



January 8, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on March 12, 2008, with the Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the International Brotherhood of Teamsters, Local 85, (Local 85 or union) on December 21, 2006.

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

You alleged that the union called the printer, Service Press, and told them "not to send" your campaign materials until December 18, 2006. Article 16, Section F(4) of the Bylaws of the Brotherhood of Teamsters and Auto Truck Drivers, Local 85, states, "[u]pon the reasonable request of any declared and eligible candidate for office, the Secretary-Treasurer shall arrange for the distribution of any campaign literature by mail, or otherwise, provided that such candidate can pay the reasonable estimated cost involved in advance. The Secretary-Treasurer shall not delay the distribution of any candidate's mailing." Moreover, under the LMRDA, the union and its officers must comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense and must treat candidates equally with respect to distribution of campaign literature. See 29 C.F.R. § 452.67.

The investigation established that on November 29, 2006, you submitted a request to have your campaign literature distributed to the membership. The union called Service Press and informed them of your request and that the membership list would be sent to them. Service Press confirmed that the union also told them not to mail any campaign literature before December 18, 2006, 3 days before the election tally. The union mailed the list on December 4, 2006, and Service Press received the membership mailing list the next day, December 5, 2006. The investigation revealed that Service Press did not

comply with the union's request not to mail your campaign literature before December 18, 2006. Service Press mailed your campaign literature on December 8, 2006. The investigation further revealed that the delay in mailing occurred because you and your running mates had not paid the cost of the mailing. Service Press mailed your campaign literature once sufficient payment to cover the cost of postage had been received. The delay in mailing was caused by the delay in payment. Both you and your running mate, Mike McShane, acknowledged that Service Press did not delay in mailing your campaign literature once payment was received. There was no violation.

You alleged that Secretary-Treasurer Van Beane and Matt Marini campaigned to employees who were on employer paid time. You further alleged that this campaigning occurred while Beane and Marini were on union paid time. Section 401(g) of the LMRDA , 29 U.S.C. § 481(g), provides that no money of an employer is to be contributed or applied to promote the candidacy of any person in an election subject to the provisions of Title IV. The investigation established that Yellow Freight permitted candidates to campaign in the driver's waiting room where drivers wait to punch in to work. The investigation established that one morning at 7 a.m. or 8 a.m., Secretary-Treasurer Beane and Business Agent Lou Marini, Matt's father, campaigned for their respective offices to 30-40 members at Yellow Freight for about 30 minutes to an hour in the driver's waiting room. The evidence revealed that members were not on employer-paid time when the campaigning occurred as they were in an area for those waiting to start work. However, the evidence is inconclusive as to whether Beane and Marini were on union-paid time when the campaigning occurred, because the officers' normal workday begins in the union office around 8 a.m. In any event, Beane and Marini campaigned to only 30-40 members. Beane won the election by a margin of 249 votes. Marini won by a margin of 94 votes. The votes of the 30-40 members at Yellow Freight would not have affected the outcome of the election.

You alleged that during the ballot retrieval from the post office trays of ballots were received that were not in the secured post office box and that there were two envelopes addressed to Charles Schwab. The investigation established that when you and members of the Election Committee asked the post office clerk for the ballots, the clerk brought out trays of ballots. The postal clerk explained that once the post office box is full, the mail is removed from the box and kept in trays. The trays were in a secured area accessible only by postal employees. The investigation also revealed that two pieces of junk mail addressed to Charles Schwab were mistakenly included with the ballots because Schwab had previously rented that post office box. There was no violation.

You alleged that observers were not allowed to observe the December 21, 2006 tally because the election notice stated that the tally would occur on December 22, 2006. The investigation established that the "Notice of Nominations and Elections" dated October

4, 2006, stated that the ballots would be counted on December 21, 2006, and that the "Election Notice" dated October 2006, also stated that the ballots are due to later than 9 a.m. on December 21, 2006. Thus, the proper date was used on the notices. Regarding your allegation that candidates were denied the right to observe, the investigation revealed that there were observers at the ballot tally, and any member or candidate who wanted to observe had the opportunity to do so. 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, and I am closing our file regarding this matter.

Sincerely,

Cynthia M. Downing  
Chief, Division of Enforcement

cc: General President James P. Hoffa  
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