

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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January 29, 2020

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Dear ██████████:

This Statement of Reasons is in response to your complaint filed on May 20, 2019, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of International Brotherhood of Electrical Workers (IBEW) Local 827 (Union), conducted on March 7, 2019.

The 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.

You alleged that union resources were unlawfully used to support a candidate in the election. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in union officer elections. Specifically, you alleged that Unit 6 Chief Steward ██████████ used union funds to campaign because he included his union-paid cell phone number on his campaign flyers and in the February 11, 2019 union newsletter that contained candidate statements, including ██████████. However, the investigation confirmed that four days before the newsletter was issued, ██████████ paid the union for the use of the cell phone line through the campaign and election period until March 12, 2019. The investigation also disclosed that the cell phone number was previously ██████████ personal cell phone number before his term of office as a steward and was also his only phone number. Furthermore, no union policies or rules prohibit officers from using their union-paid cell phones for personal use. Thus, union members were unlikely to view the inclusion of ██████████ cell phone number in campaign literature as a union endorsement for his candidacy. Because no union funds were used to endorse ██████████ candidacy for Business Agent/Executive Board Unit 6, there was no violation of the Act.

You next alleged that the union improperly counted ballots during the tally. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. Thus, a labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. Specifically, you alleged that two torn Unit 6 ballots were improperly counted, and that there were inconsistent results between multiple hand counts and the computer-generated report documenting the receipt of ballots. As to the two challenged ballots that had their unique voter identification barcode portions cut or torn off, the Election Chairman properly counted the ballots because the barcodes on their outer mail envelopes verified the members' eligibility to vote and the voters' intentions were clear from the ballots. As to the varying results of the ballot tallies, the initial computer tally counted 1,397 ballots although an earlier computer-generated report showed that 1,395 eligible ballot packages had been received. A re-scan of outer envelopes revealed that this discrepancy arose because two challenged ballots had mistakenly been placed into the eligible ballots pile. For Unit 6, two hand counts verified the computer tally of 262 Unit 6 ballots, tallying 132 votes in favor of ██████████. When Unit 6 ballots were initially separated from the eligible ballots pile, only 261 Unit 6 ballots were counted instead of the 262 recorded in the computer. However, one challenged Unit 6 ballot was found in another pile and determined to be an eligible vote. The Department confirmed the election tally and results by reviewing the union's election records, including verifying eligible voter names on the returned ballot envelopes against the election service company's list of eligible members that voted. There was no violation of the Act.

You also alleged that the union denied candidates the right to have an observer present at all phases of the count and tally of ballots. Section 401(c) of the LMRDA provides that candidates have the right to an observer present at the polls and at the counting of the ballots. The Department's interpretive regulations at 29 C.F.R. § 452.107 state that the right to have an observer "encompasses every phase and level of the counting and tallying process." Specifically, you alleged that observers were inappropriately restricted to a designated observer area, and that Election Chairman ██████████ removed challenged ballots from the tally room outside the observers' presence where he permitted Senior Administrator ██████████ to handle the ballots. The investigation confirmed that there was no obstruction between the observer area and the tally area, that election monitors' actions were projected onto a viewing screen, and that no observers objected during the tally that they could not see. However, the Election Chairman did remove 16 challenged ballots outside of the observers' view in the tally room when confirming voters' eligibility with Administrator ██████████. The investigation did not disclose any evidence that the return envelopes for any of the 16 challenged ballots were unsealed outside of the tally room or that Administrator ██████████ touched any of those ballots. Thus, to the extent that observers were not present at every stage of the ballot counting while the challenged ballots were outside of the tally room, there was no evidence of election fraud or ballot tampering.

Therefore, no violation of the Act occurred that may have affected the outcome of the election.

You further alleged that the union denied members the right to vote as well as permitted ineligible members to vote. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of their choice. Specifically, you alleged that: a) ballots were improperly excluded from the count because the members were improperly ruled as ineligible to vote even though they had not been suspended from membership, and b) the union improperly allowed a new member who had not paid dues to vote. The Department's investigation, however, confirmed that the excluded ballots were from members who were ineligible to vote due to trial board fines outstanding since 2016. Article XXI, Section 3 of the IBEW International Constitution provides that members past due on any assessments "shall stand suspended." Regarding your allegation that [REDACTED], a new member, was improperly allowed to vote, the investigation confirmed that he was properly permitted to vote because he had completed a Local 827 membership application and dues withholding authorization form. There was no violation of the Act.

You finally alleged that the Union failed to follow its constitution and bylaws regarding its election committee. Section 401(e) requires a union to conduct elections of officers in accordance with the union's constitution and bylaws. Specifically, you alleged that the union violated its constitution and bylaws because the president did not appoint an election committee after the completion of nominations. Article VII, Section 6(d) of the IBEW Local 827 Bylaws states, "After nominations have closed, the President shall appoint an Election Judge and as many Tellers as are required who shall serve as the Election Board" However, you acknowledged that the union had a year-round, "standing" election committee consisting of the same election judge and tellers as the last several years. The investigation disclosed that you also utilized a standing election committee in previous elections when you served as union president. Furthermore, the union's constitution and bylaws do not restrict the length of time that the election judge or tellers may serve on the election committee. To the extent that use of a standing election committee without formal appointment after completion of nominations may be a violation, no violation of the Act occurred that may have affected the outcome of the election.

In sum, as a result of the investigation, the Department has concluded that no violation of the Act occurred that may have affected the outcome of the election in connection with your allegations that were properly filed. Accordingly, I have closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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