U.S. Department of Labor

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

August 23, 2011

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your March 21, 2011 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the triennial election of officers for Local 306 of the International Alliance of Theatrical Stage Employees, Moving Pictures Technicians, Artists and Allied Crafts conducted on December 8, 2010.

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

You alleged that the union failed to follow its constitution and bylaws by failing to hold nominations as the first order of business at the membership meeting for nominations in accordance with the union's constitution. Section 401(e) of the Act provides, in relevant part, "The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title." *See also* 29 C.F.R. § 452.2. Article VII, Section 2(i) of Local 306's Constitution and Bylaws provides: "Nominations of eligible candidates shall be the first order of business, at the Regular Meeting of November in election years." The minutes of that meeting, on November 10, 2010, shows that the nominations, including the executive board's decision to enforce the continuous good standing rule strictly, was the first order of business. The brief discussion regarding the strict enforcement of continuous good standing ruling was part of the nomination process. Thus, there was no violation of the Act.

You alleged that the union applied its continuous good standing rule to disqualify candidates for office, in violation of section 401(e) of the LMRDA. Section 401(e) requires in pertinent part that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Article VII, Section 1 of the Local 306 constitution requires candidates to be in continuous good standing for at least two years to be eligible. You state that numerous

candidates were declared ineligible to be nominated due to their failure to pay dues timely, thus rendering them not in good standing. You claim that there was confusion as to when the dues were actually due, and that because the continuous good standing requirement was not consistently applied in previous elections, such a requirement should not have barred candidates from being nominated in the December 2010 election.

The Department's interpretive regulations presume that unions may apply a continuous good standing candidate qualification if it provides a reasonable grace period for late payment and if the time period of continuous good standing is reasonable. *See* 29 C.F.R. § 425.37(b). A two year time period, such as the period contained in the union's constitution, is generally viewed as reasonable under 29 C.F.R. § 425.37(b). Additionally, the constitution provides for a grace period, in that Article XVII, Section 3 provides, "Failure on the part of any member to pay any financial obligations to this Local within fifteen (15) calendar days after it became payable shall result in such member being automatically declared not in good standing." Thus, on its face, the union's continuous good standing rule meets the two prongs of 29 C.F.R. § 425.37(b) and is thus a reasonable candidate qualification.

Nonetheless, you claim that the continuous good standing qualification should not bar candidates from nomination because it is not clear when the dues are due and when the grace period starts. The Department's regulations provide that a union's interpretation of its constitution will be upheld unless it is clearly unreasonable. *See* 29 C.F.R. § 452.3. Here, Article XII, Section 2 of the Local 306 constitution specifies that dues are due quarterly and Section 3 of the bylaws specifies, in the context of dues, when good standing is lost: "Any member not paid in his or her dues by the third Wednesday of the official quarter shall be automatically suspended excepting any member in good standing makes good for the delinquent member the amount due this Union."

The 15-day grace period, quoted above, states when an individual is "automatically declared not in good standing." Article XVII, Section 3. As such, the union's construction of these requirements that the dues are due on the first day of each quarter and members lose good standing on the third Wednesday of the quarter is not clearly unreasonable because the third Wednesday is at least equal to or longer than the 15-day grace period provided by the constitution, so the member would be out of good standing under either provision. Further, members of the union were put on notice of this interpretation. For example, the September 2010 meeting notice stated: "Total dues are due in the business office no later than the 3rd Wednesday, of the first month of each quarter – January, April, July, and October." This notice, plus the aforementioned provisions in the Local 306 constitution and bylaws concerning being declared "automatically not in good standing" implies that there is no grace period after that point.

You also emphasize that the continuous good standing rule had not been strictly enforced prior to the December 2010 election. However, the fact that a union has ignored a requirement in its constitution in the past does not permit it to do so at a later time, because the LMRDA contains a specific requirement that the constitution be followed. 29 U.S.C. § 481(e). Article VII, Section 1 of the union's constitution clearly provides that two years continuous good standing is required to be eligible to run for office, and such a requirement is reasonable, as explained above. The fact that the local may not have strictly enforced that constitutional provision in the past cannot eliminate this clear constitutional requirement. There is no violation.

