



March 15, 2019



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint, received by the United States Department of Labor (Department) on May 15, 2018. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the May 31, 2018 officer election conducted by the Laborers' International Union of North America Local 872 (Local 872).

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there were no violations of the LMRDA that may have affected the outcome of the election.

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. 29 U.S.C. § 481(e). To be a candidate in the election, Article V, Section 4 of the Uniform Local Union Constitution (ULUC) requires members be working at the calling during the entire year immediately prior to nomination. "Working at the calling" includes, among other things, employment in a full-time official capacity for the local and periods of unemployment where the member is available for and continuously and actively seeking employment at the calling in full compliance with the rules of the union's referral service or hiring hall. ULUC Art. V, § 4. Local 872's hiring hall rules specify that members must confirm that they remain registered on the list by contacting the hiring hall within the first three business days of each three month period; this process is known as "roll call." Local 872 Job Referral Rules, Rule 2(E) (Aug. 5, 2002). Failure to properly contact the hiring hall at the beginning of each month will result in the member's name being removed from the list. Local 872 Job Referral Rules, Rule 2(F).

Additionally, the Department's regulations require a union to give timely notice reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. See 29 C.F.R. § 452.56.

You alleged that you were improperly disqualified as a candidate for the office of Business Manager/Secretary Treasurer because you were not working at the calling during the entire year immediately prior to your nomination. The Department's investigation revealed that you were properly disqualified for missing roll call during the year immediately preceding nominations, resulting in your name being removed from the out-of-work list; thus, you were not "working at the calling" as defined by Local 872's hiring hall rules. More specifically, you missed roll call in June 2017, which resulted in your name being removed from the out-of-work list. You also alleged that members [REDACTED] should be ineligible to hold office as they do not meet the "working at the calling" requirement. However, the Department's investigation confirmed that members [REDACTED] are both full-time Local 872 employees. Accordingly, their official capacities satisfy the "working at the calling" requirement. ULUC Art. V, § 4(b). As such, these allegations do not constitute a violation of the LMRDA.

You next alleged that the election notice did not follow the Local 872 constitution. However, during the Department's investigation, you explained that your protest contained a misstatement, and you clarified that you were referring to the nomination notice. You alleged that the nomination notice failed to list the election date. Neither the LMRDA, the Department's regulations, nor the ULUC require the nomination notice to include the date of the election. Rather, the nomination notice must inform members of the offices to be filled in the election and the time, place, and form for submitting nominations. The nomination notice mailed to members on March 31, 2018 satisfied these requirements. Therefore, this allegation does not constitute a violation of the LMRDA.

You also alleged that the incumbent candidates were improperly prequalified to run as candidates in the officer election at an unannounced meeting that occurred before the nomination meeting. Section 401(c) of the LMRDA requires that a union provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c). Although the union's actions may constitute disparate candidate treatment in violation of Section 401(c), the prequalification of the incumbent candidates did not have an effect on the outcome of the election as the incumbent candidates were properly determined to be qualified, and you and other challengers were able to present your candidacies for evaluation before the Judges of Election following the nomination meeting. Additionally, the prequalified incumbent candidates did not receive an advantage because the other candidates were not prevented from campaigning before the evaluation of their candidacy before the Judges of Election.

Lastly, you alleged that [REDACTED] should not have been permitted to serve as a Judge of Election because he is retired. Article VI, Section 1(c) of the ULUC specifies that Judges of Election may be retired; as such, this allegation does not constitute a violation of the LMRDA.

For the reasons set forth above, the Department has concluded that there were no violations of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



Brian A. Pifer  
Chief, Division of Enforcement

cc: Terry O'Sullivan, General President  
Laborers International Union of North America, AFLCIO  
905 16<sup>th</sup> Street, NW  
Washington, DC 20006

David McCune, President  
LIUNA Local 872  
2345 Red Rock Street  
Las Vegas, NV 89142

Beverly Dankowitz, Associate Solicitor  
Civil Rights and Labor-Management Division