



February 7, 2020

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaints you filed with the Department of Labor on November 19, 2018 and January 2, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the regularly scheduled election of union officers conducted by the Service Employees International Union (SEIU), Local 32BJ on September 20, 2018.

The Department of Labor (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. Following is an explanation of this conclusion.

First, you alleged that the Stand Together slate conducted campaign meetings at the Teamsters Local 237 union hall in violation of Article VII, Section 1(d) of the Local 32BJ bylaws. Section 401(e) of the LMRDA requires a union to conduct its election of union officers in accordance with the union's constitution and bylaws. Article VII, Section 1(d) of the Local 32BJ bylaws prohibits candidates and their supporters from soliciting or accepting financial support from non-SEIU members. According to Local 32BJ, this prohibition only proscribes the solicitation or acceptance of "uncompensated" assistance or services from non-SEIU members. The investigation disclosed that the Stand Together slate did not solicit or accept any such assistance or services from Teamsters Local 237 during the 2018 election.

Specifically, the investigation showed that Teamsters Local 237 rents the conference room located at its union hall to agencies, labor organizations, and members affiliated with such organizations for a fee of \$125.00 per day. The Department's review of a lease agreement between Local 237 and the Stand Together slate and the slate's campaign finance records showed that the slate rented the conference room from Local 237 for a period of ten days at the rate of \$125.00 per day. Further review showed that the slate paid Local 237 a total of \$1,250.00 to cover the cost of rental fees for the

conference room and that this payment was made from the slate's campaign bank account, with check number 1713, dated August 23, 2018. Therefore, the slate's use of the conference room did not involve the solicitation or acceptance of "uncompensated" assistance or services from Teamsters Local 237.

In addition, the Stand Together slate's use of the conference room did not violate the prohibition in section 401(g) of the LMRDA proscribing the use of union funds to promote the candidacy of a person in an election of union officers. The funds that the slate used to pay the conference room rental fee were paid from the slate's campaign bank account and did not involve the expenditure of union funds. Neither the Local 32BJ bylaws nor the LMRDA was violated.

Next, you alleged that SEIU and Local 32BJ staff campaigned on behalf of the incumbent slate while being paid by the union. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election of union officers. Accordingly, union officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationary, etc., to assist them in such campaigning. 29 C.F.R. §§ 452.73-76.

During the investigation you provided the name of one member who allegedly witnessed three union officials campaigning at the 225 Liberty Street building while on paid union time. When interviewed by the Department, two of these union officials denied campaigning at that location. The third union official stated that she campaigned inside the 225 Liberty Street building in the public areas where the restaurants and public seating were located. The union official further stated that she was on her lunch break when such campaigning occurred. To the extent that union officials may have engaged in prohibited campaign activity at the 225 Liberty Street building, in violation of section 401(g) of the LMRDA, approximately 260 members worked at this location, and your witness stated during the investigation that the officials spoke with approximately 10 members. The smallest vote margin for any contested race for which the 225 Liberty building members were eligible to vote was 5,881 votes. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

In connection with your allegation regarding campaigning by union officials during the 2018 election, you alleged that, at or around midnight, while a union official was on paid union time, the official and two other members solicited members' votes in support of the incumbent president. You alleged this occurred outside Madison Square Garden and while the official and the two members were walking to Grand Central and Penn subway stations. The investigation disclosed that during the union's 2018 union officer election, Local 32BJ paid certain union members to work on state and local election issues. Specifically, Local 32BJ paid some union members, who had been

released from their normal work duties, to participate in partisan “Get Out and Vote” campaigns in support of New York City and New York state candidates. The investigation did not disclose that any of these members campaigned for any candidates in the Local 32BJ election, including for the incumbent slate, outside Madison Square Garden or any other locations while being paid by the union or during “Get Out and Vote” events. The LMRDA was not violated.

In addition, a member employed at the 225 Liberty Street building stated during the investigation that a union steward employed at that location encouraged Liberty Street members to attend a campaign event that was sponsored by the incumbent slate and scheduled to be held at that building. The member further stated that the steward was being paid by the employer when the steward engaged in the campaign activity and that five members attended the campaign event. Section 401(g) of the LMRDA prohibits the use of employer funds to promote a person’s candidacy. This prohibition against the use of employer funds includes anything of value contributed by an employer to support the candidacy of any person in an election. 29 C.F.R. § 452.78. During the investigation the steward stated that he informed members of election related meetings that were scheduled to be held at the Liberty Street building but he did not encourage any members to attend partisan campaign events. In any event, approximately 260 members worked at this location and only five members attended the campaign event. The smallest vote margin for any contested race for which the Liberty Street members were eligible to vote was 5,881 votes. Thus, any violation that may have occurred did not affect the outcome of the election.

