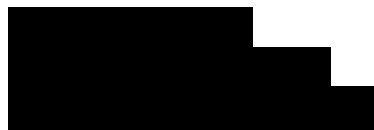




January 7, 2019



Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on March 16, 2018, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the regularly scheduled election of union officers conducted by the Communications Workers of America, Local 7777, on November 9, 2017.

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 LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You raised four allegations implicating the adequate safeguards provision provided in section 401(c) of the LMRDA. This provision requires a union to provide adequate safeguards to ensure a fair election. Thus, a union's election of officers must be circumscribed by a general rule of fairness. 29 C.F.R. § 452.110.

First, you alleged that the election committee received extra ballots from the printer but failed to account for and adequately secure these ballots. The investigation showed that, after the ballots were mailed to members, the printing company that Local 7777 hired to print and mail the election ballots provided a packing list to the union showing that the union received 1,700 ballots from the printer, that 1,651 ballots were mailed to members, and that the printer gave the union 49 ballots that were left over after the ballot mailing ($1,700 - 1,651 = 49$). A hand-written note on the packing list indicated that the union received 55 leftover ballots from the printer, rather than 49 such ballots. The union was not able to resolve this discrepancy because it never determined how many leftover ballots it received from the printer.

The investigation disclosed that the union used leftover ballots to send replacement ballots to members who requested them. The union also used leftover ballots to mail new ballot packages to members whose ballots had been returned as undeliverable. The union did not keep a log or other record showing how many leftover ballots were

received from the printer, used in the election, or remained on hand after the election. Therefore, the union was not able to reconcile the leftover ballots, in violation of the adequate safeguards provision in section 401(c) of the LMRDA.

However, there is no evidence that this violation may have affected the outcome of the election. The Department's review of the election records showed that 40 unused ballots were among the records. The election records also indicated that an additional nine ballots were used to send replacement ballots to members or to send new ballot packages to members whose ballots had been returned as undeliverable. Thus, the union was able to account for 49 ballots, which appear to have been left over after the initial ballot mailing. These 49 extra ballots are consistent with the number of leftover ballots printed on the packing list that the printer provided to the union. In any event, there was no evidence of ballot fraud or other election impropriety. On these facts, there was no violation of the LMRDA that may have affected the outcome of the election.

Next, you alleged that election committee members failed to adequately secure the ballots after the election committee retrieved the ballots from the post office and transported them to the union hall for counting. The investigation disclosed that you accompanied an observer and two election committee members to the post office to retrieve the ballots for counting. Before leaving the post office, one of the committee members placed the ballots in a bag, placed the bag in a vehicle, and then drove the vehicle to the union hall so that the ballots could be tallied and counted. While the ballots were being transported to the union hall, the other committee member sat in the front passenger seat of the vehicle and held the bag containing the ballots on her lap for the duration of the trip from the post office to the union hall. You and another observer sat in the back seat of that vehicle while the ballots were being transported to the union hall. You took issue with the fact that the committee member held the bag containing the ballots in her lap during the entire trip from the post office to the union hall. However, during the investigation you stated that you did not witness the committee member engage in any suspicious or questionable activity while she was holding the bag on her lap. Further, the Department's review of the voted ballots did not disclose any evidence of ballot tampering or other ballot impropriety. The LMRDA was not violated.

In connection with the allegation that the election committee members failed to adequately secure the ballots after the ballots were retrieved from the post office for counting, the investigation disclosed that, after the committee members arrived at the union hall, they removed the bag containing the ballots from the vehicle and then left the bag unattended in a locked office located at the union hall. All of the election committee members had keys to the locked office. Prior to the ballot count, some of the committee members went into that office to retrieve their personal items. During these

incidents, observers were not permitted inside the office and they were not able to see the bag containing the voted ballots. Therefore, the adequate safeguards provision of section 401(c) of the LMRDA was violated when election committee members left the voted ballots unattended in a locked office to which these members had keys, and observers could not see the ballots while the ballots were locked inside the office. However, the investigation did not disclose any evidence of ballot fraud or other ballot impropriety. There was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the election committee's initial report of the vote count did not reconcile with the final number of votes cast in the election. The investigation disclosed that the election committee's initial ballot count showed that the election committee retrieved 306 voted ballots from the post office for counting. After the election committee removed all of the voted ballots from their sealed returned ballot envelopes, the election committee discovered that there were 306 empty returned ballot envelopes and that one voter returned his voted ballot in a business reply envelope, for a total of 307 voted ballots and empty return ballot envelopes. After the election committee corrected this error, the election committee discovered that its records incorrectly indicated that the names of 305 members were marked off the voter eligibility list as having voted. The election committee's second review of the voter eligibility list revealed that, instead, the names of 307 voters had been marked off the list. In any event, the Department's review of the election records showed 307 empty returned ballot envelopes and 307 voted ballots among the records. This review also disclosed that the names of 307 voters had been marked off the voter eligibility list as having voted in the election. There was no violation of the LMRDA.

You also alleged that the area where observers were required to stand during the ballot count and vote tally prevented observers from adequately observing these processes. As a result, you took issue with the procedures that the election committee used to conduct the ballot count and vote tally. The investigation disclosed that observers were required to stand 15 to 25 feet from the area where ballots were being tallied, counted, and recorded, and were unable to adequately observe the ballot count and vote tally. The adequate safeguards provision of section 401(c) of the LMRDA guarantees the right of an observer to observe the counting of the ballots. This right encompasses every phase and level of the counting and tallying processes, including the counting and tallying of the ballots, and the totaling, recording and reporting of the tally sheets. In addition, an observer must be positioned so that the observer may note the names of those voting so that candidates may be able to ascertain whether unauthorized persons voted in the election. Thus, the adequate safeguards provision of section 401(c) of the LMRDA was violated in that observers were prevented from adequately observing the counting and tallying processes. However, the Department's review of the voted ballots showed no evidence of ballot fraud or other election improprieties. Further, the

results of the Department's recount of the votes and the union's tally of the votes were exactly the same. There was no violation of the LMRDA that may have affected the outcome of the election.

You further alleged that you were prevented from having an observer at an election committee meeting. The investigation disclosed that the CWA constitution does not require that candidates be permitted to have observers at election committee meetings. Moreover, the LMRDA does not contain any such requirement. Further, the investigation disclosed that no other candidates or observers attended the meeting. There was no violation of the CWA constitution or the LMRDA.

Finally, you alleged that during the ballot tally and count the election committee removed voted ballots from the original ballot box and placed them in a second ballot box after it became apparent that the original ballot box could not accommodate all of the voted ballots. The investigation disclosed that, after the first ballot box became full with voted ballots, the election committee located a clear plastic container in the union hall and placed the remaining ballots in that container. Observers stated during the investigation that they were able to view the container before any ballots were placed in it and that the container was empty at the time of such viewing. There was no violation of the LMRDA.

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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