**U.S. Department of Labor**

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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August 12, 2010

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your March 24, 2010 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 – 484, occurred in connection with the election of officers of the International Association of Machinists and Aerospace Workers (IAM), Local Lodge 2339N (Local 2339N) conducted on December 8, 2009 to bring Local 2339N out of trusteeship.

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

You alleged that Local 2339N violated section 401(e) of the LMRDA, by improperly disqualifying you as a candidate for the office of Local 2339N president in the December 2009 election. Section 401(e) requires that every member in good standing shall be eligible to be a candidate and to hold office, subject to section 504 and to reasonable qualifications uniformly imposed. Although you were nominated for the position of president, Local 2339N disqualified you based on a 2008 IAM determination that you had misappropriated union funds and were permanently barred from holding any office or representing members of the IAM, pursuant to Article VII, Section 5 of the IAM Constitution and the IAM Shortage Policy. Specifically, the IAM determined, following a December 17, 2008 hearing, that you misappropriated Local 2339N funds totaling $15,363.09 while acting in your capacity as Local 2339N president.

You assert that you were not afforded adequate due process rights under section 101(a)(5) of the LMRDA, prior to being disciplined in the form of a permanent office-holding disqualification. Department of Labor regulations at 29 C.F.R. § 452.50 provide that a union may bar a member guilty of misconduct from holding office without violating section 401(e), so long as the member has been afforded the rights guaranteed

under section 101(a)(5) of the LMRDA. Section 101(a)(5) provides that a member may not be disciplined unless such member has been served with written specific charges; given reasonable time to prepare his defense; and afforded a full and fair hearing. The Department of Labor investigation revealed that your section 101 (a)(5) rights were accommodated by the union.

a. Written Specific Charges

In *Int'l Brotherhood of Boilermakers v. Hardeman*, the U.S. Supreme Court considered due process rights in the context of section 101(a)(5) and asserted that the courts should also examine whether the union member receiving the charges has been misled or otherwise prejudiced in the presentation of his or her defense. *Hardeman*, 401 U.S. 233, 245 (1971); *see also Frye v. United Steelworkers of America*, 767 F.2d 1216, 1223 (7th Cir. 1985) (holding that, "to establish a violation of 101(a)(5), a disciplined member must demonstrate that he was misled or otherwise prejudiced in the presentation of his defense"). The charge underlying the IAM determination that you misappropriated union funds was provided in a November 24, 2008 letter sent from IAM Secretary-Treasurer Warren Mart. This charging letter provided: the amount of funds that the union alleged you misappropriated; the specific IAM constitutional provision requiring such discipline for misappropriated funds; the name of the Grand Lodge Auditor (GLA) who investigated and submitted her findings of misappropriations; the date that this auditor contacted you to meet to discuss the transactions that she found to be in violation of the IAM Constitution and Bylaws; as well as a full description of your rights to request a hearing, bring a representative from the IAM, present witnesses and evidence, and to cross-examine the GLA responsible for conducting the audit of Local 2339N. While the letter apprising you of the charges against you arguably may not meet the standard for specific written notice, the investigation established that you were not misled or otherwise prejudiced in presenting your defense.

The Department's investigation revealed that on July 28, 2008, while Local 2339N was in trusteeship, the IAM held a hearing to inform Local 2339N members and former officers of financial irregularities and potential financial malpractices which supported the IAM's position to keep Local 2339N in trusteeship. The Department found that you were present at this July 28, 2008 hearing, and were presented with specific financial irregularities or malpractices that occurred prior to the imposition of the trusteeship. Former officers, including you, were then given the opportunity to respond to these reports of financial malpractice and also permitted to introduce documents to support any disagreement that you had with the malpractices being discussed. The Department found that you actively participated at this hearing, responding to issues of financial malpractice that were presented.

Following the decision to impose a trusteeship over Local 2339N, the IAM requested that GLA Jane Tackett perform an audit of Local 2339N to review records, accounts, and transactions. GLA Tackett completed her audit in November 2008, which revealed that you and a number of other former Local 2339N officials were responsible for misappropriating union funds. IAM Representative, and trustee of Local 2339N, Carla Winkler, confirmed that GLA Tackett's audit focused on the specific irregularities discussed at the July 28, 2008 trusteeship hearing. GLA Tackett concluded that these irregularities and malpractices discussed at the July 28, 2008 hearing constituted misappropriation of union funds, chargeable to former officers. During its investigation, the Department interviewed GLA Tackett who explained that after completing her audit of the books and records of Local 2339N, she called the various officers whom she found to be responsible for losses in order to discuss the irregularities in detail. GLA Tackett called you on November 24, 2008, and stated that she wanted to meet with you. You confirmed that you received this call but declined to meet with GLA Tackett, asking that she put any request to meet with you in writing.

