U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210

April 20, 2010

Dear |||||||||||||||||||||||||:

This Statement of Reasons is in response to a complaint filed by your attorney, |||||||||||||||||||||||||, on your behalf, with the Department of Labor on July 1, 2009. In the complaint, you alleged that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, was violated in connection with the election of union officers conducted on June 13, 2009, by Laborers' International Union of North America, Local 78.

Section 402 of Act, 29 U.S.C. § 482, provides that, before a member may file an election complaint with the Secretary of Labor, such member must first invoke the remedies available under the constitution and bylaws of the labor organization for three calendar months without obtaining a final decision or must exhaust such remedies. *See* 29 C.F.R. § 452.135. The Department of Labor's (Department's) investigation disclosed that you invoked the available internal remedies by filing an election protest with the union on June 11, 2009. Your protest is currently pending before the union.

On July 1, 2009, a complaint was filed with the Department on your behalf, less than one month after the invocation of the internal union remedies. Since you invoked the internal remedies on June 11, 2009, the three calendar month invocation period did not expire until September 11, 2009. Thus, you did not comply with the filing requirements of section 402 of the Act when you filed your complaint with the Department prior to that expiration date. Further, you were advised by the Department that it would be necessary for you to refile your complaint during the month beginning September 11, 2009, for it to be considered. You did not refile the complaint. Inasmuch as you failed to comply with the Act's filing requirements, your July 1, 2009 complaint is not properly before the Department and it, therefore, is dismissed.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers International Union of North America
905 16th Street, NW
Washington, DC 20006

Kazimierierz Prosniewski, President
LIUNA Local 78
30 Cliff Street
New York, New York 10038

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The Department of Labor (Department) conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to the specific allegation, that there was no violation of the Act.

The complaint alleged that the union improperly disqualified you from candidacy for failing to work at the calling. The Department's investigation substantiated that your disqualification was proper. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union must conduct its election of union officers in accordance with the union's constitution and bylaws. Article V, Section 4, of the International's constitution provides, "no one shall be eligible to hold any office in the Local Union if the person has not been regularly working at the calling of the International Union during the entire year immediately prior to nomination." The provision further provides that during periods of unemployment where a member is available for and continuously and actively seeking employment at the calling, the member is required to comply with the rules of the referral service or hiring hall. Such rules require a member to register on an out of work list to maintain working at the calling status. Thus, in order for you to be eligible for candidacy, you were required to have worked at the calling or, during periods of unemployment, to have maintained working at the calling status by registering on an out of work list for the entire year preceding the nomination meeting.

The investigation disclosed that the nomination meeting was held on May 7, 2009, and, thus, the one-year qualifying period for working at the calling was from May 2008 to May 2009. The investigation confirmed that you did not register on the out of work list when you were unemployed, as required by the referral service or hiring hall rules. As a result, you failed to maintain working at the calling status during the qualifying period. Inasmuch as you failed to maintain working at the calling status for the entire year prior to nominations, as required by the International constitution, you were not eligible for candidacy. Thus, your disqualification from candidacy was proper. The Act was not violated.

For the reasons set forth above, it is concluded that there was no violation of the Act, and I have closed the file on this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers International Union of North America
905 16th Street, NW
Washington, DC 20006

Kazimierierz Prosniewski, President
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The Department of Labor (Department) conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to the specific allegation, that there was no violation of the Act.

The complaint alleged that the union improperly disqualified you from candidacy for failing to work at the calling. The Department's investigation substantiated that your disqualification was proper. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union must conduct its election of union officers in accordance with the union's constitution and bylaws. Article V, Section 4, of the International's constitution provides, "no one shall be eligible to hold any office in the Local Union if the person has not been regularly working at the calling of the International Union during the entire year immediately prior to nomination." This constitutional provision defines "working at the calling" to include employment for which the union serves, or is actively seeking to serve, as the exclusive collective bargaining representative.

The Department's investigation disclosed that the nomination meeting was conducted on May 7, 2009, and, thus, the one-year qualifying period for working at the calling was from May 2008 to May 2009. During that period, you worked as an asbestos supervisor. The investigation showed that employment as an asbestos supervisor does not constitute working at the calling under the International constitution because such work is not the type of employment the union serves, or is actively seeking to serve, as the exclusive collective bargaining representative. Inasmuch as you were not working at the calling during the year prior to the nomination meeting, as required by the International constitution, you did not meet the working at the calling requirement for candidacy. Thus, the union properly disqualified you from candidacy for failing to satisfy that requirement. The Act was not violated.

