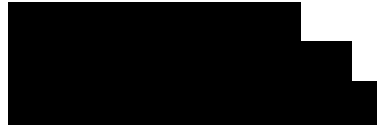




August 5, 2020



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor on March 9, 2020, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the election of officers conducted by the International Longshore and Warehouse Union, Local 52, that was concluded on November 22, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your 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.

You alleged that Local 52's definition of good standing was unclear and that this lack of clarity resulted in the union applying its good standing candidate eligibility requirement in a non-uniform manner. In support of this allegation, you asserted that the local initially disqualified three nominees from candidacy because they failed to pay an assessment in November 2018, but later allowed two of these nominees to run for office. 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 section 504 and to reasonable qualifications uniformly imposed). 29 C.F.R. § 452.32. Qualifications for union office may not be proper if they are not applied in a uniform manner. 29 C.F.R. § 452.53. Section 401(e) of the LMRDA also requires a union to conduct its election of union officers in accordance with its constitution and bylaws. 29 C.F.R. §§ 452.2; 452.109.

The investigation did not substantiate your allegation regarding the union's definition of good standing. The investigation disclosed that prior to 2014, Local 52's constitution defined "good standing" to include being current in the payment of union dues as well as fines and assessments. The local amended its constitution in 2014 and revised that definition to include only the payment of union dues. Based on the 2014 amended constitution, Local 52 does not consider the payment of fines or assessments in

determining whether a member is in good standing and eligible for candidacy. Consistent with Local 52's 2014 amended constitution, no candidate was prevented from running for office in the 2019 election for failure to pay union fees or assessments.

In addition, the investigation did not disclose that the union failed to apply its candidate eligibility requirement in a uniform manner. The investigation disclosed that all three of the nominees you mentioned were current in their dues payments at the time of the 2019 election. After some discussion, the union determined that, based on the "good standing" candidate eligibility requirement prescribed in Local 52's 2014 amended constitution, all of the nominees had satisfied that requirement and, thus, they were eligible for candidacy. As a result, their names were placed on the ballots. The LMRDA was not violated.

You also alleged that the union permitted a candidate whose nomination form was not on file with the union to run for delegate. Section 401(e) of the LMRDA requires a union to conduct an election of officers in accordance with its constitution and bylaws. 29 C.F.R. §§ 452.2; 452. 109. Article, VII, Section 3 of the union's constitution provides that any qualified member desiring to be a candidate for any office must file a nomination form with the secretary treasurer/business agent no later than the night of the October regular monthly meeting, before the meeting is called to order.

The investigation disclosed that the election records did not include a nomination form for the candidate in question. During the investigation, however, the local's office manager, the incumbent secretary treasurer/business agent, and the candidate all stated that the candidate submitted a completed nomination form to the office manager at the beginning of the September 15 nominations period, which was before the October 10, 2019, deadline for submitting the form. The office manager further stated that after she received the nomination form from the candidate she verified the candidate's eligibility for candidacy and then added his name to the list of eligible candidates whose names were read at the October 10, 2019, regular monthly meeting at which nominations were accepted. The investigation further disclosed that the incumbent secretary treasurer/business agent conducted the nomination meeting and admitted during the investigation that he may have inadvertently disposed of the candidate's nomination form while cleaning up after the meeting. On these facts, the evidence provides an adequate basis for concluding that the candidate submitted his nomination form to the union in a timely manner. Therefore, it was not unreasonable for the union to place his name on the ballot. The LMRDA was not violated.

Finally, you alleged that a candidate's name was not listed on the primary ballot or the first final ballot and only appeared on the second final ballot. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. 29 C.F.R. §§ 452.2; 452. 109. The investigation did not substantiate your allegation. The investigation disclosed that Local 52's constitution provides for a primary election system and requires a final or run-off election when no candidate receives a majority of the votes cast in the primary election. A review of the ballots showed that the candidate's name was listed on the ballots for the primary

election, the first final (run-off) election, and the second final (run-off) election. Such elections were components of the same regular election process.

In addition, you opposed the union's decision to conduct the second run-off election that Local 52 completed on November 22, 2019. Although you disagree with that decision, section 401(c) of the LMRDA mandates that a union provide adequate safeguards in conducting its election of union officers to ensure the fairness of the entire election process. To that end, an election of union officers must be conducted in a manner that does not violate the fundamental precepts of fairness that are essential to the election of union officers through a democratic electoral process. With this requirement, "[a] labor organization's wide discretion regarding the conduct of its elections [must be] . . . circumscribed by a general rule of fairness." 29 C.F.R. § 452.110.

Pertinent here, the investigation showed that Local 52 issued the second run-off ballots in order to correct an error on the ballot for the first run-off election. Specifically, the investigation disclosed that the union conducted its primary election of officers on October 31, 2019, and mailed ballots for a run-off election scheduled for November 14, 2019, for those candidates who received the highest number of votes but did not receive a majority of the votes cast. Shortly after mailing the ballots for the November 14 runoff election, the union recalled the ballots for that election after it discovered that the name of one of the eight candidates for dispatcher had been left off the ballot. The union did not tally the first run-off ballots. Instead, the union issued corrected ballots containing the name of the candidate who had been left off the first run-off ballot. Local 52 tallied the corrected ballots on November 22, 2019. On these facts, the union's dissemination of the second run-off ballots for the sole purpose of correcting an error on the ballot for the first run-off election complied with the adequate safeguards provision prescribed in section 401(c) of the LMRDA and was consistent with the fundamental precepts of fairness that are essential to the election of union officers.

You asserted, however, that Local 52's constitution permits the local to conduct only one run-off election and, therefore, the November 22 run-off election that was conducted to correct an error printed on the ballot was invalid. Contrary to your assertion, Local 52's constitution does not expressly prohibit the local from conducting more than one run-off election, nor does it prohibit the local from taking remedial action to correct an error on the ballot or to cure any defects in its election process. Neither the LMRDA nor Local 52's constitution was 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 complaint and closed its file in this matter.

Sincerely,



Brian A. Pifer  
Acting Chief, Division of Enforcement

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