U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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May 25, 2018

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your complaint to the Department of Labor, received February 12, 2018, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the October 24, 2017 election of union officers held by Local G-555 (local), Utility Workers Union of America (International).

The Department of Labor (Department) conducted an investigation regarding your allegations. As a result of the investigation, the Department concluded that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the local's failure to provide absentee ballots denied many members the right to vote. Unions are required to provide absentee ballots only where the union knows in advance that a substantial number of a particular segment of the members, *e.g.*, those assigned to work outside the union's geographic area, will not be able to exercise their right to vote in person. 29 C.F.R. § 452.95. The investigation revealed no such segment of the membership of Local G-555. The investigation disclosed that the local made arrangements with the employer to hold its elections at employer worksites and arranged for members to vote at their worksites during working hours. The investigation further found that the members who worked in the field (*i.e.*, away from their home work station) were permitted to vote in locations other than their home work site. The investigation disclosed that approximately 70 percent of the local's members voted, a twenty percent increase from the prior election. Further, the two members you identified as not having voted because of a lack of absentee ballots did, in fact, vote. There was no evidence that substantial numbers of members were not able to vote. There was no violation.

In a related allegation, you asserted that closing the polling sites at 4:30 p.m. provided members with less than one hour to vote before or after their shifts. As noted above, members were permitted to vote at their worksites, during working hours. Therefore, shift hours did not disadvantage voters in this election. There was no violation.

You made several allegations concerning the improper use of union and employer funds. Specifically, you alleged that the local's July 2017 publication of the union newsletter *The Union Eye* , after an 18-month hiatus, was issued within a month of the October 24, 2017 election and contained articles favorable to the incumbents. Department of Labor regulations, at 29 C.F.R. 452.75, provide that to attack a candidate or urge the election of a candidate in a union financed publication is a violation of LMRDA section 401(g), 29 U.S.C. 481(g). That section provides in relevant part that no monies received by any labor organization by way of dues, assessment, or similar levy shall be contributed or applied to promote the candidacy of any person in an election subject to Title IV.

Consistent with applicable case law the timing, tone and content of a publication is examined to determine whether the publication may be deemed campaign material. The investigation disclosed that the July 2017 issue of *The Union Eye* was posted on the local's website in August and mailed to members in September 2017, a month before the October 24, 2017 election. Although the timing of the publication was shortly before the election, the investigation disclosed that the content in that issue was of general interest to members. The tone of the newsletter was neutral with respect to the election. No article in this publication promoted any member's candidacy. There was no violation.

You further alleged that incumbents gained exclusive access to campaign to retirees attending a financial seminar on union property and that the seminar speaker was a personal friend of an executive board member. The investigation disclosed that no campaigning was conducted during the seminar. The investigation further found that the seminar speaker has no personal relationship with any member of the local executive board. Access to seminar participants was not exclusive. No election rule prohibited candidates from campaigning to any attendee before or after the conclusion of the seminar. There was no violation.

You also alleged that documents posted on union bulletin boards and emailed to members of the union's Executive Committee, identifying you by name, constituted an improper use of union funds promoting local president Hall's candidacy. The investigation disclosed that you represented to International Representative [redacted] that local president Hall had committed an ethics violation. On September 6, 2017, Hall emailed International Representative [redacted] (copying International President Langford on the email), seeking clarification of the specific charge against him, inquiring as to who made the charge, and asking whether he was under investigation. By letter dated September 21, 2017, Langford responded to Hall's email, informing him of the charge made against him, identifying you as having made the charge, and dismissing the charge because there "is no evidence that you have engaged

in wrongdoing and no investigation is being conducted by the [International]." These two documents were posted on the union's bulletin board(s) by an unknown person or persons and emailed to the Executive Committee by local executive vice president [redacted].

The posting and emailing of these documents did not violate section 401(g), as these were not campaign statements. Rather, the email and the International President's letter were a reasonable response concerning internal union business that was of vital interest to the members. It was appropriate for the union to provide information concerning this issue, without regard to whether it arose at the time of the election campaign. The documents were narrowly tailored to the matter raised and did not constitute campaigning. There was no violation.

You next alleged that incumbent vice president [redacted] used either company or union telephones to call members of the Engineering Department during working hours, informing those members that a strike would be called resulting in their bankruptcy if they voted for your slate. You did not identify any members who received these calls, and interviews conducted during the Department's investigation disclosed evidence that no calls of this nature were made. There was no violation.

You further alleged that the local president deliberately timed a union representative training session to coincide with the upcoming election in order to campaign to those representatives. The investigation disclosed that the training program concluded during the election period. The investigation further found that no campaigning was witnessed during the training sessions. Finally, nothing prohibited you from meeting with representatives before and after the training sessions. There was no violation.