You also alleged that the American Arbitration Association (AAA) stored the returned voted ballots in an unsecure room located at the AAA’s New York office suite and that numerous individuals had access to that office, including building management and janitorial staff. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. Accordingly, a union’s conduct of an election of union officers must be circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation disclosed an adequate safeguards violation regarding ballot storage in the 2018 election. Specially, the investigation showed that the AAA retrieved voted ballots from the post office box used for the return of those ballots several times prior to the official ballot counting and tallying. After each ballot retrieval, the AAA transported the ballots to its New York office where the ballots were sorted and stored in an unlocked room located in the office suite. The suite could be accessed by inserting an electronic key card into the card slot located on the outside of the office suite door, but the room within the suite where the AAA stored the ballots was kept open.

The investigation disclosed that maintenance and building staff, janitorial staff, and AAA employees possessed electronic key cards to the suite and had access to the unlocked room where the voted ballots were being stored. The Department’s review of

the records for the AAA electronic key card system for that office showed that, from August 29, 2018 through September 20, 2018, electronic key cards assigned to 19 AAA employees and nine other individuals were used nearly 470 times to enter the AAA New York office suite. Consequently, AAA employees and other individuals who had electronic key cards to the AAA suite had unfettered access to the voted ballots while they were being stored in an unlocked room located at that office. Such access was inconsistent with reasonable measures necessary to safeguard the voted ballots. AAA's failure to have adequate safeguards in place to ensure that the voted ballots were properly secured at the AAA New York office violated the adequate safeguards provision in section 401(c) of the LMRDA. However, the Department's review of the election records, including voted ballots and return ballot envelopes, did not disclose any evidence of ballot tampering or other election impropriety. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You further alleged that the union improperly ruled four members of your slate ineligible for candidacy. Section 401(e) of the LMRDA provides that every member in good standing is eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Article V, section 1 of the Local 32BJ bylaws requires a member to have been in continuous good standing for the two years prior to nominations and the election to be eligible for candidacy. Article V, section 2 of the Local 32BJ bylaws provides that "good standing" requires the payment of dues to the local within the month that they become due.


During the 2018 election, the qualifying period for the candidacy was from June 2016 to June 2018. The Department's review of the local's dues records showed that one member on your slate did not pay the dues owed for May 2016 through June 2017 until August 2018 and paid dues owed for July 2017 through December 2017 in March 2018. The second member did not pay dues owed for November 2017, December 2017, and January 2018 until February 2018, and a third members paid dues owed in July 2017 through December 2017 in March 2018. The fourth member did not start paying dues until January 2017. Therefore, these four members failed to comply with the continuous good standing requirement for candidacy during the two-year qualifying period and, thus, they were not eligible to run for office. On these facts, the union properly disqualified them from candidacy. In addition, further review of the dues and election records showed that the union disqualified several members on the incumbent slate from candidacy for failing to meet the two-year continuous good standing requirement. Their names did not appear on the ballot. The union uniformly applied the requirement to all members seeking candidacy, including members of the incumbent slate. The LMRDA was not violated.

Finally, you alleged that the election committee permitted the incumbent slate to submit nomination petitions to the election committee that inaccurately identified the at-large

executive board and district executive board positions. Specifically, you alleged that the incumbent slate's nomination petitions incorrectly identified the office of "At-Large Executive Board Member" as "At-Large Exec. Board" and incorrectly identified the office of "District Executive Board Member" for the New York Metro District as "Executive Board." The investigation disclosed that the union's constitution and bylaws are silent concerning whether members seeking nomination to office may use abbreviations or other nomenclature on their nomination petitions to identify the offices for which the members are seeking nomination. In any event, the investigation did not disclose that any member who signed the incumbent slate's nomination petitions was confused about which office an incumbent slate member was seeking to be nominated. The LMRDA was not violated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has dismissed your complaints and closed its file in this matter.

Sincerely,

A black rectangular redaction box covering the signature of Brian A. Pifer.

Brian A. Pifer
Chief, Division of Enforcement

cc: Mary Kay Henry, President
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