



January 10, 2020

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on July 14, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by Local 307, National Postal Mail Handlers Union (NPMHU), on March 23, 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 first alleged that the election judges failed to establish any rules regarding voter eligibility, failed to send ballot packages to a significant number of members because they had missed one or more dues payments, and failed to count the returned ballot of any member who did not appear in good standing on the dues checkoff list. Section 401(e) of the LMRDA provides, in relevant part, that in any covered election, “every member in good standing . . . shall have the right to vote.” 29 U.S.C. § 481(e).

Article III, section 3 of the NPMHU Uniform Local Union Constitution (ULUC) provides that “[a]n individual shall obtain membership in this Local Union by exercising and submitting an application for membership or a dues deduction authorization form, by making at least one full payment of dues, and otherwise meeting the qualifications for membership.” Under article III, section 5 of the ULUC, only active (not retired) members may nominate, vote, or hold office. With regard to dues payments, article VIII, section 3 of the ULUC requires members to pay dues by the last day of every month, but it includes a grace period such that members are not suspended until their dues have not been paid within 90 days of their due date.

The investigation did not substantiate your allegation that Local 307 did not send ballots to members who had missed dues payments. The investigation established that Local 307 mailed ballots to all active members, whether or not they were in good standing.

However, the investigation confirmed that the election judges did not establish or apply the correct voter eligibility rules under the ULUC. The investigation determined that the election judges determined members’ eligibility to vote at the ballot tally using only the pay period 5 dues checkoff list. If a member’s name did not appear on the pay period 5 dues checkoff list, that member’s ballot was not counted. The investigation established that the election judges failed to

check previous pay periods' dues checkoff lists to determine whether the voter had made a dues payment within the grace period allowed by the ULUC. The Department's investigation determined that the election judges thereby voided the ballots of three eligible voters. The investigation further established that the election committee inadvertently failed to count the ballot of a fourth eligible voter. These actions violated the LMRDA.

There was one race whose outcome could have been affected by this violation: the race for Detroit Processing and Distribution Center (GWY) branch president. The original outcome of that race was a 38-38 tie between you and [REDACTED]. The Department's investigation established that two of the four ballots that had been improperly not counted were cast by GWY members in good standing. On October 8, 2019, the union opened and counted the ballots for GWY branch president cast by those two eligible voters (in addition to seven other GWY branch president ballots discussed below). You and the other candidates were notified of the tally and of your right to be present or to have an observer present on your behalf. You and your observer were present for the tally.

The final tally yielded the following total results:

[REDACTED]

Local 307 declared [REDACTED] the winner and swore him in as GWY branch president. Therefore, this violation has been remedied by the union.

Next, you alleged that the election judges spoiled nearly 50 ballots during the ballot tally, even though the voting members were easily identifiable on the dues checkoff list. You alleged that in previous Local 307 officer elections, similarly situated members had their ballots counted. As noted above, section 401(e) of the LMRDA provides that members in good standing have the right to vote. 29 U.S.C. § 481(e).

The investigation established that the mail ballot package included instructions directing members as follows: "Print your last name, the last 4 digits of your Employee Identification Number (EIN), and your facility on the larger envelope addressed to the Judges of Election." The instructions further stated, "If the returned envelope does not contain your name and the last 4 digits of your EIN, your ballot will be VOID."

The investigation determined that the election judges counted the ballots of some but not all members who failed to follow those voting instructions. The election judges voided 24 returned ballots whose ballot return envelopes (BREs) were labeled with members' names and EINs that did not match each other (2 of the 24 were later identified by OLMS as retired and not eligible to vote at the time of the election). The election judges also voided 9 returned ballots in BREs with no names. However, the election judges counted 5 returned ballots in BREs that had no EINs at all but were labeled with members' names and facility names. The election judges also counted 1 returned ballot whose BRE was labeled only with the member's name. The Department's investigation established that the election judges thereby voided the ballots of 22 eligible voters whose identities and eligibility to vote the election judges could have determined using the information provided on the BREs. These actions violated the LMRDA.

However, the only race that could have been affected by this violation was that for GWY branch president. The Department's investigation established that 7 of the 22 improperly voided ballots were cast by GWY members who were eligible voters. As explained above, on October 8, 2019, the union opened and counted the ballots for GWY branch president cast by those 7 eligible voters (in addition to the 2 other GWY branch president ballots discussed above) and declared ██████ the winner. Therefore, this violation has been remedied by the union.

You next alleged that the election judges failed to identify the number of ballots printed and mailed to the membership. You also alleged that the election judges failed to identify the number of returned undeliverable ballots. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c).

