



August 5, 2020



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on August 29, 2019 with the Department of Labor (Department) alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-483, occurred in connection with the election of officers conducted by UNITE HERE Local 54 on May 10, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

First, you alleged that members who worked the 9:00 a.m. to 5:00 p.m. housekeeping shift at Harrah's Hotel and Casino (Harrah's) on the day of the election were denied the opportunity to vote because they had to work mandatory overtime. You, however, did not name any members who were denied the opportunity to vote because they had to work mandatory overtime. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). The Department's investigation revealed that the polling hours (7:00 a.m. to 7:00 p.m.) at all four polling sites accommodated members' varying work schedules. Article 12, Section 12.2, of the collective bargaining agreement (CBA) between Harrah's and Local 54 states that "the employer is required to give the employee notice of no less than ½ a scheduled shift in instances requiring forced overtime/additional hours on a one to one replacement basis and with two hours' notice." The Department's investigation revealed that the Casinos' Labor Relations Representatives were notified about the election and were asked to allow members to leave the property to vote during lunch. The investigation confirmed that employees were permitted to leave the employer's property to vote as long as they

clocked out. The investigation did not reveal any evidence that members who worked overtime were not able to vote. There was no violation.

Second, you alleged that Local 54 and its incumbent officers interfered with the election in the following ways. You alleged that individuals who were delinquent in their dues were not previously notified of their delinquency by Local 54 and were unprepared to pay their dues upon arrival at the polls in order to vote. Under the LMRDA, union members in good standing are entitled to vote. 29 U.S.C. § 481(e). Article 13, Section 11, of Local 54's Constitution defines "member in good standing" as a member who is "not suspended or expelled for non-payment of dues or for any other reason." The Department's investigation found that members who were more than two months in arrears could either pay their dues at the polls to be eligible to vote or vote a challenged ballot. Local 54's constitutional provisions regarding voter eligibility and good standing were included in the nomination/election notice that was mailed to the membership in March, 2019. The notice also stated, "For the purpose of this election, a member in good standing is a member who is not 2 months or more in arrears in the payment of dues, assessments, or fines. A member will be considered to be in good standing for purposes of this election if that member's dues are paid at least through the month of March 2019, or is otherwise in good standing as of the election date." There is no constitutional provision that requires Local 54 to notify members of their dues delinquency. There was no violation.

You also alleged that members left the voting polls before voting – either because they did not have money to pay their dues or because the "challenged ballot" line was too long. You identified [REDACTED] and [REDACTED] as two members who you claim did not vote because of these issues. The investigation found that [REDACTED] voted in the election and [REDACTED] did not vote because she was not on the voter eligibility list or on the election tellers' logs, and she did not vote a challenged ballot. In addition to these two individuals named by you, three of your slate members and one of your supporters provided the names of 11 others allegedly impacted by this issue. The Department reviewed the eligibility status of these members and found no evidence substantiating the allegation. With respect to the allegation concerning the wait time in the "challenged ballot" line, the investigation found that voting took 30 minutes at most, even during peak voting times. The investigation revealed that 152 challenged ballots were voted in this election. There was no evidence that the length of the "challenged ballot" line prevented members from voting. There was no violation.

You further alleged that Local 54 wrongfully and unlawfully interfered with the election by not maintaining an accurate voter eligibility list, and that voter turnout would have been higher if the list had been accurate. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote. 29 U.S.C. § 481(e). The Department reviewed the voter eligibility list, the list of members who

voted, the challenged ballots, and a log that documented why members were not on the eligibility list. The Department's review revealed that 8.2% of the voters cast challenged ballots. The investigation found no evidence of a violation with respect to the accuracy of the union's voter eligibility list or dues records. There was no violation.

Third, you alleged that the incumbent slate issued monetary payments to leaders of community organizations, disguised those payments as charitable contributions, and directed the leaders to tell their members to vote for the incumbent slate. Section 401(g) of the LMRDA provides that no moneys of an employer or union shall be contributed or applied to promote the candidacy of any person in an election subject to Title IV of the LMRDA. 29 U.S.C. § 481(g). The investigation found that some Local 54 members also belong to community organizations. During the campaign period, some of those community organizations appeared to endorse candidates in the Local 54 election. A campaign flyer for three incumbents listed ten "community organizations [that] have endorsed . . . [President] Bob McDevitt, [Secretary-Treasurer] Donna DeCaprio and [Vice President] Javier Soto . . ." Those organizations were the South Jersey Indian Association, the Bangladesh Association of South Jersey, the Hoy Sun Ning Young Benevolent Association of Atlantic City, Organizacion Original Carnaval Putleco, and six others. According to Local 54's Financial Secretary-Treasurer, Donna DeCaprio, any endorsement of Local 54 candidates by the community organizations to which Local 54 members belong was not connected to any payments those organizations received from Local 54. The investigation revealed that members who belong to various community organizations would routinely ask Local 54 to donate money for their respective causes.

