U.S. Department of Labor

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

March 24, 2010

[redacted]

[redacted]

Dear [redacted] and [redacted]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("Department") on November 12, 2009 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("the Act"), as amended 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for United Steel Workers Local 9535 (the "Local"), an affiliate of the United Steelworkers, AFL-CIO, CLC ("USW"), originally conducted on April 30, 2009 and rerun on July 31, 2009.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations affecting the outcome of the election occurred.

You allege that the Local permitted supervisors, specifically persons working as Air Transportation Supervisors ("ATS"), to run for office and vote in the election. The Department's investigation did not substantiate this claim. Section 401(e) of the Act requires that "every member in good standing shall be eligible to be a candidate and to hold office … and shall have the right to vote for or otherwise support the candidate or candidates of his choice." 29 U.S.C. § 481(e). The investigation revealed that members in the ATS position were members in good standing and eligible to vote and be candidates. Moreover, the investigation further revealed that the duties of ATS consisted of training and supporting new hires on their first flight but did not include exercising supervisory authority or any duties that would present a conflict of interest with holding union office. There was no violation of the Act.

You also allege that the Local failed to provide a reasonable opportunity to nominate persons for the election because all members did not receive nomination forms and

because the Local did not reopen nominations for the July rerun election. However, your initial protest to the Local concerning the April election alleged flaws in the nomination process, but did not allege that members did not receive nomination forms. As a result you failed to exhaust your internal union remedies concerning this allegation, as required by section 402 of the Act, and it is not properly before the Department.

You also allege that ineligible members may have voted in the July election as a result of the employer sending members a letter reminding them of their obligation under the collective bargaining agreement to pay dues to the Local. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of employer funds or resources to promote the candidacy of any person in an election. The investigation revealed that the letter made no mention of the election or candidates. There was no violation of the Act.

You also allege that the Local failed to allow you to inspect the membership list within 30 days of the election. The Department's investigation substantiated this claim. Section 401(c) of the Act establishes that every candidate has the right to inspect a list containing the names and last known addresses of all members once within 30 days of the election. The Local's Election Manual also provides for the same right. The Act further provides that the list is to be kept at the principal office of the labor organization. The investigation revealed that [redacted] requested to inspect the membership list and the Local informed her that she could do so in Nashville, Tennessee on the date of the mail ballot. The Local's failure to provide [redacted] with an opportunity to inspect the list at its principal office in Syracuse, New York was a violation of the Act. However, in order for a violation to be actionable there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, there is no evidence that [redacted] intended to take any action based on her inspection of the list and the investigation did not find any evidence that any ineligible members voted in the election. Therefore, the violation did not affect the outcome of the election.

You also allege that the Local failed to provide adequate safeguards for the election by conducting portions of the election process in Nashville, Tennessee and Newark, New Jersey. Section 401(c) of the Act requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer at the polls and at the counting of ballots. As you indicated, the investigation revealed that the ballots were mailed from Nashville, Tennessee, and counted in Newark, New Jersey. However, the investigation further revealed that each candidate was provided an opportunity to attend or have an observer attend both the mailing and counting of the ballots. There was no violation of the Act.

You also allege that the Local failed to adhere to its Constitution and Bylaws following the USW's decision to rerun the April 2009 election by not filling the officer positions with the pre-election officers. The USW Local Union Election Manual states: "Officers shall be installed and the oath of office administered at the first regular meeting in May,

2009 for the April, 2009 election. It also states: "In the event that the election for any local union office . . . is invalidated as a result of an election protest, the office . . . shall be filled by the pre-election incumbent until a new election is held and a successor is elected and qualified." Section 401(e) of LMRDA, 29 U.S.C. § 481(e) requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. *See* 29 C.F.R. § 452.2. The Department will accept the interpretation consistently placed on a union's constitution by the responsible union official or governing body unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3. The USW's Constitution and Bylaws do not explicitly incorporate the USW Local Union Election Manual. However, because the USW gives the Election Manual binding status the Department will consider it to have the status of a binding requirement. In this case, the membership voted to reject the protests to the April 2009 election and swore in the new officers as required. However, on June 19, 2009 the USW overturned the election and ordered a rerun. The Local and USW interpret the Election Manual as not requiring the removal of the newly installed officers where the Local and its membership reject the protest. This interpretation is not clearly unreasonable. *See* 29 C.F.R. § 452.3. Further, the Act does not require the removal of officers when protests have been lodged or are pending and, instead, provides that newly elected officers will conduct the affairs of the local, absent a union constitution or bylaws to the contrary. 29 U.S.C. § 482(a). There was no violation of the Act.

You also allege that the Local failed to provide adequate safeguards for the election by not posting or sending out information about the July 2009 rerun election. The investigation did not substantiate this claim. The Act does not require a separate notice of election to be sent in mail ballot election. As the Department's regulations state, "if the election is conducted by mail and no separate notice is mailed to the members, the ballots must be mailed to the members no later than fifteen days prior to the date when they must be mailed back in order to be counted." 29 C.F.R. § 452.102. The investigation revealed that the ballots were mailed on July 9, 2009, for the July 31, 2009, rerun election. There was no violation of the Act.

You also allege that a supporter of a candidate for president used employer resources to distribute campaign materials both during the original and rerun elections. The investigation revealed that of all your allegations regarding this issue, there was only one that occurred in connection with the July 2009 rerun election. You alleged that a member made and distributed candy treats that contained slogans supporting a candidate for president and one of these treats ended up in the file folder used for personal communications in the Syracuse office. The investigation revealed that the file cabinet and file folders were not employer or union resources but had been purchased by a pilot and flight attendant with their own money. There was no violation of the Act.

Finally, you also assert a variety of additional objections under statutes other than the LMRDA and objections that would not constitute violations of Title IV of the LMRDA,

if true. As these allegations are not within the Department's Title IV jurisdiction, they are not addressed in this letter.

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

Sincerely,

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