The investigation established that 1,003 ballot packages were mailed to the membership. The investigation also established that the election committee maintained a list of the ballot packages that were returned as undeliverable and documented attempts to re-mail them. The ULUC does not contain any specific provision regarding the reporting or posting of the number of ballots printed or mailed to the membership or the reporting or posting of the number of ballots that came back to the union as undeliverable. Article VI, section 4.G of the ULUC requires the official certification of results to "account for the total number of ballots cast and shall state the number of valid votes cast for each candidate." Local 307's official certification of results included this information. There was no violation.

You next alleged that the election judges failed to respond to several members who requested second (replacement) ballots, which you alleged effectively denied those members their right to vote in the officer election. You also alleged that the election judges failed to verify how many replacement ballots were requested, how many were sent out, and by what type of mail. As noted above, section 401(c) requires a union to provide adequate safeguards to ensure a fair election, and section 401(e) provides that all members in good standing have the right to vote. 29 U.S.C. §§ 481(c), (e).

The Department's investigation established that the union posted notices on union bulletin boards instructing members who needed replacement ballots to contact their branch president or steward or to email an election judge ██████ (email addresses were provided in the notice). The Department's investigation determined that the election judges responded to requests for replacement ballots and maintained a replacement ballot log. The ULUC does not require that replacement ballots be sent by a particular type of mail or that they be reported as replacement ballots at the tally. The Department's review of the replacement ballot records showed that 40 members requested and were mailed replacement ballots. Of the 40 who were mailed replacement ballots, 23 returned their voted ballots. All of the individual members you identified were sent replacement ballots. An additional 7 individuals requested ballots but were properly denied because they had not made any dues payments.

During the investigation, ██████, GWY branch president at the time of the election, stated that she had spoken with election judge ██████ about member ██████, who spoiled his ballot and requested a replacement. ██████ stated that she told anyone who orally requested a replacement ballot to send the request by email. The Department's investigation did not uncover any evidence that ██████ followed up by email to request a replacement ballot. The Department's investigation established that ██████ name was not in the replacement ballot log and that he did not receive a replacement ballot. Even if it could be

established that ██████ requested a replacement ballot but was not mailed one, in violation of the LMRDA, that vote could not have affected the outcome of any of the races. Therefore, there was no violation that could have affected the outcome of the election.

Next, you alleged that the election judges failed to allow candidates or their observers the right to oversee the mailing of ballots or ballot pickup from the post office. You alleged that the election judges failed to publish a “calendar of events” so candidates and observers could be present during all phases of the election. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). In addition, section 401(e) requires that elections be conducted in accordance with the union’s constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV. 29 U.S.C. § 481(e).

Article VI, section 2.F of the ULUC requires the election judges to “give reasonable notice to the candidate and his/her observer . . . of the time and place of each phase of the balloting process,” including “the preparation and mailing of the ballots, their receipt from the post office, and the opening and counting of the ballots.” The Department’s investigation established that candidates and their observers were not given reasonable notice of the date, time, and place of the ballot preparation and mailing. This failure to comply with the union’s constitution and bylaws violated the LMRDA. However, this violation could not have affected the outcome of the election. The Department’s investigation established that the election judges did not deny any candidate’s request to observe or have an observer present at any phase of the balloting process. Candidates and their observers were notified of the date, time, and place of the ballot pickup and tally. There was no violation that could have affected the outcome of the election.

You also alleged that during a substantial portion of the local election, only two election judges were utilized. You alleged that this violated the ULUC, which requires that the local union report and utilize three election judges. As noted above, section 401(e) of the LMRDA requires that elections be conducted in accordance with the union’s constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV. 29 U.S.C. § 481(e).

Article VI, section 1.C of the ULUC provides: “For Locals with 1500 members or less, there shall be three Judges of Elections,” who must “be appointed prior to the Nomination Meeting by the Executive Board of this Local Union.” The Department’s investigation established that the executive board approved a list of five to seven election judges on December 8, 2018. ██████ r ██████ were initially selected from that list as the three election judges. McGuffie changed his mind before the election began, and ██████ - ██████ was appointed in his place. On or around February 13, 2019, ██████ resigned as an election judge. The executive board could not agree on a member to replace ██████. ██████ then called ██████, who had been on the original list of election judges approved by the executive board. She had initially declined the appointment because of a vacation conflict, but when ██████ asked her in February, ██████ agreed to serve as an election judge at the tally. ██████ was identified as a replacement by February 21, 2019, and she was present for the ballot tally. There was no violation.

Next, you raised six allegations about the use of employer or union funds in the election. Section 401(g) of the LMRDA prohibits the use of employer or union funds to promote the candidacy of any person in a union officer election. 29 U.S.C. § 481(g).

