U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

November 18, 2010

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on June 24, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers for Local 24 of the American Federation of Musicians of the United States and Canada, AFL-CIO/CLC, completed on December 6, 2009.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that there was no violation of the Act.

You allege that the Local, in accepting and upholding an election protest filed by your opponent for the office of secretary-treasurer, did not enforce or adhere to the procedures and timelines for filing internal election protests and for making protest determinations set forth in the constitution and bylaws. Specifically, you allege that the protest was filed with local executive board members other than you, the secretary-treasurer, as required by the constitution. You further allege that the Local lost jurisdiction over the protest when it failed to respond to the protest within the 15 day period set forth in its constitution.

Failure to strictly adhere to internal union procedures in protesting an election of union officers is not a per se violation of the LMRDA. The Department's investigation revealed that the Local, in acting upon that protest, acted consistently with guidance from the Secretary, which is supported by the courts, that unions not hold members who are seeking redress within their union to procedural niceties. *See Hodgson v. Local Union 6799, United Steelworkers of America, AFL-CIO,* 403 U.S. 333, 341 (1971). Relevant case law and Department policy favor the union's accepting and addressing union member protests and disfavor technical burdens which might cause members' protests to go unaddressed. The primary purpose of the exhaustion requirement is to give the union an opportunity to police its own affairs. Thus, protests have been found properly filed where, as here, the union member addressed the protest to union officials other

than the official named in the constitution. *See Donovan v. Sailors' Union of the Pacific*, 739 F.2d 1426 (9th Cir. 1984) (protest addressed to the union president instead of the party designated by constitution to receive union protests found to be valid). Also, when a union does not insist on strict adherence to express exhaustion procedures and addresses a protest on its merits, any procedural defect is considered to be waived. *See Donovan v. Electrical Workers Local* 126, 728 F.2d 610 (3d Cir. 1984); *Sheridan v. Local 626*, 191 F. Supp. 347 (D. Del. 1961). There was no violation of the Act.

Your complaint to the Department expressly provided that you were not protesting the validity of the union's decision, reached as a result of your opponent's protest, to conduct a rerun election. Therefore, the Department does not have jurisdiction over that matter, and it could not provide the basis for litigation by the Department. In any event, the evidence indicates that the Local had a sufficient basis for determining to rerun the election.

The requirement that a member exhaust internal union remedies before complaining to the Secretary of a violation of the Act was intended to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a degree of deference to decisions on internal union election protests providing for the conduct of a new election. The Secretary will not seek to reverse a union's decision to hold a remedial election, even if the evidence could be viewed as insufficient to support a decision by the Secretary to sue to overturn the original election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable. In this case, the evidence indicates that there was sufficient basis – discrepancies in the accuracy of and candidate access to the membership list – for determining to rerun the election. Further, there was no evidence of bad faith.

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,

Patricia Fox
Chief, Division of Enforcement

cc: Thomas F. Lee, President

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