



September 22, 2017

[REDACTED]

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on January 30, 2017 with the Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the Transport Workers, Local 234 (Local 234 or Local), on September 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 your allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the election committee failed to take all reasonable steps to ensure that every member received notice of the election. In particular, you alleged that three of your slate members, [REDACTED], did not receive a notice in the mail. Section 401(e) of the LMRDA mandates that elections required to be held by secret ballot must be preceded by a notice of election mailed to each member at his last known home address not less than 15 days prior to the election. The investigation revealed that approximately 5,600 members on the membership mailing list were mailed a nomination and election notice on August 10, 2016. The investigation further revealed that the Election Committee (EC) updated the mailing list during the election. If a notice was returned as undeliverable, the EC would identify the work location of the affected member, contact the business agent assigned to that location, and ask the business agent to obtain the member's correct address. Once an updated address was obtained, an EC member would contact the printer and a new notice would be sent to the updated address. A review of the nomination/election notices returned to the union as undeliverable revealed that a total of 110, election notices were returned to the EC or 1.9 percent of the total number mailed notices. Of those 110

undeliverable notices, the EC was able to obtain new addresses for 57 of those members. With regard to your three slate members, the evidence revealed that the union had their correct addresses on file. A review of the polling site location voter eligibility lists and polling site location voter sign in sheets show that all three slate members voted in the election. There was no violation.

You also alleged that the election committee's use of voter identification cards for members employed by SEPTA discouraged members from voting. You alleged that the EC failed to properly notify members of this requirement and due to this error many members did not receive their voter identification card. Members not presenting a voter identification card were required to vote a challenged ballot. You surmise that many in these circumstances likely did not vote, believing a challenged ballot would not be counted. You further alleged that your fellow slate member [REDACTED] and members [REDACTED] did not receive voter identification cards. Section 401(e) of the LMDRA provides that every member in good standing shall have the right to vote for or otherwise support the candidate of his choice. The investigation established that the nomination and election notice clearly informed members employed by SEPTA that they had to present their SEPTA employee pass and a voter identification card in order to vote or vote a challenge ballot if they did not. A notice and explanation of the voter identification card was published in the August 17 and September 7, 2016 editions of the union's newsletter, "*On the Move*." The September 2016 edition included a reminder to members to bring their voter identification cards and informed them that all challenged ballots would be counted regardless of the outcome of the election.

The Department's records review revealed that 81 voter identification cards were returned to the EC as undeliverable. Of this total, 67 members completed a "Substitute Voter Card" to obtain a replacement voter identification card. Further, two weeks prior to the election, the local and the American Arbitration Association (AAA) agreed that SEPTA employees who showed their SEPTA identification card at their assigned polling site would not be required to vote challenged ballots. The Department's review of the records show that [REDACTED] did not complete substitute voter cards but were able to vote at the Southern polling site location. Overall, election results show over 3,640 members voted in the election, which exceeds the 3,580 votes cast in the 2010 Local 234 officer election supervised by the Department. There was no violation.

You next alleged that incumbents used the local's newsletter, *On the Move*, to campaign. In support of this allegation you stated that the newsletter increased in frequency during the course of the election and that the contents did not relate to current topics of union business. Section 401(g) of the LMRDA prohibits the use of a union-financed publication to promote or denigrate candidacy. 29 CFR § 452.75. The Department's review of the union's *On the Move* newsletters dating back six months prior to the election revealed, however, that the newsletters contents neither attacked nor promoted any candidate. The newsletters during the period prior to the election

contained contemporaneous union topics, specifically, contract negotiations with SEPTA. The investigation revealed that the local's attorney writes most of the articles, and the subject matter of the articles is reviewed by President Willie Brown. President Brown indicated that he determines the content based on consultation with officers, business agents and members. The investigation did not reveal any evidence that the articles promoted the candidacy of the incumbents. There was no violation.

You also alleged that the local's attorney prepared the incumbent president's campaign material using union equipment and while on union time. The investigation did not reveal any evidence to substantiate this allegation. The union's counsel stated that the slate's campaign literature was a collaborative effort and that he co-authored or edited most pieces of the campaign literature on his personal time using his personal computer. He asserted that the campaign literature was not drafted on union time, created or printed on union equipment, or published using union supplies. The Department's investigation found and you did not provide any evidence to the contrary. Further, a review of the campaign literature and invoices provided by the union show that, on September 27, 2016, Brian Pollitt, the union's executive vice-president, hand-delivered a flash drive containing the prepared campaign literature to the printing vendor. Payroll records show that Pollitt was on vacation time when he submitted the printing job. There was no violation.

You further alleged that union funds were used by Business Agent Jadine Daye, Recording Secretary Avignon Dent and Vice President William Vera when they campaigned at worksites on union time. The investigation established that SEPTA permits candidates and their supporters to campaign in the breakrooms at SEPTA facilities as long as the campaigning does not interfere with SEPTA operations. The investigation revealed that Dent and Vera were observed campaigning at the Elmwood facility on September 28, 2016, and Daye was also observed campaigning at the 69th Street facility on September 29, 2016. A review of the Payroll records provided by the union's payroll service indicated that Day, Dent and Vera were on vacation time from September 23-29, 2016. There was no violation.

You next alleged that an incumbent slate supporter, [REDACTED], and an executive board member, Chauntann Reid, campaigned within the restricted area at the *Midvale* polling site on the day of the election. Department of Labor regulations provide that a union may forbid any campaigning within a specified distance of a polling place. 29 CFR § 452.111.