First, you alleged that incumbent president [REDACTED] unlawfully published an unauthorized membership news publication just months prior to the election. In this publication to the membership, you alleged, [REDACTED] promoted his candidacy and unfairly criticized several potential candidates who openly opposed his candidacy. Specifically, you alleged that [REDACTED] criticized candidate [REDACTED] but praised allies [REDACTED], [REDACTED], and [REDACTED].

Section 401(g) prohibits any showing of preference by a labor organization or its officers that is advanced through the use of union funds to criticize or praise any candidate for union office. 29 U.S.C. § 481(g). Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed publication to members. Courts have consistently held that the tone, content, and timing of union-financed publications determine whether such publication is in fact material promoting the candidacy of a person and thus falling within the section 401(g) prohibition.

The Department's investigation established that Local 307's *Michigan Mail Handler* newsletter is mailed to all Local 307 members and all NPMHU local presidents twice a year. [REDACTED] has been putting out the newsletter for the past eight years, with the exception of the period from March 2016 to March 2018 when he was not in office. In preparation for the summer 2018 issue, [REDACTED] sent an email on June 3, 2018, to the members of the executive board, notifying them that he planned to send a newsletter to the membership in July and asking for content submissions by July 5, 2018. [REDACTED] stated that none of the other executive board members provided content, and therefore he created the content for the entire issue on his own. The newsletter is not required to be approved by the executive board. The investigation determined that [REDACTED] sent the draft to the printer on July 14, 2018, and the newsletter was mailed to members on or shortly after September 12, 2018.

The Department's review of the summer 2018 issue of the *Michigan Mail Handler* newsletter established that it did not constitute campaign material that promoted any candidates in the election. The newsletter described [REDACTED] actions as president (for example, handling arbitrations and dealing with management) and opined as to what was not done or was done poorly while he was out of office (for example, no branch meetings held for one location, members given bad advice). The newsletter criticized [REDACTED] performance as Detroit Network Distribution Center (NDC) branch president. However, neither that content nor any other content was linked to campaigning, to voting, or to the election. The newsletter did not solicit members' votes or seek support from members for any candidate or potential candidate. The newsletter was sent to members nearly five months before nominations and more than six months before the election. [REDACTED] was reelected NDC branch president. There was no violation of the LMRDA.

Second, you alleged that [REDACTED] unlawfully used union funds to purchase T-shirts for members at his home facility, the Grand Rapids Processing and Distribution Center, just months before the election. You alleged that [REDACTED] was distributing union-paid gifts to his political allies to give himself an unfair voting advantage over other candidates.

The investigation established that Local 307 allots a social and recreation budget for each facility to use for its membership each year. The branch president is responsible for determining how the funds are used. [REDACTED] was the Grand Rapids branch president from March 2018 through the challenged election. In December 2018, he purchased T-shirts for Grand Rapids members

using the social and recreation budget for the facility. Haggarty distributed the T-shirts to all Grand Rapids members on or after April 9, 2019, more than two weeks after the election was completed. There was no violation.

Third, you alleged that ██████ unlawfully used his union credit card to buy meals and alcoholic beverages for ██████, and other supportive stewards at the Detroit NDC facility while making political arrangements for the 2019 local officer elections.

The investigation determined that ██████ met with the NDC stewards to discuss issues there when he visited that facility. On occasion, ██████ scheduled the meetings at a nearby restaurant. All stewards were invited to these meetings. ██████ initiated similar steward meetings at other branches. The Department's investigation uncovered no evidence that any campaigning or campaign strategy discussions occurred at such meetings. There was no violation.

Fourth, you alleged that ██████ unfairly used his incumbent position as local president to unlawfully publish union records on his private website, sharply criticizing other candidates and prior union officials who did not support his candidacy for reelection.

The investigation revealed that ██████ created a personal website, using his own funds, in 2016. ██████ initially used the website to respond publicly to internal charges and later used it to campaign in this and other union elections. Shortly after he was elected in March 2018, ██████ created spreadsheets of credit card charges and expense reimbursements of candidate ██████ as well as a spreadsheet of lost time claims by candidate ██████. He also created other spreadsheets that implicated former president ██████. The investigation determined that ██████ created the spreadsheets from information found in the union's financial records to form the basis for internal charges he planned to file. In February and March 2019, he posted the spreadsheets and other documents, such as a copy of a storage unit receipt, to his personal website. His campaign literature included links to his personal website.

The Department's investigation did not uncover any evidence that ██████ used union resources to campaign on his personal website. Under LMRDA Title II, all union members have the right to examine and copy union records necessary to verify the union's financial reports. *See* 29 U.S.C. § 431(c). The investigation established that you and ██████ created campaign flyers in support of your own candidacies that listed specific purchases by ██████ that you alleged were a misuse of union funds. There was no violation.