You alleged that there were several deficiencies in the balloting procedures for the election, including the following: (1) the Local 306's election officials allegedly failed to supervise ballot preparation, failed to create an accurate list of eligible members, and failed to maintain a list of who was mailed a ballot; (2) the local constitution specified that the ballots are to be mailed on the third Friday of November, but the ballots in this election were mailed on Monday, November 22, 2010, three days after the third Friday; (3) members of the theatrical division who requested duplicate ballots received traditional division ballots, preventing them from voting; and (4) the union did not tally 79 ballots from the theatrical division because the return ballot envelope was not signed or the voter's signature was not in a specified location.

Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that every member in good standing shall have the right to vote and requires that the election shall be conducted in accordance with the constitution and bylaws of the organization. Additionally, section 401(c) of the Act, 29 U.S.C. § 481(c), requires that adequate safeguards to insure a fair election shall be provided. The requirement of adequate safeguards has been interpreted in Departmental regulations as imposing a general rule of fairness on union elections. 29 C.F.R. § 452.110.

First, regarding the alleged failure of the election committee to supervise the ballot preparation, there is no provision in the LMRDA, the union's or International's Constitution and Bylaws, or the election rules that requires the local's election officials to supervise the ballot preparation. Similarly, there is no requirement that the union create a separate list of eligible members. However, there is a requirement that once created, all election records be maintained for one year. 29 U.S.C. § 481(e). The investigation established that the union did not maintain the list it created of members who were mailed ballots, in violation of this requirement. Nevertheless, section 402(c) of the Act, 29 U.S.C. § 482(c)(2) provides that an election will only be overturned where a violation may have affected the outcome of the election. The Department's investigation found no evidence that the failure to maintain this record had any effect on the outcome of the election.

Second, concerning the alleged late mailing of the ballots, Article VII, § 4(I) of Local 306 constitution provides that the ballots be mailed to the membership on the "Third Friday of November." The ballots were mailed three days later, on Monday, November 22, 2010 and the ballots were due the day of the tally, December 8, 2010. The reason the union gave for the late mailing was that it was waiting for one of the envelopes to enclose in the mail ballot package. A log of the election events indicates that all the envelopes were available, but because there had been doubt whether everything would be available in time for the mailing, the election judge had scheduled another commitment on the third Friday of November and he could not change it. Therefore, the ballots were not mailed until Monday, November 22, 2010. Whatever the reason for the late mailing, while such mailing violated Local 306's constitution, and thus was a violation of 29 U.S.C. § 481(e), the Department's investigation, found no evidence that this had any effect on the outcome of the election.

Third, you claim that some members of the theatrical division who requested duplicate ballots received traditional ballots, rather than theatrical division ballots, which prevented them from voting. The Department's investigation determined that the union mailed the traditional division ballot to 29 theatrical division members, some of whom voted the traditional division ballot. Upon learning of its mistake, and prior to the election, the union mailed correct duplicate ballots to those theatrical division members who had requested a new ballot due to the error. When the votes were ultimately counted, seven traditional division ballots were included among the theatrical division ballots, indicating that seven theatrical division members were not offered the opportunity to vote in this race. While the denial of the right to vote in this race violated the LMRDA, the seven votes could not have affected the outcome of the election for theatrical business representative, which was won by more than seven votes.

Fourth, you alleged that the union did not tally 79 ballots from the theatrical division because the return ballot envelope was not signed or the voter's signature was not in a specified location. Article VII, Section 4(iii) provides, "Any envelope that does not contain the member's signature will be disqualified." Section 401(e) of the Act, 29 U.S.C. § 481(e) requires that every member in good standing shall have the right to vote. The Department reviewed the applicable records and determined that 36 of the 79 disqualified ballots had sufficient information to identify the voter and the voters were eligible to vote; thus, those 36 votes should have been counted. The failure to count those ballots violated 29 U.S.C. § 481(e). However, the Department added the votes contained in those ballots to the tally and they do not change the outcome of any race.

Finally, you alleged that the union failed to follow the constitution and bylaws and failed to provide adequate safeguards when it sent ballots to all members, regardless of

eligibility, and determined eligibility for voting on the date before the ballots were counted, rather than the day the ballots were scheduled to be mailed out. There is no provision in the LMRDA, the union's or the International's Constitution and Bylaws, or the election rules that requires the Union to determine eligibility for voting on the date the ballots are mailed out. There was no violation of the Act. However, during the investigation, the Department determined that the union failed to retain its list of voters. While this failure was a violation of the record retention provision of 29 U.S.C. § 481(e), the investigation found no evidence that this violation had any effect on the outcome of the election.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John Seid, President
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August 23, 2011

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Dear [redacted]

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

You alleged that the union applied its continuous good standing rule to disqualify candidates for office, in violation of section 401(e) of the LMRDA. Section 401(e) requires in pertinent part that every member in good standing shall be eligible to be a candidate and to hold office subject to reasonable qualifications uniformly imposed. Article VII, Section 1 of the Local 306 constitution requires candidates to be in continuous good standing for at least two years to be eligible. You state that numerous candidates, including yourself, were declared ineligible to be nominated due to their failure to pay dues timely, thus rendering them not in good standing. You claim that there was confusion as to the effect of paying dues after the third Wednesday of the first month of each quarter and that because the continuous good standing requirement was not consistently applied in previous elections, such a requirement should not have barred candidates from being nominated in the December 2010 election.

