



May 28, 2020

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (the Department) on October 3, 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 International Union of Painters & Allied Trades (IUPAT), Painters, AFL-CIO District Council 36 (DC 36) on June 29, 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 several officers, employees, and/or members of DC 36 or Painters Local Union 510 (Local 510), a component of DC 36, illegally campaigned at union worksites, during official time, or via union publications. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote any person's candidacy in an election. 29 U.S.C. § 481(g). However, the LMRDA permits union officers and employees to support the candidates of their choice as long as no union or employer funds are used to do so. *See* 29 C.F.R. § 452.76. While officers and employees may not campaign on time that is paid for by the union – or use union funds, facilities, equipment, etc., to campaign – campaigning incidental to regular union business would not be a violation of the LMRDA. Similarly, campaigning by union stewards on company time with the approval of the employer would violate Section 401(g) of the LMRDA unless the stewards were on legitimate work assignments, and their campaign activities were only incidental and not an impediment to the performance of their assigned tasks. 29 C.F.R. § 452.78. This prohibition would also not extend to ordinary business practices which result in conferring a benefit on all customers equally.

More specifically, you alleged that Local 510 Business Representative [REDACTED] wore a campaign button in the Moscone Center, an exhibition space in which Local 510

members work. You were unable to provide the date, time, or any details, and the investigation failed to produce any substantiation of this. There was no violation. You further alleged that, during a handful of general membership meetings, ██████ pointed to then Field Representative ██████ and referred to him as their "future leader." You did not recall the particular dates, but stated that this took place within six months before the election. According to ██████ he did make general comments about "training the leaders of the future," but before the election period and never referencing a specific person. There was no violation. Finally, you alleged that ██████ took ██████, a candidate for Local 510 Business Representative, to the DC 36 office in Los Angeles "where she could have engaged with members" on an unspecified date. The investigation did not reveal any evidence to substantiate your allegation. ██████ stated that he never visited a DC 36 office with Dosier, and in fact had not been to a DC 36 worksite since 2017. Dosier confirmed that she had never been to a DC 36 office until after the election, for a Delegates meeting. There was no violation.

You additionally alleged that ██████ handed out campaign buttons at the Moscone Center, since you saw her visit and noticed people wearing her buttons "in the following days." ██████ reported that she only handed out her campaign button before and after work hours and off the clock, and only to people who also were not working. You could not provide, and the investigation failed to produce, any evidence to the contrary. There was no violation.

You also alleged that at some point in the weeks before the election, DC 36 Assistant Business Manager ██████ came to the Moscone Center and took ██████ out to lunch, which you believe could have signaled an endorsement of her candidacy. As you acknowledge, there is no issue with an officer taking a member out to lunch, and no endorsement is implied. There was no violation.

In addition, you alleged that you heard that former Local 510 Financial Secretary ██████ was at the Moscone Center on June 26, 2019, and that you assumed she was campaigning as a member on behalf of her nephew, ██████, a candidate for Local 510 Business Representative. You could not provide any further details or witnesses. Ann Worth explained that after resigning as Financial Secretary, she did hand out campaign flyers promoting her nephew and ██████ in her capacity as a member, before signing in for work and only to other off-duty members. She approximated that she handed out 50 flyers over the course of two or three days. The investigation found no evidence to support your allegation. There was no violation.

You also alleged that during the week prior to the election, Local 510 Field Representative and candidate for Business Representative ██████ asked an apprentice at the Moscone Center if he could "count on [their] vote." ██████ admitted that he took a personal day to hand out campaign flyers outside the Moscone Center to about 30 members. Although he was off the clock, he did not know if the members

were on or off-duty at the time. Even if those 30 members were on-duty, and campaigning to them was thus prohibited under the LMRDA, the margin of victory in [REDACTED] race was 1,138 votes. There was no violation that could have affected the outcome of the election.

You further alleged that [REDACTED] campaigned in the May and June 2019 editions of the "Organized Labor" newsletter, managed by the San Francisco Building Trades Council and distributed to different unions. More specifically, you claimed that [REDACTED] wrote articles in a manner that seemed to promote his candidacy in his regular Local 510 column, and a calendar featuring the June 29, 2019, election date was included on the same page. A review of the articles did not substantiate that they contained campaign statements. The tone and content of the articles did not include the promotion or criticism of any candidate, including [REDACTED]. Notably, candidates were not even mentioned in the articles. The investigation also confirmed that the calendar was a constant fixture and merely showed upcoming events. Finally, Local 510's liaison for the newsletter stated that any member could write an article if they wanted to, provided it was not inflammatory towards the union. There was no violation of the LMRDA.

You additionally alleged that Local 510 Trustee [REDACTED], the former Training Coordinator for DC 36's Apprenticeship Training Program, sent the apprentices an e-mail regarding the election. [REDACTED] compiled the contact list of apprentices while working in the program. However, the investigation revealed that the email was simply a reminder of the upcoming election and that new members would need to be sworn in to vote. It contained no references to candidates or any manner of campaigning. There was no violation of the LMRDA.

Next, you alleged that members of Local 510 were denied the opportunity to vote in the DC 36 election because DC 36 allowed in-person voting only at a single polling location, during a designated timeframe, for each local union. Section 401(e) of the LMRDA ensures a basic right to vote for all members in good standing. 29 U.S.C. § 481(e). As the Department's regulations explain, the statutory right to vote requires that unions provide members with a reasonable opportunity to vote. This may require the establishment of multiple polling sites or the use of mail ballots when the union's membership is widely dispersed. Unions may also meet this obligation by extending the time period for voting to accommodate members who might otherwise be prevented from voting because of conflicting work schedules. 29 C.F.R. § 452.94; *see* 29 C.F.R. § 452.95 (a union must provide absentee ballots or alternative means of voting if it knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person).

The investigation revealed that the DC 36 election was held on Saturday, June 29, 2019, at a separate location for each of the 11 component unions. Local 510 members were

able to vote at the Sheet Metal Union Hall in San Francisco, the site of their monthly membership meetings, at any point between 7:00 a.m. and 5:00 p.m. Members reside within Local 510's jurisdiction in the greater Bay Area, covering Northern California from Sacramento to Monterey. Furthermore, members regularly commute to San Francisco for their membership meetings and work assignments. There was no evidence of work conflicts on the day of the election and the polls were open for ten hours. Furthermore, notice of the election was mailed in March 2019, thus affording members ample notice of the date and time.

You were unable to identify any members who were unable to vote because of the polling location or hours. The investigation similarly failed to produce evidence that DC 36's polling practices – as implemented through Local 510's polling site and time – denied any member the right to vote. Even if true, the slimmest margin of victory in the election was 1,138 votes, far surpassing the roughly 700-800 members in Local 510. There was no violation.

Finally, you alleged that the DC 36 nomination/election notice incorrectly identified Local 510's polling location as "Local Union 510 Meeting Hall" instead of "Sheet Metal Union Hall," the location of Local 510's general membership meetings for the past two years. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). A union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards to ensure a fair election. 29 C.F.R. § 452.110(b). Relatedly, notice of the election must specify the polling location. 29 C.F.R. § 452.99.

The investigation disclosed that the street address included under the Meeting Hall name in the election notice was correct, and consistent with the location provided in other union documents. Furthermore, the membership meeting site is sometimes referred to as the "Local 510 Meeting Hall." You could not provide, and the investigation failed to reveal, the names of any members who were confused by the meeting hall name used or who went to the wrong location to cast their votes. There was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file in this matter.

Sincerely,



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Chief, Division of Enforcement

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