The election rules provided:

No campaigning or distribution of campaign literature is permitted within 15 feet of the polling place(s) on the day of the election. Only members voting, members waiting in line to vote, and designated observers are permitted in the area set aside for voting.

The investigation revealed conflicting evidence regarding your allegation that [REDACTED] and Reid campaigned within the restricted area. The investigation revealed that your witness, [REDACTED], an observer for candidate for President [REDACTED], was unsure whether [REDACTED] and Reid were at least 15 feet from the polls when campaigning. [REDACTED] and Reid signed statements denying that they campaigned within 15 feet of the polls. The AAA representative stationed at the *Midvale* polling site, [REDACTED] acknowledged that there were individuals talking in the polling area, but she could not confirm that they were within 15 feet of the polling area, or that they were campaigning. Consequently, there is no corroboration of your assertion that [REDACTED] and Reid campaigned within 15 feet of the polling area. There was no violation.

You also alleged that supporters of incumbent President Willie Brown campaigned in the polling area at the *Elmwood* polling site. The investigation revealed that your witnesses, [REDACTED], stated that they observed two Brown supporters and Local 234 section officers, [REDACTED] rfield, wearing tee-shirts with Brown's name and campaigning at the *Elmwood* polling site entrance, which was less than 15 feet of the polling area. However, both [REDACTED] [REDACTED] acknowledged that they were aware of the 15 feet limit and deny campaigning within 15 feet of the polls. They admit wearing Brown tee-shirts, but stated that they removed their tee-shirts when instructed to do so by the election chairperson after wearing them for about an hour. [REDACTED], EC Chairperson, acknowledged arriving at the polling site approximately two hours after being notified that [REDACTED] and [REDACTED] were wearing Willie Brown tee-shirts in a prohibited area at the *Elmwood* polling site. When [REDACTED] arrived at the polling site, he saw [REDACTED] within 25 feet of the polling site, but [REDACTED] could not recall whether the two were ever within 15 feet of the polling site. He ordered both men to remove their tee-shirts and they immediately complied.

The AAA representative, [REDACTED], was stationed at the polling site and was aware of the union's rule prohibiting campaigning within 15 feet of the polling area, but she did not observe any campaigners within the prohibited area. She stated that all campaigners were outside of the door of the polling site. Consequently, there was not sufficient evidence to corroborate your allegation that Brown's supporters were campaigning within 15 feet of the polling area. There was no violation.

You further alleged that Business Agent Antoine Goines and members [REDACTED], [REDACTED] wore Brown tee-shirts and either campaigned within 15 feet of the *Southern District* polling site or inside the polling area. The investigation revealed that Goins and [REDACTED] denied that they were campaigning and signed statements that they never campaigned within 15 feet of the polling area and that their tee-shirts were covered up. [REDACTED] stated that when he arrived at the polling site, he was asked to take his tee-shirt off, and he complied. [REDACTED] acknowledged that he campaigned by the front door of the polling site, but stated that he never put on his tee-shirt.

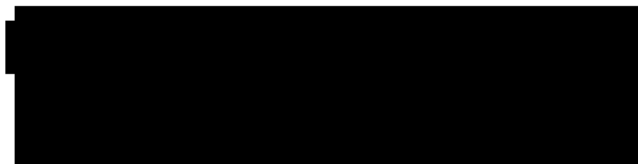
The investigation established that the AAA Representative, [REDACTED], was stationed at the *Southern* polling site. She was aware of the union's rule prohibiting campaigning within 15 feet of the polling area and acknowledged that it was part of her job to enforce the campaign rules. [REDACTED] stated that there may have been a few campaigners close to the restricted area, but she did not know who they were or who they were campaigning for. While the 15 foot area was not marked, she stated that she instructed the observers to tell any campaigners to back up so that they were not within sight of the polling station. Also, she instructed the observers to tell campaigners who were wearing tee-shirts to turn their tee-shirts inside-out or stand outside the building. The campaigners complied with the AAA representative's request. The investigation did not reveal any evidence to corroborate your allegation that these supporters of incumbent President Willie Brown were campaigning in the polling area at the *Southern* polling site. There was no violation.

You next alleged that Brown supporters campaigned in the polling area at the *Fernrock* polling site. In particular, you alleged that [REDACTED] witnessed prohibited campaigning on the day of the election by incumbent Secretary-Treasurer Joe Coccio and three other males whom [REDACTED] could not identify. Coccio denied that he was at the *Fernrock* polling site on the day of the election. He stated that, on the day of the election, he campaigned mostly outside of the 69th Street polling site, which is his home location. Also, you alleged that [REDACTED] stated that another Brown supporter, [REDACTED], campaigned at this location. [REDACTED] acknowledged that she campaigned at *Fernrock*, but denied that she handed out campaign materials or that she campaigned within 15 feet of the polling area.

The investigation revealed that the AAA Representative, [REDACTED] was stationed at the *Fernrock* polling site. She was aware of the union's rule prohibiting campaigning within 15 feet of the polling area and acknowledged that it was part of her job to enforce the campaign rules. While the 15 foot area was not marked, she does recall that a woman was inside the polling area wearing a shirt promoting one of the candidates or slates. She asked the woman to leave, but the woman confronted [REDACTED] in an aggressive manner and refused to do so. As a result, [REDACTED] asked a SEPTA supervisor to intervene, and the woman agreed to leave. [REDACTED] did not observe any other campaigning in the polling area. The investigation did not reveal any evidence to corroborate your allegation that supporters of incumbent President Willie Brown were campaigning in the polling area at the *Fernrock* Polling Site. There was no violation.

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 regarding this allegation.

Sincerely,



Sharon Hanley
Chief, Division of Enforcement

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