also local union members have the same voting rights as other members of the local. There was no violation.

In both complaints, you alleged that IBEW permitted ineligible members to vote in the rerun, after the election committee determined they worked as managers and barred them from voting in the first election. Specifically, you allege that project managers and estimators are managers who are ineligible to vote under the constitution.

In 2011, a constitutional amendment was presented to alter the language in Article XV, section 5 of the IBEW Constitution. The amendment identified a "general manager" and "other manager" as a member who could not hold office, attend union meetings, or vote in local elections. After reviewing the proceedings of the 2011 IBEW Conference Transcript regarding Article XV, Section 5 of the Constitution, pages 428-433, the investigation determined that the union interprets foreman, general foreman, labor superintendents, project managers, and estimators not to be considered "managerial positions" for purposes of voting or running for office in the IBEW. Based on this interpretation, the members permitted to vote in the rerun were not managers and thus eligible to vote. The Department of Labor investigation revealed that project managers and estimators do not have authority to hire, fire, or impose substantial discipline. Consequently, the union properly found that they were not managers and were eligible to vote. There was no violation.

In the November 29 complaint, you alleged that the local union conducted the rerun election without the elected election committee, in violation of the local's bylaws. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires that elections must be

conducted in accordance with the constitution and bylaws of the union in so far as they are not inconsistent with the provisions of the Act. 29 U.S.C. § 481(e). Article III, Section 8(c) of the local's bylaws provides: "At the meeting of the Local Union, in the month preceding the month in which nominations are made, the Local Union by a majority of members present shall elect an Election Judge and as many Tellers, as are required, who shall serve as an Election Board to conduct the election. No candidate for any office shall be eligible to serve on this Board." Vacancies on the Election Committee are filled by appointment in the IBEW.

During the investigation, the Department learned that you refused to participate as election judge and five of the six remaining members of the election committee elected in April 2016 resigned after the International Vice President ordered the rerun. Following the resignations, the last remaining member on the election committee was elevated to election judge and the remaining vacancies were filled by appointment, under normal local operating procedures. There was no evidence the election committee engaged in violations that may have affected the outcome of the election. The appointment of election committee members does not provide a basis for litigation by the Department.

You also alleged that the failure to use an experienced election committee resulted in the local's failure to send out candidate information. Sending out candidate information is not required by the LMRDA or the union's constitution. Moreover, the investigation established that, on August 10, 2016, the union mailed candidate information regarding the August 30, 2016 re-run election to all the members. There was no violation.

In your November 29 complaint, you alleged that [REDACTED], a candidate for Delegate to the IBEW International Convention, campaigned on union time and using union computers. Section 401(g) of the LMRDA prohibits the use of union resources to promote any candidate. The investigation found that [REDACTED] sent multiple emails concerning the election to the union's stewards, but those emails only encouraged the stewards to vote. The investigation did not uncover any instances of using union time or equipment to campaign for a specific candidate. There was no violation.

In your November 29 complaint, you alleged that union staff members took personal days to campaign. However, neither the statute nor union policy prohibits campaigning while on personal or vacation time. There was no violation.

In your November 29 complaint, you alleged that IBEW improperly allowed an apprentice, [REDACTED], to run in the rerun election. IBEW Constitution Article XV, Section 14 states: "No apprentice shall be eligible to hold any office in the [Local] U[nion], except that a member who was previously eligible to hold office in the

LU shall remain eligible if he entered an apprenticeship program for the purpose of upgrading his classification." The investigation revealed that [REDACTED] is a journeyman electrician, not an apprentice. He completed his apprenticeship in 2003 and has been a full-time employee of the local since 2012. He is eligible to hold office. There was no violation.

In your November 29 complaint, you alleged that IBEW international staff interfered with the election by voting, running the election and investigating election complaints. Neither the statute, the IBEW Constitution, nor the local bylaws prohibit international employees from participating in elections of locals to which they belong. The investigation did not reveal any violations of the LMRDA attributable to the international staff's participation. There was no violation of the Act.

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

Sincerely, [REDACTED]

[REDACTED]  
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Chief, Division of Enforcement

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