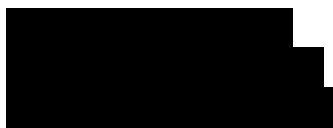




October 23, 2019



Dear [REDACTED]

This Statement of Reasons is in response to your August 7, 2018 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the June 5, 2018 election of officers of the Operative Plasterers' and Cement Masons' International Association (OPCMIA), Local 528.

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

Section 401(e) of the LMRDA requires that the election be conducted in accordance with the local's constitution and bylaws. You alleged that the union failed to follow its constitution and bylaws when: (1) the salaries of each office to be filled were not announced at the nominations meeting; (2) the Local Executive Board failed to properly decide whether to elect or appoint the Election Committee; and (3) the Financial Secretary did not have a list of eligible voters prepared ten days prior to the election.

As to your first allegation, Article 7, Section A of the constitution and bylaws states:

"At the nomination meeting and prior to nominations, the salaries of each office to be filled will be announced in accordance with Article 11[(M)] of this Constitution . . . and noted in the Local Union meeting minutes."

The Department's investigation determined that the salaries for officer positions were not announced or discussed prior to or during the nominations meeting. However, you failed to explain how this violation may have affected the outcome of the election, and the Department found no evidence that this affected the outcome of the election. Thus, this allegation constitutes a violation of the LMRDA, but did not affect the outcome of the election.

As to your second allegation, Article 7, Section B of the constitution and bylaws states:

“At the nomination meeting, but prior to actual nominations, the President shall appoint or cause to be elected an Election Committee of not less than three members of the Local Union in good standing to conduct the election . . . Prior to the nomination meeting, the Local Executive Board shall determine if the Local Election Committee is to be elected or appointed by the President . . .”

The Department’s investigation determined that the nomination meeting was suspended to allow the President to appoint three members to serve on the Election Committee. The Department did not find any evidence that prior to this nomination meeting the Local Executive Board determined whether the Election Committee would be elected or appointed. Although the union’s actions constitute a violation of the LMRDA, you conceded that this violation did not have any effect on the nominations or election, and the Department’s investigation did not reveal evidence that this violation had any effect on the nominations or election.

As to your third allegation that the Financial Secretary did not prepare a list of eligible voters ten days prior to the election, in violation of Article 8, Section B of the constitution and bylaws, the Department’s investigation revealed that a list of eligible voters was in fact printed on May 17, 2018. This list was updated daily and available at any time prior to the election. Neither the LMRDA nor the union’s constitution and bylaws requires that the union provide a copy of the eligible voters list to candidates. Further, there was no evidence that any candidate in this election was provided with a copy of this list. As such, this allegation does not constitute a violation of the LMRDA.

Section 401(c) of the LMRDA requires unions to comply with all reasonable requests of any candidate to distribute campaign literature and prohibits unions from discriminating in favor of or against any candidate with respect to the distribution of campaign literature. You alleged that the union engaged in disparate candidate treatment when it purposefully delayed the mailing of your campaign literature and did not list the nominees for all positions in the May 22, 2018 newsletter even though Mr. Eric Coffelt’s name appeared below the “Business Manager’s Report.”

Regarding the distribution of your campaign literature, during the Department’s investigation, Local 528’s Office Manager, [REDACTED], explained why your campaign literature was mailed in two different batches. After you had prepared the envelopes for mailing, [REDACTED] ran the envelopes through the postage machine but was only able to complete about half of the envelopes when the postal service arrived to pick up the mail. The postal service picked up the half that [REDACTED] had completed, and [REDACTED] completed the second half about forty minutes later. The second half of

your envelopes were then immediately taken to the post office. The Department's investigation determined that all of your campaign literature was mailed on May 30, 2018, and there was no evidence that any members did not receive your literature. Thus, this allegation does not constitute a violation of the LMRDA.

As to your allegation regarding the listing of nominees in the newsletter, there is no constitutional requirement to include this information in the newsletter preceding the election. The Department's investigation revealed that there was no intentional decision to not include candidates' names in the May 22, 2018 newsletter. As discussed below, the inclusion of [REDACTED] name in the newsletter was incidental to his service as Business Manager, and the report in the newsletter that contains [REDACTED] name does not mention the upcoming officer election. As such, this allegation does not constitute a violation of the LMRDA.

Section 401(g) of the LMRDA provides that no resources of a labor organization are to be contributed or applied to promote the candidacy of any person in an election. You alleged that the union used union funds to promote the candidacy of incumbent Business Manager, [REDACTED], when it included a "Business Manager's Report" in the May 22, 2018 newsletter, even though no such section had been in the newsletter before.

In assessing whether the use of union resources constitutes campaigning, the Department evaluates the timing, tone, and content of the particular activity. Here, the timing of the "Business Manager's Report" suggests that it was related to the campaign because it appeared in the newsletter immediately preceding the election. Further, no such report had been included in any previous newsletters. Additionally, the report was promotional of the current administration and close in proximity to the election information contained in the newsletter. Relatedly, however, the local's members were voting on the ratification of a recently negotiated contract on June 5, 2018 (the same day as the officer election); thus, the local's officers thought the achievements included in the "Business Manager's Report" would encourage members to ratify the contract. The Department's investigation revealed that similar statistics related to increases in membership, wage rates, and benefits have been reported in previous newsletters, but these articles were not titled "Business Manger's Report." The fact that Local 528 members were voting to ratify a contract on the same day as the officer election provides some explanation for the otherwise suspect timing of this particular article. Notably, the report did not mention the election or disparage or promote any candidates; thus, although the timing of the report suggests it may have been related to the election, the tone and content of the report do not constitute campaigning. As such, this allegation does not constitute a violation of the LMRDA.

For the reasons set forth above, it is concluded that, to the extent a violation occurred, there was no effect on the election. Accordingly, the office has closed the file on this matter.

Sincerely,



Brian A. Pifer
Chief, Division of Enforcement

cc: Daniel Stepano, General President
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