



May 3, 2019

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (Department) on February 8, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the December 4, 2018 election of officers that was conducted by the Pipefitters, Steamfitters, Refrigeration, and Air Conditioning Service Local 636 (Pipefitters Local 636) of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada (UA).

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded with respect to each of your specific allegations that no violation occurred which may have affected the outcome of the election.

I. Background

The Department's investigation established the following facts:

Assistant Business Manager/Secretary-Treasurer [REDACTED] ran unopposed for the business manager position in the December 4, 2018 election. He also ran for 1 of the 23 Michigan Pipe Trades delegate positions. Based on the December 4th ballot tally, [REDACTED] did not win any of the 23 delegate positions. During the investigation, [REDACTED] stated that he was "shocked" by this result, but he did not ask for a recount or file a protest on election night because "it had already been a very long day and everyone was exhausted." In accordance with past practice, the election committee gave [REDACTED] the sealed election records at the end of the tally because he was the secretary-treasurer.

[REDACTED] believed there were discrepancies in the ballot count because he received far fewer votes for delegate than he did for business manager. Early in the morning on December 5, 2018, [REDACTED] unsealed the ballots in his office alone. He

believed he had the authority to confirm vote totals as business manager-elect, though ██████ conceded he was wrong to open the box. After “informally” checking 20 to 30 ballots to see if he had received votes, ██████ asked the local’s bookkeeper, ██████, to assist with a more comprehensive recount. They separated all ballots that ██████ had received a vote for delegate and discovered that the total was greater than what was reported on election night. ██████ attested under penalty of perjury that he “did not tamper with, destroy, change, or alter in any way the election records when I inappropriately unsealed the records.”

██████ reported the vote count discrepancy to the owner of the company that administered the election (Unimatic), to UA International Representative ██████, and to Election Committee Chair ██████. ██████ told ██████ that he “should not have” opened the ballot box. Unimatic arrived at the union office on December 5, 2018, and conducted several machine recounts, all of which showed varying results. The election committee conducted hand recounts on December 7, 2018 without the candidates being present. The results differed from the machine counts.

Unimatic determined that a design flaw in the ballots prevented the machines from properly tallying the results. ██████ and Unimatic owner ██████ held a meeting with the candidates on December 11, 2018 to discuss the election problems. A series of internal protests soon followed.

The UA’s general president assigned ██████ to investigate the election protests. ██████ attempted to contact every complainant and successfully interviewed about 18 of the 20 individuals who filed protests. ██████ also interviewed everyone “who had their hands on the ballots,” including ██████ eight others. After reviewing the evidence, ██████ decided to rerun the election. He cited the following three reasons for his decision: 1) Unimatic’s ballot design caused errors in the vote count; 2) ██████ improperly unsealed the ballots; and 3) the candidates were not notified of subsequent recounts and could not attend or send observers. As these issues only affected contested positions, the rerun ballot did not include uncontested races. Accordingly, ██████ won the business manager position by acclamation.

II. Standard of Review

The standard applicable to the Secretary in deciding whether a new election is required, *i.e.*, the finding of a violation that may have affected the outcome of the election, is not applicable to a union’s decision to conduct a new election. The LMRDA envisions providing unions an opportunity to correct election problems and deficiencies before complaints are filed with the Secretary of Labor, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a degree of deference to decisions on internal union election protests providing for

the conduct of a new election. The Department will not seek to reverse a union's remedial decision to hold a new election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable.

III. Discussion of Allegations

You allege that Pipefitters Local 636 violated section 401(c) of the LMRDA by assigning ██████ to investigate the election because he was friends with ██████. Section 401(c) requires that unions provide adequate safeguards to ensure a fair election (29 U.S.C. § 481(c)). It also prohibits disparate treatment of candidates. You assert that ██████ friendship with ██████ created a conflict of interest that tainted the investigation. In particular, you object to the fact that ██████ 1) left the uncontested business manager race off the ballot during the rerun election allowing ██████ to win by acclamation; 2) did not remove ██████ from office; and 3) did not file disciplinary charges against ██████. The Department's investigation did not substantiate the allegation that ██████ investigation was biased. The UA's general president explained that ██████ was the logical choice to conduct the investigation because he was the international representative for the state of Michigan. ██████ investigation was thorough—he interviewed approximately 28 individuals. Many witnesses told the Department that ██████ was professional throughout the investigation. Crucially, ██████ identified deficiencies with the election and took proactive steps to remedy them by ordering a new election. ██████ investigation therefore provided adequate safeguards.

None of your specific claims of bias amount to a violation of the LMRDA. The business manager position was not included in the rerun election because ██████ was the only candidate, not because ██████ was biased in favor of ██████. You did not contest ██████ nomination for business manager and the investigation did not find any misconduct related to nominations. Therefore, Pipefitters Local 636 had no basis to treat the business manager race any differently than the other uncontested positions. Accordingly, it was not unreasonable for the local to omit the business manager position from the rerun election ballot and allow ██████ to win office by acclamation. Furthermore, while you argue that ██████ should be removed from office or subject to internal discipline, those remedies are outside the scope of the Department's jurisdiction under the LMRDA. Accordingly, no violation occurred that affected the outcome of the election.

You also allege that ██████ unsealing of the ballots violated sections 401(c) and 401(e) of the LMRDA. As previously discussed, section 401(c) requires that a union provide adequate safeguards to ensure a fair election. Section 401(e) establishes that an election "shall be conducted in accordance with the constitution and bylaws of" the union. 29 U.S.C. § 481(e). You assert that Gilligan

violated the constitution because he failed to follow the protest procedures and instead conducted his own recount. The investigation revealed that section 125(a) of the UA constitution establishes protocols for filing election protests. [REDACTED] did not act in accordance with the constitution when he opted to open the ballot box himself. Accordingly, the Department concluded that [REDACTED] violated section 401(e). Furthermore, while the Department did not find evidence that [REDACTED] altered any ballots, he nevertheless undermined the integrity of the election results when he opened the ballots. The Department also identified other factors that call into question the adequacy of the union's safeguards: Unimatic designed a flawed ballot that could not be accurately counted by machine; the local conducted a hand recount, but those results differed from the Department's own recount.

The Department concluded on these facts that Pipefitters Local 636 violated section 401(c) of the LMRDA by failing to provide adequate safeguards to ensure a fair election. However, despite finding violations of sections 401(c) and 401(e), the Department also concluded that the rerun election remedied all deficiencies. The union's decision to rerun the election was not made in bad faith, did not violate the LMRDA, and was not inconsistent with principles of union democracy.

Accordingly, we are closing our file on this matter.

Sincerely,

[REDACTED]

Brian A. Pifer
Chief, Division of Enforcement

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