



April 16, 2009

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]:

This Statement of Reasons is in response to your joint complaint filed on October 8, 2008 alleging that violations of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the Carpenters Local Union 370 ("Local 370" or "Union") election held on June 9, 2008.

The Department of Labor ("Department") conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election.

In your complaint to the Department you alleged that at least 40 members were denied the opportunity to vote because of the distance to the polls and the limited polling hours. The Act requires that a union provide a reasonable opportunity to vote, taking into consideration a number of factors, such as the working schedules of its members, the distance between a member's home/work site and the polling site. The regulation provides the following language:

There is an obligation on the labor organization to conduct its periodic elections of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. A union may meet this obligation in a variety of ways depending on factors such as the distance between the members work sites or homes and polling places, the means of transportation available, the nature of the members occupation and their hours of work.

See 29 C.F.R. § 452.94.

The Department reviewed work schedules, disbursement of membership and the nature of the member's work to conclude that Local 370 did not deny members the opportunity to vote in violation of the Act. The investigation revealed that the union covers a wide geographic area with some members living or working more than an hour away in one direction. The Local stated that members' typical work hours are from 7:00 am to 3:30 pm. However, the investigation revealed that members work for over 100 employers, and the typical workday for many members ends at 5 or 5:30 pm.

The Local, consistent with past practice, provided one polling site which was open between the hours of 12:00 pm and 6:00 pm. The polling hours did not allow members to vote prior to beginning work. However, the polling hours did provide an opportunity for members in proximity to the polls to cast votes during lunch hour or after work. Additionally, those members with a 3:30 release time would have time to reach the polls prior to 6:00 pm, even if the member were required to travel more than an hour. However, those members whose workday ended at 5 or 5:30 pm and who worked more than one hour away from the polls may not have had a reasonable opportunity to vote, though many employees at those locations were able to vote in the election. The Department conducted a mail survey of the 1,242 members who did not vote in the election to determine the reason the member did not vote in the election. Based on the survey, 36 members responded that their working hours or the distance to the polls prevented them from voting. This number would not be enough to have affected the outcome of the election where the smallest margin of victory was 59.

You alleged that the incumbent candidates used Local 370 funds and equipment for campaign purposes in violation of the Act when union officers while on union-paid time used union-issued cell phones to make campaign calls. The Department reviewed the cell phone records from May 16, 2008 through June 15, 2008, of President William Weir, Vice President Doug Blacklock, Recording Secretary Chris Dugan, and Financial Secretary Mark Sowalski. The Department's investigation revealed that one officer, while on duty, used a union issued cell phone to contact members concerning the election. This officer solicited the votes of two members and called six other members to remind them to vote. Such a use of union funds, however minimal, constitutes a violation of section 401(g) of the LMRDA which provides that "no moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election." *Id.* However, the smallest margin of victory was 59 votes, and the number of members that were contacted through the use of union funds could not have affected the outcome. Therefore, there was no violation affecting the outcome of the election.

You alleged that by the time the union complied with ██████████'s request for the Election Guidelines it was too late to do a campaign mailing. During the investigation,

██████████ admitted that at the time of nominations, he was aware of the procedures concerning campaign mailings. Therefore, the Department did not find evidence that any delay in sending the election guidelines prevented the making of a request to mail campaign. There was no violation.

You alleged that the ballots did not put members adequately on notice as to whether the winning candidates would be delegates to the General Convention. The Department found that the Carpenter's General Convention is held every five years, and Local 370 holds separate elections for delegates to the General Convention. There was no violation of the Act.

You alleged that retired members served on the Election Committee in violation of the Carpenter's Constitution, Bylaws and Election Guidelines. The investigation revealed that the Constitution and Bylaws at Section 31(D) provides that a member cannot hold office or a position on a committee if drawing from a Carpenter's pension plan. The Department found that two members of the Election Committee were retirees drawing from the Local's pension plan. The Department's investigation revealed that the presence of the retirees on the Election Committee was a violation of the Carpenter's Constitution and thereby a technical violation of the Act. *See* 29 C.F.R. §§ 452.2 and 452.109. However, there was no evidence that the retirees acted in a manner that violated the Act. There was no effect on the outcome of the election.

You alleged that members were "turned away" from the polls and that the Local did not allow them to vote challenged ballots until specifically asked to do so. The investigation revealed that six members who sought to vote were found to be ineligible as the Local determined that they did not meet the good standing requirement. These members were not allowed to vote a regular ballot. Five of the six did vote a challenged ballot. The election committee decided not to make a decision on the challenged ballots or to include them in the tally as the five votes would not have affected the outcome of any office. There was no evidence that these members were eligible and were improperly denied the right to vote. There was no violation of the Act.

You alleged that two challenger candidates, ██████████ and ██████████, were treated unfairly by the Election Committee. You alleged that these candidates were forced to move their campaign tent on election day because the Election Committee claimed that the tent was in violation of a New York State election law banning campaigning within a specific distance from a polling site. You alleged that despite asking the challengers to move their tent, the Election Committee allowed the incumbent candidates to park a truck in the same location. While the location of the campaign tent was protested to the Election Committee, the investigation did not reveal that the action of the incumbents with respect to the truck was protested to the Election

Committee or that the Election Committee was aware of and permitted the incumbents' action. There was no disparate candidate treatment on the part of the union.

You alleged that the voting machines used by Local 370 were not properly examined by the election tellers. The investigation revealed that prior to the election the machines were zeroed out, the Election Committee assigned [REDACTED], the contractor for the machines, to demonstrate how the machines worked, and he was available to answer questions. No concerns were raised at that time. There was no violation of the Act.

You alleged that Local 370 misspelled a candidate's name on the ballot. The Department confirmed that one candidate [REDACTED] (or [REDACTED]) [REDACTED]'s name appeared incorrectly on the ballot as "[REDACTED]." The Department found that Mr. [REDACTED] had not made any campaign mailings or disseminated campaign literature or writings to the membership such that members were familiar with the spelling of his name. The Department did not find any evidence to indicate that members were confused by the misspelling. Either spelling of [REDACTED]'s distinct name can be read to sound the same therefore limiting the likelihood of voter confusion.

[REDACTED] confirmed that he did not believe the mistake confused the membership. While the error violates the Act's provision requiring adequate safeguards to ensure a fair election, 29 U.S.C. §481(c), the investigation revealed no evidence indicating that it affected the results of the election. There was no violation affecting the outcome of the election.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act which may have affected the outcome of the election and upon which the Secretary of Labor may bring an action under section 402 of the Act, 29 U.S.C. § 482. Therefore, there is no basis for bringing an enforcement action. Accordingly, I am closing the file on this matter.

Sincerely,

Patricia Fox  
Acting Chief, Division of Enforcement

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