The Department's investigation found that Local 54 made the following contributions to community organizations before the May 2019 election: South Jersey Indian Association (\$1,000 to support annual parade in August of 2017 and 2018); Bangladesh Association of South Jersey (\$1,000 to support the Mela Festival in August 2018); Hoy Sun Ning Young Benevolent Association of Atlantic City, New Jersey (\$500 to support lunar new year celebration in February/March 2019); and Organizacion Original Carnaval Putleco (\$1,000 to sponsor the August 2018 Puerto Rican Day Parade). Given the nature and timing of the donations, the investigation did not substantiate your allegation that these donations were connected to the Local's election in any way or that they were contributed or applied to promote the candidacy of any person in the UNITE HERE 54 election. Further, the investigation found no evidence that the alleged organizations are employers within the meaning of Section 401(g). There was no violation.

You further alleged that the incumbents, in violation of Section 401(g) of the LMRDA, used member Farook Hossain as their point of contact with the Local's Indian members. The investigation confirmed that Hossain is the president of the South Jersey Alliance of South Asian American Labor (ASAAL), and that he was a candidate for delegate on the incumbent slate in the challenged election. The investigation found that ASAAL is a

nationwide organization run by community volunteers and has no employees. While the investigation found that ASAAL endorsed the incumbent slate in the Local 54 election, and the incumbent slate's campaign flyer listed ASAAL as a supporter, the investigation did not reveal any evidence that ASAAL received any money from Local 54 in exchange for the endorsement. While Hossain campaigned for the incumbent slate via Facebook, the investigation found that Hossain only campaigned after work or on his days off, and took time off on the day of the election. There was no violation.

Moreover, you asserted the following regarding Local 54's relationship to Farook Hossain:

- (1) You alleged that Local 54 contributed \$6,000 from its PAC fund to [REDACTED] [REDACTED] campaign for the Atlantic City Board of Education;
- (2) You alleged that [REDACTED], who is a member of the Bangladesh Association of South Jersey, contacted the Local 54's Bangladeshi members to seek their support of the incumbent slate;
- (3) You alleged that [REDACTED] campaigned to Bangladeshi members while on union time; and
- (4) You alleged that [REDACTED] wife and uncle were hired by Local 54.

The investigation revealed that Local 54 contributed \$2,500 from its PAC fund to support [REDACTED] election to the Atlantic City Board of Education; however, union officials asserted that contributing money to a candidate running for the local board of education is consistent with what they would do for any member running for that office. The investigation did not reveal any evidence that the contribution to support his school board candidacy was made in exchange for his campaigning for the Local 54 incumbent slate. The investigation also found no evidence that [REDACTED] campaigned to Bangladeshi members while on union time. During the period of his campaign, [REDACTED] worked full-time for the union and was on a leave of absence from his position as a waiter at the Tropicana. He campaigned as a candidate in the election after work, on his days off from work and on the day of the election for which he took leave. Furthermore, contrary to your assertion, the investigation found that Local 54 does not employ any of his family members. There was no violation.

Fourth, you alleged that incumbent candidates and union representatives (including business agents) were allowed to access the "front of the house" and the "back of the house" of the casinos to campaign for the incumbent slate. Section 401(g) of the LMRDA provides that no moneys of an employer or union shall be contributed or applied to promote the candidacy of any person in an election subject to Title IV of the LMRDA. When interviewed by the Department, election officials indicated that campaigning in the "front of the house" is allowable since it is a public space; however, access to the "back of the house" is typically not permitted without an appointment.

According to Local 54 officials, even though there are no written rules concerning campaigning in the workplace, employers do not permit the disruption of operations.

You alleged that you did not have this access to the membership for campaigning purposes because you had been on medical leave since December 2018. As the Department began investigating your 401(g) allegation concerning access to the “front of the house” and the “back of the house” of casinos, the following specific sub-allegations were identified and investigated:

- (1) You alleged that UNITE HERE International Representatives [REDACTED] and [REDACTED] campaigned inside casinos before the election;
- (2) You alleged that Business Agent [REDACTED] campaigned to members at Bally’s Park Place;
- (3) Your slate member, Executive Board Candidate [REDACTED], alleged that Business Agent [REDACTED] campaigned in the “back of the house” at the Tropicana Casino on a weekly basis before the election, and distributed campaign literature where bellmen store luggage;
- (4) Your slate member, Executive Board Candidate [REDACTED], alleged that Shop Stewards [REDACTED] and [REDACTED] (last name unknown) distributed flyers in the Tropicana Casino cafeteria on break time, that shop stewards campaigned for the incumbents in the dishwashing area, and that International Union representatives distributed flyers for the incumbent slate in the Tropicana Casino cafeteria;
- (5) Your supporter and union member, [REDACTED], alleged that [REDACTED] distributed campaign literature in the Hard Rock Hotel & Casino employee cafeteria and the Hard Rock Legends Club every day; and
- (6) Your supporter and member, [REDACTED] alleged that [REDACTED] campaigned in the Hard Rock Hotel & Casino employee cafeteria, and was seen coming out of the “EBS” (housekeeping office).

The Department’s review of union officials’ vacation request records disclosed that the above mentioned individuals were on leave during the week before the election and/or on the day of election. The Department investigated each of the above sub-allegations and found no evidence of campaigning on union time. There was no violation.

Fifth, you alleged that Local 54, its incumbent officers and its Election Committee wrongfully interfered with the election by failing to provide adequate parking for all voters on election day. Section 401(c) of the LMRDA provides that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c). You further alleged that many voters circled (unsuccessfully) to find parking and left without voting since the lot was full due to a police bike-a-thon. In support of your claim, you alleged that

member [REDACTED] was impacted by this situation. The investigation found that [REDACTED] was able to park and vote. While the Department confirmed that a police bike-a-thon event took place on the morning of the election, the investigation found that the police officers left the lot between 7:15 a.m. and 7:30 a.m. and that the lot was not full during the early morning event. The nomination/ election notice provided information about the free parking that was available at all four polling sites. The investigation revealed that members were instructed not to park at the convention center because free parking was not available there; an alternate lot was rented for this polling site. However, the Local reimbursed the cost of parking for members who parked at the convention center. The investigation revealed no disparate treatment with respect to validating members' parking tickets. The investigation found no evidence that members were prevented from voting due to the parking situation. There was no violation.

Sixth, you alleged that Local 54 provided multiple benefits, including "super seniority" and out-of-state trips, to shop stewards appointed by President Robert McDevitt in exchange for the stewards' support of McDevitt's slate, and that stewards lose these benefits if they do not support the incumbent slate. Section 401(g) of the LMRDA provides that no moneys of an employer or union shall be contributed or applied to promote the candidacy of any person in an election subject to Title IV of the LMRDA. The investigation found that business representatives typically give individuals a shop steward role after identifying them as leaders regarding workplace issues. The investigation further found that shop stewards routinely travel to help other locals in the course of union business. The investigation did not find any evidence that stewards were promised or given benefits such as super seniority or trips in return for supporting the incumbent slate. There was no violation.

Seventh, you alleged that the incumbent slate wrongfully interfered with the election by intimidating and harassing voters during the course of the campaign by directing them to vote for the incumbent leadership. Section 401(c) states that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. §481(c). Moreover, Section 401(e) provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. You asserted that members who worked in the "back of the house" of casinos, and did not speak English were compelled to vote for McDevitt and his slate by Local 54 incumbent representatives. You asserted that unnamed Local 54 business agents told unnamed non-English-speaking members where and when to wait outside their work sites to be transported by van to the polls. You alleged that members were forced into vans by supporters of the incumbent slate. You asserted that this conduct occurred during the course of the election and was directed at various voters and potential voters. You further asserted that members of the incumbent slate told foreign-language speaking voters who to vote for and gave

these voters rides in Local 54 vans only if they would vote for the incumbent Robert McDevitt and other slate members.

The Department conducted a careful and comprehensive investigation into these serious allegations. You were not able to provide the name of anyone who felt intimidated or coerced and the investigation did not reveal any evidence to support your allegations. Local 54's Election Chairperson stated that he was not aware of anyone feeling intimidated by the McDevitt slate van drivers. The investigation found that both slates had vans to transport members to the polls. The Department's investigation verified that the vans rented by the incumbent slate on election day were paid for with campaign committee funds. Ultimately, the investigation did not find any evidence to substantiate these allegations. There was no violation.

During the course of the investigation, the Department reviewed a bundle of four ballots from the Trenton polling site. Those ballots included barcode sheets revealing voters' names. As all four ballots showed identical candidate selections, ballot secrecy was compromised. You did not raise this issue in your internal protest or in your complaint to OLMS, however, it appears you could not have known of this violation. Nevertheless, this violation only affected four votes. Therefore, there was no possible effect on election outcome, as the smallest vote margin was 233.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that had an effect on the outcome of the election, and I have closed the file regarding this matter.

Sincerely,



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Acting Chief, Division of Enforcement

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