Fifth, you alleged that ██████ and others openly campaigned on Tour 3 while on U.S. Postal Service-paid time. You alleged that these individuals aggressively solicited voters, passed out campaign literature, and collected ballots and filled them out for members.

The investigation did not substantiate these allegations. The investigation established that no candidates or supporters were allowed to campaign on the floor at Detroit NDC, and there was no evidence that anyone did so. All candidates were allowed to place their campaign literature in the NDC breakroom. The investigation determined that some stewards explained to new members how to complete their ballots to ensure they would be counted (for example, making sure that both their names and EINs were on their return envelopes). There was no evidence that any stewards marked members' ballots or told members which candidates to vote for. There was no violation.

And sixth, you alleged that [REDACTED] at the Detroit NDC unlawfully held an unauthorized “Meatball Luncheon/Cupcakes” using non-approved branch funds solely to influence the voting process in favor of [REDACTED], his political allies, and [REDACTED]

The investigation established that acting branch president [REDACTED] used the social and recreation funds allotted to the NDC branch to provide a meatball luncheon for all tours of members at the NDC. Separately, NDC steward [REDACTED] handed out free cupcake samples to U.S. Postal Service employees to promote his girlfriend’s bakery business. The investigation did not reveal any evidence that any type of campaign activity took place at either event. There was no violation.

Next, you alleged that the balloting process was seriously compromised when [REDACTED] instructed another candidate, Vice President [REDACTED] to acquire the union postal ballot lockbox. You alleged that [REDACTED] was later directed to turn the lockbox key over to [REDACTED] who was also a candidate. You alleged that this created an opportunity for ballot tampering. You further alleged that Local 307 left [REDACTED] name on the postal balloting lockbox throughout the entire election and that [REDACTED] had the nomination lockbox under his name and control throughout the entire nomination process. As noted above, section 401(c) of the LMRDA requires a union to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c).

The investigation confirmed that [REDACTED] obtained two post office boxes for the officer election in late December 2018; one for the voted returned ballots and the other for nominations and returned undeliverable ballot packages. The investigation revealed that both post office box applications identified [REDACTED] as the individuals who would be receiving mail at the post office boxes. [REDACTED]’s name was added to both lists by notations dated January 17, 2019. Article VI, section 1.A of the ULUC refers only to “the post office box or address *designated by the Judges of Election*” (emphasis added). The ULUC contains no specific provisions regarding how, when, or by whom the election post office boxes must be obtained. [REDACTED] denied ever touching the keys for the post office boxes. The election judges were given the keys no later than January 17, 2019. At that time, the only relevant phase of the election process that had occurred was the mailing of the nomination notices. [REDACTED] had possession of the post office box keys thereafter throughout the election. The post office confirmed that only the individuals listed on the applications were authorized to receive the contents of the boxes. There were no indications of any tampering with the post office boxes. There was no violation.

You also alleged that newly elected treasurer [REDACTED] should have been disqualified from running for office because it was commonly known that he had applied for a supervisory position. Section 401(e) of the LMRDA requires that members in good standing shall be eligible to be candidates and to hold office, subject to reasonable qualifications uniformly imposed. 29 U.S.C. § 481(e).

Article V, section 1 of the ULUC provides that, to be qualified as a candidate for any local officer position, a regular member:

Shall be required to have been in continuous good standing in the National Postal Mail Handlers Union for a period of two years and in continuous good standing in this Local Union for a period of two years immediately prior to nomination and current in the payment of dues, and s/he cannot have been employed in or applied

for a supervisory or managerial position with the Postal Service (including any EAS position involved in discipline of employees or application of the National Agreement) for any time during that period, or by the USPS Office of Inspector General or the Postal Inspection Service (or as a confidential informant) for any time during that period.

Article VI, section 2.A of the ULUC requires the election judges, after nominations are complete, to “determine whether or not each candidate possesses all of the qualifications for office.”

The investigation determined that the union applied the candidate qualifications uniformly. The election judges all stated that they performed no screening of any candidates based on whether they had applied for or been employed in supervisory positions. The election judges confirmed that they ruled candidates ineligible only if they did not meet the two-year continuous good standing requirement. There was no violation.

Finally, you raised allegations regarding [REDACTED] alleged removal of [REDACTED] from his officer position and the new officers’ allegedly being sworn in prior to publication of the election results. Even if true, these allegations would not constitute violations of the LMRDA.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on this matter.

Sincerely,

[REDACTED]

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Chief, Division of Enforcement

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