For the reasons set forth above, I have closed the file on this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers International Union of North America
905 16th Street, NW
Washington, DC 20006

Kazimierierz Prosniewski, President
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Section 402(a) of Act, 29 U.S.C § 482(a), provides that a "member" of a labor organization may file a complaint with the Secretary of Labor challenging the conduct of such organization's election of union officers. *See also* 29 C.F.R. § 452.135. "Member," when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization and who has not been suspended or expelled from membership. *See* 29 U.S.C. § 402(o). The Department of Labor's (Department's) investigation disclosed that you were suspended from membership for the nonpayment of dues at the time that your complaint was filed with the Department. Therefore, you were not a member of the union at the time of such filing. Thus, you were not in compliance with the filing requirements of section 402(a) of the Act. Inasmuch as you failed to meet those requirements, your complaint is not properly before the Department and it, therefore, is dismissed.

For the reasons set forth above, I have closed the file on this matter.

Sincerely,

CM Downing

Cynthia M. Downing
Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers International Union of North America
905 16th Street, NW
Washington, DC 20006

Kazimierierz Prosniewski, President
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The Department of Labor (Department) conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to the specific allegation, that there was no violation of the Act.

The complaint alleges that the union improperly disqualified you from candidacy for failing to work at the calling. The Department's investigation disclosed that you were not disqualified from candidacy for failing to work at the calling. Rather, you were disqualified for failing to meet the two year continuous good standing requirement for candidacy, as set forth in the local union constitution.

The Department's investigation substantiated that your disqualification was proper. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union member's right to be a candidate for office may be subject to "reasonable qualifications uniformly imposed" and that a union must conduct its election of union officers in accordance with the union's constitution and bylaws. Article V, Section 1, of the local union constitution provides, "in order to qualify as a candidate for any office in a local union, a member shall be required to have been in good standing in the International Union for a period of two years and in good standing in the Local Union for a period of two years immediately prior to nominations . . . . " The investigation determined that you were, in fact, suspended from membership for this reason during the two-year qualifying period for continuous good standing, May 6, 2007 to May 6, 2009. There is no indication that this qualification requirement was not uniformly imposed. Thus, you were not eligible for candidacy at the time of the May 7 nominations meeting and the union properly disqualified you. The Act was not violated.

For the reasons set forth above, it is concluded that there was no violation of the Act, and I have closed the file on this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Terence M. O'Sullivan, General President
Laborers International Union of North America
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Washington, DC 20006

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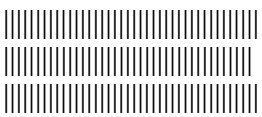

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The complaint alleged that the union improperly disqualified you from candidacy for failing to work at the calling. The Department's investigation substantiated that your disqualification was proper. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that a union member's right to be a candidate for office may be subject to "reasonable qualifications uniformly imposed" and that a union must conduct its election of union officers in accordance with the union's constitution and bylaws. Article V, Section 4, of the local union's constitution provides, "no one shall be eligible to hold any office in the Local Union if the person has not been regularly working at the calling of the International Union during the entire year immediately prior to nomination." The provision further provides that during periods of unemployment where a member is available for and continuously and actively seeking employment at the calling, the member is required to comply with the rules of the referral service or hiring hall. These rules require a member to register on an out of work list to maintain working at the calling status.

The investigation disclosed that the nomination meeting was held on May 7, 2009, and, thus, the one-year qualifying period for working at the calling was from May 2008 to May 2009. The investigation also showed that you were unemployed in May and August of 2008 and from December 2008 until May 2009. You did not register on the out of work list for the period covering December 2008 to May 2009, as required by the referral service or hiring hall rules. As a result, you failed to maintain working at the calling status during that period. There is no indication that this qualification requirement was not uniformly imposed. Thus, you were not eligible for candidacy for failing to maintain working at the calling status. Your disqualification from candidacy, therefore, was proper. The Act was not violated.

For the reasons set forth above, it is concluded that there was no violation of the Act, and I have closed the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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