Regardless of whether the November 24, 2008 letter, standing alone, provided sufficiently specific charges related to the allegation that you misappropriated union funds, the Department determined that your attendance and active participation in the July 28, 2008 hearing, your phone conversation with GLA Tackett, as well as the specific reference to GLA Tackett's investigation as the basis for the misappropriation charges, collectively provided you with sufficient details so that you were not misled or prejudiced in presenting a defense against these charges.

b. Reasonable Time to Prepare a Defense

You also assert that you were not afforded reasonable time to prepare a defense, in violation of section 101(a)(5). The Department's investigation revealed that you received notice of the charges against you on or before November 28, 2008. Despite receiving the charging letter on or before November 28, 2008, the Department determined that you were aware of these allegations of financial malpractice as early as July 28, 2008, and took the opportunity to respond to many of the allegations giving rise to the charges at the July 28, 2008 hearing. On November 28, 2008, you responded to the charges and requested a hearing. The IAM received this letter on December 1, 2008, and responded by letter on December 5, 2008, setting a hearing date for December 17, 2008. This December 5, 2008 letter setting forth the time and place of the hearing was sent via overnight mail. Also in this December 5, 2008 letter from the IAM, you were advised that GLA Tackett would be instructed to make her audit report and other relevant documents available to you for your review prior to the hearing. Despite being sent via overnight mail, you state that you did not receive this December 5, 2008 letter until December 10, 2008.

Even assuming that you received the IAM's December 5, 2008 letter on December 10, 2008, you had seven days' notice of the specific date and time that the hearing would be held. Regardless of the date that you received the IAM's December 5, 2008 letter, you received the charging letter approximately 20 days prior to the hearing date (notice received on or before November 28, 2008 with a December 17, 2008 hearing), and had specific knowledge of and the opportunity to respond to these allegations of financial malpractice as early as July 28, 2008. As such, the Department found that you were provided reasonable time to prepare a defense to the charges of misappropriating union funds.

In addition to insufficient time to prepare a defense, you also stated that you were scheduled to work on December 17, 2008 and could not appear at the hearing. The Department's investigation revealed that you made no attempt to reschedule your work assignment so that you could attend the December 17, 2008 hearing. You summarily rejected the December 17, 2008 hearing date as an impossibility, without making any attempt to contact your employer to accommodate this scheduled hearing because you believed any attempt to change your schedule would be futile. Accordingly, the Department does not believe that the union was unreasonable in holding your hearing on December 17, 2008.

c. Afforded a Full and Fair Hearing

Finally, the Department's investigation determined that despite your failure to attend the December 17, 2008 hearing, a hearing was held and GLA Tackett presented evidence through documents and testimony relating to the reported misappropriations. The IAM Special Assistant overseeing the hearing was not involved in the investigation of the misappropriations. This Special Assistant considered the evidence presented and on January 6, 2009 issued his decision, finding that you were responsible for misappropriating $15,363.09 in union funds. Despite your failure to attend this hearing, the Special Assistant carefully considered the evidence presented and actually reduced the amount of misappropriated funds allegedly chargeable to you from $24,114.72 (as stated in the IAM's initial charging letter) to $15,363.09. On January 13, 2009, you were sent a copy of the IAM decision and given the right to appeal the findings of misappropriation to the IAM Executive Council. On February 2, 2009, you appealed the decision of the Special Assistant.

The Department's investigation revealed that on March 13, 2009, the IAM sent you via certified mail its decision to uphold the Special Assistant's decision that you misappropriated union funds in violation of Article VII, Section 5 of the IAM Constitution and were therefore disqualified from holding union office. Following its

investigation, the Department determined that the process that the IAM followed in implementing its disciplinary measures adequately provided you with a full and fair hearing, with full appeal rights. Accordingly, prior to imposing its disciplinary action, the IAM satisfied the requirements of section 101(a)(5), such that there was no violation of section 401(e) when you were disqualified from running for Local 2339N office in the December 2009 election.

