U.S. Department of Labor

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

January 8, 2010

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (the Department) on July 20, 2009, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by International Brotherhood of Electrical Workers (IBEW or the International), Local 363 (Local 363 or the Local) on June 23, 2009.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred regarding your allegation. This conclusion is explained below.

You alleged that Local 363 violated the Act by finding you to be an employer and therefore ineligible to run for or hold office. Specifically, you challenged the union's decision to disqualify you from running for the position of Local 363's Business Manager because you were employed as the Executive Director of the Construction Contractors Association of the Hudson Valley (CCA) on May 26, 2009, the day nominations were conducted.

Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), as well as the Department's regulations at 29 C.F.R. § 452.109, provide that elections must be conducted in accordance with the union's constitution.

The investigation showed that Article XV, Sec. 5 of the IBEW Constitution excludes electrical employers from holding office in a local union. In pertinent part, Article XV, Sec. 5 states:

> No L.U. [Local Union] shall allow any member who becomes an electrical employer, or a partner in an electrical employing concern, to hold office in the L.U. or attend any of its meetings, or vote in any election of a L.U. The

> L.U. shall allow such a member to continue his membership in the L.U. or take a withdrawal card for deposit in the I.O.

The investigation revealed that the International has interpreted that provision to mean that any member who "makes policy and management decisions" or who "takes an active role in negotiations" for an electrical business will be considered to be an employer. A union's interpretation of its own constitution will be accepted unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3. Here, the International's interpretation of its constitution is reasonable. Department of Labor regulations recognize that unions may deny supervisor and employer members the right to run for union office particularly when the person involved would be subject to a conflict of interest in carrying out his representative duties for employees and rank and file union members. See 29 C.F.R. §452.47. In your capacity as Executive Director of CCA, you represented the multi-employer group in negotiating collective-bargaining agreements between CCA and various labor organizations including the Laborers, Carpenters, and Masons. In that role, you made management and/or policy decisions and negotiated on behalf of the members of CCA, thirteen of which were electrical employers and approximately twelve of those had collective-bargaining relationships with Local 363. Based on these facts, the union concluded that you were an employer within the meaning of Article XV, Sec. 5 of the IBEW Constitution. As such, the union properly ruled you ineligible to run for office.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA, and I have closed the file in this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: [redacted], Associate Solicitor for Civil Rights and Labor-Management