



January 23, 2018



Dear [REDACTED]

This Statement of Reasons is in response to your February 2, 2017 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers held by Local 333 (Local 333 or the union) of the International Longshoremen's Association (ILA), on June 23, 2016.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations, that three violations of the LMRDA occurred, but none of them affected the outcome of any race. As to your remaining allegations, the Department has concluded that no violation occurred. The Department's conclusion is explained below, first addressing those allegations that constitute violations.

You alleged that the union denied members, specifically full-time dispatchers and members employed by the benefit fund and Domino Sugar, the right to participate in the nomination process because they did not possess one or both credentials required to gain access to the Maryland Cruise Terminal, where the nominations meeting was held. Section 401(e) of the LMRDA requires a union to provide members in good standing with a reasonable opportunity to nominate candidates. Because the Act does not prescribe particular procedures for nominating candidates, a union is free to employ any method that will provide a reasonable opportunity to make nominations. 29 C.F.R. § 452.57. The investigation revealed that members were required to present two credentials, a Maryland Port Administration (MPA) badge and a Transportation Worker Identity Credential (TWIC) card in order to gain access to the cruise terminal. While most Local 333 members possessed both credentials, some did not, including the three full-time dispatchers. Further the investigation disclosed that the union did not make arrangements to accept written nominations. By holding the only nominations meeting at a location that was inaccessible to all members in good standing, the union failed to provide members a reasonable opportunity to nominate candidates, in violation of the LMRDA. However, the investigation did not find nor did you furnish evidence of any member who wished to nominate a candidate but was unable to do so

due to the restricted access to the meeting location. Further, members were not required to attend the meeting in order to be nominated or to accept nomination. Accordingly, no violation occurred that affected the outcome of the election.

You alleged that the union denied members the right to vote in the election because the only polling place was located at the Dundalk Marine Terminal (DMT), a restricted access property where members needed a TWIC card and an MPA badge to gain access. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote. As stated above, the investigation revealed that not all Local 333 members possessed the two credentials required to gain access to the DMT because some work positions or work locations did not require one or both credentials. The investigation showed that the combined nomination and election notice did not provide information about gaining access to the DMT if a member lacked one or both credentials. The union attempted to address the problem by mailing a supplemental election notice to members on June 13, 2016, informing them to contact the union office by June 17, 2016, if they lacked credentials so that the union could provide an escort to the polling place on the day of the election. The union also stated that this information was posted on its website and posted at the union office.

However, due to the short time period for requesting access, only three members availed themselves of this opportunity for an escort to the polls. One member claimed that he received the letter shortly before the deadline and telephoned the union, but no one answered the phone. That member did not vote. The investigation disclosed that at most nine members in good standing, including the three full-time dispatchers, may have lacked the required credentials and did not vote. The union's belated efforts to inform members lacking the necessary credentials how to arrange for an escort were insufficient to uphold these members' right to vote. However, the investigation disclosed that the closest margin of victory in the election was a fourteen-vote margin for one of the five executive board member positions. Accordingly, this violation could not have affected the outcome of the election.

You alleged that the union failed to follow its constitution and bylaws because the election was conducted using a paper ballot system. Section 401(e) of the LMRDA requires a union to conduct its officer elections in accordance with its constitution and bylaws. The investigation revealed that Article XI, Section 8, of Local 333's bylaws states that the election shall be held by "machine ballot vote." Since the election vendor selected by the union used a paper ballot system, a violation of the union's bylaws occurred. However, the investigation uncovered no evidence that the use of this system affected the outcome of the election in any way.

Regarding the eleven remaining allegations, the investigation did not disclose any evidence of violations. You alleged that members were also denied the right to vote

when the polling hours were changed from the times the polling place was open in prior years. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of his or her choice. The investigation disclosed that the polls were open from 7:00 a.m. to 6:00 p.m., a period of eleven hours. In earlier elections you alleged that the polling place had been open until 7:00 p.m., one hour longer than during this election. The investigation revealed that union members' schedules were varied enough to permit access to the polling place during the eleven-hour period. Approximately 75 percent of the members voted during the election, which the union considered to be high voter turn-out. Accordingly, there was no violation.

You alleged that you were treated differently from other candidates on two occasions. First, you alleged that you were harassed by a Maryland Port Authority police officer when you were campaigning outside the polling site building at the DMT. Section 401(c) specifies the campaign safeguards that a union must provide. The safeguards required by Section 401(c) encompass a general rule of fairness, which includes equal candidate treatment. 29 C.F.R. § 452.110(a). The investigation disclosed that the incident you complained about was captured on the officer's dash-cam video and showed that the interaction was non-confrontational and that it concluded when the officer told you that you were free to stay on the premises to campaign. Accordingly, there was no violation.

You also alleged that the trustee collaborated with management by adding a new clause to the collective bargaining agreement that required dispatchers running for union office to give up their positions, thus discouraging them from running for office. The investigation revealed that the collective bargaining agreement reached between the trustee and management did not contain such a clause providing for disparate treatment of candidates. Accordingly, there was no violation.