In addition to the allegations related to section 101(a)(5), you raised other allegations in your complaint. You alleged that Local 2339N permitted two candidates to enter and exit the polling room in violation of section 401(c) of the LMRDA. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election.

The Department's investigation revealed that the two candidates that you mentioned only entered the polling room to vote and to begin setting up for a local membership meeting. The membership meeting was being set up in a separate area of the polling location apart from where voting was taking place. Further, you were not able to describe any wrongdoing on the part of either candidate, nor could you identify any other witnesses who could describe any wrongdoing on the part of either candidate. Accordingly, there is no violation of the adequate safeguards provision of the LMRDA.

You alleged that a statement by Local 2339N trustee [redacted]'s s that mistakes were made during the December 2009 election which would require a new election violated section 401(c) of the LMRDA, 29 U.S.C. § 481(c), which requires unions to provide adequate safeguards to insure a fair election. The Department interviewed Winkler who denied making any such statements. You were not able to provide any other witnesses who overheard her making such statements. Further, such a statement, in and of itself, would not violate the LMRDA adequate safeguards provision. There is no violation of the LMRDA.

You also allege that the Local 2339N notice of nominations described the meeting attendance eligibility requirement in violation of section 401(c) of the LMRDA. You assert that the meeting attendance requirement should have been waived because Local 2339N was under trusteeship and not an autonomous local union for the 12-month period preceding the November 2009 nomination meeting; therefore, meetings held while the union was under trusteeship were not legitimate local meetings, as intended by the meeting attendance requirement in the Bylaws. The allegation that you have raised is not a violation of the LMRDA. Whether Local 2339N, or the administrators of the trusteeship, decided to waive the meeting attendance requirement for this election coming out of trusteeship would be a decision left to the union and its members. The allegation, as you have raised it, is not covered by Title IV of the LMRDA.

You allege that Local 2339N only honored individual requests for absentee ballots in violation of section 401(c) of the LMRDA. You stated that in past Local 2339N elections, members were permitted to make a group request for multiple absentee ballots which the union honored by mailing multiple absentee ballots in one envelope. The Local 2339N trustee, [redacted], stated that she was not aware of any IAM locals that permit multiple absentee ballot requests to be sent to the union in one envelope. The election notice mailed to Local 2339N members stated that the union would only accept one absentee ballot request per envelope. The Department's investigation did not reveal that any union member was denied an absentee ballot because it was included as part of a multiple absentee ballot request. The Department's investigation did not reveal that Local 2339N received any requests for multiple absentee ballots. Accordingly, there is no violation of the LMRDA.

You allege that Local 2339N distributed a nominations notice that incorrectly described officers' compensation in violation of section 401(c) of the LMRDA. The Department's investigation revealed that the officer compensation listed on the nominations notice was correct according to new Bylaws which went into effect following the December 2009 election and which would be applicable to the newly-elected officers. The fact that the new compensation levels were published on the notice of nominations rather than the compensation levels in effect at the time of nominations, does not constitute a violation of the LMRDA.

You allege that appointed assistants in charge of Local 2339N during the trusteeship used the union newsletter to promote their candidacies for office in the December 2009 election in violation of section 401(g) of the LMRDA. Section 401(g) prohibits the use of union funds to promote any candidate for union office. Further, the Department of Labor regulations provide that a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed newsletter to members. 29 C.F.R. § 452.75. The Department recognizes that incumbent officers must proceed with union business in election years, and incumbents, by the nature of their positions, may be important participants in matters of interest to union members. As such, statements by and about incumbents in the union's newspaper or other media are to be expected, even as elections approach.

In order to ascertain whether or not such a communication constitutes promotion of a candidate in violation of section 401(g), the Department evaluates the timing, tone, and content of the particular communication. During its investigation, the Department reviewed issues of the union newsletter that you provided and determined that the newsletters did not include any article or features that would constitute the promotion of the incumbent officers. The newsletters that were provided included general information about union business and union affairs. The newsletters did not reference

the upcoming election and did not make statements that would constitute the endorsement of the incumbent officers. Based on the Department's review of the tone and content of the newsletters that you provided, these communications do not constitute campaign material that endorses candidates in the upcoming election. Accordingly, there is no violation of section 401(g) of the LMRDA.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
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Office of Labor-Management Standards

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