You also alleged that your slate lost six days of campaigning when an election committee member emailed you incorrect information that was transmitted to your slate only. Section 401(c) prohibits disparate treatment of candidates and requires unions to provide a reasonable opportunity to campaign; what constitutes reasonableness depends on the circumstances, including the amount of time allotted to campaigning prior to the election, the number of members and the geographic area in which the union operates. 29 C.F.R. § 452.79. The investigation disclosed that an election committee member, on behalf of the election committee chair (ECC), by email dated Saturday, September 16, 2017, responded to your slate's email inquiry regarding the local's policy on campaigning on the employer's premises. This election committee member, who was subsequently relieved of her duties, stated that campaigning on the employer's premises was prohibited, but that candidates could have someone from the local shop place campaign literature in common areas of the employer's premises. Upon discovering this misstatement, the election committee chair (ECC) informed your slate of the correct policy, that candidates and supporters could enter the employer's premises to place campaign materials in non-work areas, during their non-working hours. There is a conflict in statements regarding the date the ECC advised your slate of the correct policy, with the ECC stating that he informed your slate two days later, on

Monday, September 18, 2017. However, even if your statement that the error was not corrected until September 22 is credited, there would be no violation. There was no evidence of disparate treatment and your slate had over a month (September 22 to October 24, 2017) to campaign after this incident. Further, nothing in the erroneous email stopped you from campaigning outside the premises of the eight work centers that comprise this local, or from having a supporter place your campaign materials in non-work areas on the employer's premises. There was no violation.

In a related allegation, you challenged the presence of the dismissed election committee member in the polling area where she worked as a poll worker; you alleged that she should not have been allowed to enter the polling area due to her dismissal. The investigation found no evidence that would prohibit the former election committee member from serving as a poll worker, who would as a matter of course have access to the polling area. Further, you did not provide any evidence to support your allegation. There was no violation.

You next alleged that permitting the incumbents to include retiree campaign endorsements in their campaign materials violated Article IV, Section 6 of the local bylaws. Article IV, section 6 of Local G-555 Bylaws (bylaws) provides that "no candidate, including a prospective candidate may solicit or accept financial support or any direct or indirect support of any kind from a non-member of the National Union." The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3. The International's longstanding interpretation of the bylaws provision is that the rule was intended to prohibit non-members' financial support of a candidate – not to prohibit their names from being included as an endorsement on campaign literature. The investigation found that the union has allowed retiree endorsements on campaign literature for over 15 years. Furthermore, in 2014, a member of your slate included retiree endorsements on his campaign literature. The International's interpretation of this provision has therefore been consistently applied by this local and is accepted as reasonable. There was no violation.

You alleged that in violation of election rules, two non-members, retirees [redacted] and [redacted], were permitted in the polling area, which was on employer property. You allege that the two men had on t-shirts promoting the local president, in further violation of the election rules. The investigation disclosed that there was no election rule prohibiting non-members (or former members) from being on company property. There was no violation.

Section 8 of the election rules prohibits any campaigning, including the wearing of campaign apparel, in the polling place or anywhere inside the building on the employer's property, and provides that the remedy for a violation of this election rule is to remove the campaign apparel prior to voting. The investigation disclosed that [redacted], who was wearing a campaign t-shirt, covered it with a jacket prior to entering the building to use the restroom. He briefly stopped in the polling area to greet the poll

workers in the polling area where no one was voting at the time. [redacted] was not wearing campaigning apparel. He entered the polling area before the polls opened to greet the poll workers, and left shortly thereafter. Neither individual campaigned in the polling area. There was no violation.

You further alleged that the local permitted some members to vote outside of their home worksites but not others, which may have prevented some members from voting. The investigation found that members employed at the Engineering Department were permitted to vote at any polling station by challenged ballot, since they typically work away from their home workstations and stay in the field without reporting daily to their home worksite. In contrast, other members begin and end their shifts at their home workstations. There were 36 challenged ballots cast by members from the Engineering Department; none of those ballots was included in the tally, because the lowest margin of victory was 85 votes for executive vice president. There was no violation.

You next alleged that some members did not receive campaign mailings from either slate until after the conclusion of the October 24, 2017 election, which you believed effectively constituted the denial of a reasonable request to distribute your campaign literature. Section 401(c) imposes a duty on unions to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. 29 C.F.R. § 452.67. The investigation found that the local mailed campaign literature for both slates on the same day, approximately one week prior to the election. A few of both slates' campaign mailings were received after the election. However, most of both slates' campaign literature was received prior to the election, which showed that the local honored your request for the mailing of your campaign literature. With respect to your campaign literature received after the election, you were not disadvantaged because both slates were similarly affected. There was no violation.

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

Sincerely,

[redacted]

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Chief, Division of Enforcement

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