You alleged that you arrived at the polling place at 6:45 a.m. and asked verbally to inspect the voter eligibility list, which you also referred to as the member eligibility list, but this request was denied. Among the particular safeguards required by section 401(c) is the candidates' right to inspect the union's membership list once within 30 days prior to the election. A union's membership list is different from a voter eligibility list, which the LMRDA does not require to be made available for candidate inspection. The investigation revealed that the trustee treated your request as a request to inspect the membership list, but asserted that your request was too late because he only had one copy of the voter eligibility list at the polling place and that allowing you to inspect it at that time would have held up the opening of the polling place. Even assuming that you had requested to view the union's membership list, the union's position was reasonable because you were afforded 30 days to inspect and, therefore, could have made your request earlier than 15 minutes prior to the start of voting. There was no violation.

You made three allegations regarding the union's failure to conduct its officer election in accordance with its constitution and bylaws. First, you alleged that Local 333's bylaws were violated when an outside election management group was hired to conduct the election, instead of judges appointed with approval of the membership. The investigation revealed that Local 333's bylaws, Article XI, Section 5, state that "The President shall ... appoint ten (10) members to act as judges and supervisors of the election with the approval of the body present." The investigation further disclosed that the union was under a trusteeship at the time of the nominations, and under Article XXI, Section 2, of the ILA constitution, the international president is authorized, with the approval of the executive council, to suspend the officers of a local union and appoint a trustee to take charge and control of the affairs of that local. Moreover, under Section 4, "The trustee shall take all steps necessary and proper to carry out the purposes of the trusteeship." One of the stated purposes for establishing this trusteeship was for the purpose of restoring democratic procedures to Local 333. Accordingly, the constitution gave the trustee discretion to hire a neutral party to conduct the election in order to promote fairness and restore democratic procedures. Accordingly, there was no violation.

Second, you alleged that more than 100 members were improperly admitted into membership by the trustee in violation of Local 333's bylaws. The investigation disclosed that at the time the trusteeship was imposed, Article V, Section 3, of Local 333's bylaws required new members to be approved by a majority vote of the membership. The investigation further disclosed that potential members were required to have their qualifications confirmed by the employer, and they were required to pass "Powered Industrial Truck" training conducted by the Steamship Trade Association prior to admission to membership. Training was limited to ten participants each month. Accordingly, using a list of individuals whose membership in the local had been revoked, in part because they had not completed the employer-mandated training, the trustee selected over 100 of the most qualified, ten per month, to submit to the employer association, which then approved them for the required training. Since Local 333 was under trusteeship, the trustee acted on behalf of the membership to approve the admission of new members. The trustee's actions were consistent with the international's efforts to restore democracy and autonomy to the local. Accordingly, there was no violation.

Third, you alleged that Local 333 failed to select an election qualifying committee as required by Article XI, Section 5 of Local 333's bylaws. Article XI, Section 5, of the bylaws provide, once nominations have occurred, "After the President has resumed the chair, a qualifying committee shall be appointed to ascertain whether the nominees are members in good standing with this Local Union and are eligible for nomination to office." The investigation determined that the trustee, acting for the union president, did appoint two members to a qualifying committee, and the two members met after

the nominations to determine whether the members nominated for office were qualified to run. Accordingly, there was no violation.

You made four allegations that implicate section 401(g) of the LMRDA, which prohibits the use of union or employer moneys to promote the candidacy of any candidate in an LMRDA officer election. First, you alleged that management representatives used the new member training sessions that were sponsored by the Steamship Trade Association and by a non-profit organization as opportunities to express negative views about you so that the new members would not support your candidacy in the election. The investigation found no evidence to substantiate your broad, non-specific claims that management used these sessions to campaign against your candidacy. Accordingly, there was no violation.

Second, you alleged that candidates used union and employer resources to campaign, specifically that [REDACTED] and [REDACTED] were allowed to campaign at the union office and campaigned on recognized union social media websites during work time. The investigation found no evidence that union or employer resources (including employer paid time) were used to campaign. The investigation did not reveal evidence of either candidate campaigning at the union office. The investigation did reveal that both candidates were members of a then-existing Facebook group called the [REDACTED]. The evidence indicated that this Facebook group, composed of approximately 400 Local 333 members, was not an official Local 333 site and that no union funds or time were used to establish or administer the site. OLMS reviewed the postings made to the [REDACTED] group from May 1, 2016, until the election. This review revealed numerous posts promoting or denouncing candidates that were posted on weekdays between 8 a.m. and 5 p.m. when the majority of Local 333 members worked. However, only a few of the postings were more than a few sentences long, and the evidence indicated that members were permitted to and did use their break time and lunch time to review social media sites. Accordingly, there was no violation.

Third, you alleged that a candidate, Scott Cowan, duplicated campaign literature free of charge at an employer establishment while other candidates were not provided with this benefit. The investigation did not disclose any evidence to support this claim. Incumbent President Scott Cowan stated that he paid a printing company to duplicate his campaign literature and provided supporting documentation, including an invoice from the printing company and a bank statement indicating that the amount of the invoice was paid from Cowan's personal account. Accordingly, there was no violation.

Fourth, you alleged that candidates used facilities belonging to other unions to campaign. You did not furnish nor did the investigation find any evidence to support this allegation. In his interview with the OLMS investigator, a union official from ILA Local 953 stated that no one from Local 333 had used its resources for campaign

purposes and that the local had had no involvement or interest in the Local 333 officer election. Accordingly, there was no violation.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. As to allegations in your complaint to the Department not addressed in this Statement of Reasons, these issues are not considered in scope because the allegations, even if true, would not have constituted violations of Title IV of the LMRDA. Accordingly, I have closed the file regarding this matter.

Sincerely,

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