



October 31, 2022



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on June 21, 2022, alleging violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA). You alleged that violations occurred in connection with the regularly scheduled election of union officers conducted by District Council 6 of the International Union of Painters and Allied Trades (IUPAT) on June 18, 2022.

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 no violation occurred.

You alleged that you were improperly disqualified from running for office for failing to meet the union's working-at-the-trade candidacy qualification. You alleged that you met the requirement because you had been actively seeking work for most of the twelve months prior to May 18, 2022, the date of nominations. You alleged that you had been coerced into signing a form to withdraw your pension after months of not working and that you were treated differently from other members who withdrew their pensions.

Section 401(e) of the LMRDA requires that members in good standing shall be eligible to be candidates and to hold office, subject to reasonable qualifications uniformly imposed. 29 U.S.C. § 481(e). The Department's interpretive regulations state that it is generally "reasonable for a union to require candidates to be employed at the trade" and "to have been so employed for a reasonable period," although any such requirement "should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working." 29 C.F.R. § 452.41(a).

The relevant qualification for candidacy for a District Council 6 elected position, contained in section 155 of the IUPAT Constitution, is that a member be "employed, actively seeking employment, or unable to be employed or to seek employment due to

temporary disability during the major portion of the twelve months prior to the date of nomination.” That section of the IUPAT Constitution further requires that a member be “currently active in the trades and not voluntarily drawing a pension from a pension plan sponsored by or affiliated with the IU or subordinate body of the IU.”

The Department’s investigation established that IUPAT General President [REDACTED] upheld the district council’s determination of your ineligibility based on your failure to meet this working-at-the-trade candidacy qualification. In a letter to you dated May 27, 2022, [REDACTED] stated that he based his decision on the union’s finding that you signed a Member’s Certification of Retirement on December 17, 2021. [REDACTED] concluded that your attestations on that form made it “clear” that you were not currently working in the trades and had not been seeking work for a “major portion of the twelve months preceding nomination.” The IUPAT General Executive Board upheld [REDACTED] decision in a letter to you dated June 7, 2022, affirming that you were ineligible to hold district council office because you were not “employed, actively seeking employment, or unable to be employed or to seek employment due to temporary disability during the major portion of the twelve months prior to the date of nomination.” When responsible union officials have consistently applied an interpretation of the constitution that is not clearly unreasonable, the Department defers to the union. See 29 C.F.R. § 452.3. Here, the union’s interpretation of its working-at-the-trade candidacy qualification, as applied to you, was not clearly unreasonable.

The Department’s investigation confirmed that you signed a Member’s Certification of Retirement on December 17, 2021. On that form, you identified April 30, 2020, as your effective date of termination of employment; attested that you last worked under the jurisdiction of the pension fund in June 2020; and certified that you did not intend to return to employment in the industry in which employees covered under the plan are employed or in a trade or craft covered under the plan. As a result, you received a lump sum payment of your pension.

During the Department’s investigation, you asserted that the Member’s Certification of Retirement was a form the union started requiring just for you. You asserted that other members were not required to sign the form to receive their pensions. You also named two members who, you asserted, retired from the local, took their pensions, and are still working.

The Department’s investigation determined that the union’s pension plan does not allow “in-service” withdrawals, meaning that members must either retire or terminate their employment to be eligible to receive their funds. The Department’s investigation found that the pension fund board of trustees began requiring plan participants to certify their intention to retire from the industry when applying for benefits after another member disclosed their intention to retire for one day to collect their lump sum pension fund amount and then return to work in the trade, which the plan trustees

viewed as violating the terms of the plan. The investigation showed that the trustees directed the plan's attorney to develop an affidavit for this purpose in September 2021 and that the trustees reviewed and approved the resulting form, the Member's Certification of Retirement, in November 2021.

The Department's investigation did not substantiate your claims that the union treated you differently from other members with respect to requiring the form for pension withdrawal. The Department reviewed completed Member's Certification of Retirement forms submitted by other plan participants beginning in November 2021, including two that were signed and notarized before yours and a third that was signed and notarized after yours. With regard to your claim that two named members collected their retirement and then returned to work, the investigation established that one of those members retired from the union in 2017 and has not worked in the trade since he retired; the other member has not retired, is still working, and is not collecting his pension.

You also asserted that you signed the Member's Certification of Retirement out of financial duress because you were not getting any work through the union. You asserted that you had repeatedly sought employment by contacting business representative Jim Black for assistance in-person and by phone, including requesting to be added to the "laid off list" that Black maintained for members who were not working. However, you provided no documentation of any such efforts prior to approximately March 2022. When interviewed by the Department, Black stated that you had not begun reaching out to him for help finding work until March 2022. Therefore, the Department's investigation did not substantiate your claim that your financial situation at the time you signed the form was caused by the union.

Moreover, the investigation indicated that after you signed the Member's Certification of Retirement, both you and Black were unsure whether you were legally permitted to receive job referrals through the union because you had certified your intention not to return to employment in the trade in order to receive your pension. You provided a text message exchange between yourself and Black dated March 21, 2022, in which you stated, "I would like to go back to work as long as I am legally aloud [sic] to return to work (please make sure make [sic] name is on the list)!" Black then responded, "You are on the lay off list." The Department's investigation established that you had appeared on the union's laid off list once prior to that, on February 21, 2022, and that you appeared on the list for eight consecutive weeks from March 28, 2022, through May 16, 2022. The investigation uncovered no evidence that you were seeking work through the union during the remaining forty-three weeks of the qualifying period leading up to nominations on May 18, 2022.

You also stated that you unsuccessfully sought work outside the union's referral system during the twelve-month qualifying period. However, you identified only a single

specific job for which you had applied, and the documents you supplied indicated that your application was submitted on December 29, 2020, and rejected on February 5, 2021, outside the twelve-month qualifying period. That application aside, the only evidence you provided to show that you were actively seeking work for the majority of the year preceding nominations consisted of the names and phone numbers of five signatory contractors. You asserted that you had reached out to those contractors in search of employment, but you were unable to provide the names of individuals at those contractors with whom you spoke, the specific dates or time periods when you contacted them, or any other records of these contacts. You stated that when you called companies, you often spoke only with a receptionist or office secretary who advised you they were not hiring, and you were not put through to a hiring manager or anyone else who could provide additional information. The investigation established that the union maintains a list of contractors and hiring contacts and that the list is provided to any member who requests it, but you never asked for the list.


The Department's investigation therefore did not find evidence that you were actively seeking employment for a majority of the twelve months prior to nomination. Furthermore, the investigation established that you were voluntarily drawing a pension from a pension plan sponsored by the union. Accordingly, the union's determination that you were ineligible to run for office based on your failure to meet the working-in-the-trade requirement in section 155 of the IUPAT Constitution was not clearly unreasonable, and the Department defers to the union's interpretation. There was no violation.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file on the matter.

Sincerely,

A large black rectangular redaction box covering the signature of Tracy L. Shanker.

Tracy L. Shanker
Chief, Division of Enforcement

cc:  General President
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