The Department's interpretive regulations presume that unions may apply a continuous good standing candidate qualification if it provides a reasonable grace period for late payment and if the time period of continuous good standing is reasonable. *See* 29 C.F.R. § 425.37(b). A two year time period, such as the period contained in the union's constitution, is generally viewed as reasonable under 29 C.F.R. § 425.37(b). Additionally, the constitution provides for a grace period, in that Article XVII, Section 3 provides, "Failure on the part of any member to pay any financial obligations to this Local within fifteen (15) calendar days after it became payable shall result in such

member being automatically declared not in good standing." Thus, on its face, the union's continuous good standing rule meets the two prongs of 29 C.F.R. § 425.37(b) and is thus a reasonable candidate qualification.

Nonetheless, you claim that the continuous good standing qualification should not bar candidates from nomination because the constitution and bylaws have contrary definitions as to what constitutes not being in good standing with regard to failure to pay dues – after the 3rd Wednesday of the first month of each quarter or after the 15-day grace period. The Department's regulations provide that a union's interpretation of its constitution will be upheld unless it is clearly unreasonable. *See* 29 C.F.R. § 452.3. Here, Article XII, Section 2 of the Local 306 constitution specifies that dues are due quarterly and Section 3 of the bylaws specifies, in the context of dues, when good standing is lost: "Any member not paid in his or her dues by the third Wednesday of the official quarter shall be automatically suspended excepting any member in good standing makes good for the delinquent member the amount due this Union."

The 15-day grace period, quoted above, states when an individual is "automatically declared not in good standing." Article XVII, Section 3. As such, the union's construction of these requirements that the dues are due on the first day of each quarter and members lose good standing on the third Wednesday of the quarter is not clearly unreasonable because the third Wednesday is at least equal to or longer than the 15-day grace period provided by the constitution, so the member would be out of good standing under either provision. Further, members of the union were put on notice of this interpretation. For example, the September 2010 meeting notice stated: "Total dues are due in the business office no later than the 3rd Wednesday, of the first month of each quarter – January, April, July, and October." This notice, plus the aforementioned provisions in the Local 306 constitution and bylaws concerning being declared "automatically not in good standing" implies that there is no grace period after that point and that such member is suspended if dues are paid later than the 3rd Wednesday.

You also emphasize that the continuous good standing rule had not been strictly enforced prior to the December 2010 election. However, the fact that a union has ignored a requirement in its constitution in the past does not permit it to do so at a later time, because the LMRDA contains a specific requirement that the constitution be followed. 29 U.S.C. § 481(e). Article VII, Section 1 of the union's constitution clearly provides that two years continuous good standing is required to be eligible to run for office, and such a requirement is reasonable, as explained above. The fact that the local may not have strictly enforced that constitutional provision in the past cannot eliminate this clear constitutional requirement. There is no violation.

You alleged that union election officials allegedly failed to supervise ballot preparation. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that every member in good

standing shall have the right to vote and requires that the election shall be conducted in accordance with the constitution and bylaws of the organization. Additionally, section 401(c) of the Act, 29 U.S.C. § 481(c), requires that adequate safeguards to insure a fair election shall be provided. The requirement of adequate safeguards has been interpreted in Departmental regulations as imposing a general rule of fairness on union elections. 29 C.F.R. § 452.110.

Regarding this alleged failure of the election committee to supervise the ballot preparation, there is no provision in the LMRDA, the union's or International's Constitution and Bylaws, or the election rules that requires the local's election officials to supervise the ballot preparation. However, there is a requirement that once created, all election records be maintained for one year. 29 U.S.C. § 481(e). The investigation established that the union did not maintain the eligibility list of members who had voted. Nevertheless, section 402(c) of the Act, 29 U.S.C. § 482(c)(2), provides that an election will only be overturned where a violation may have affected the outcome of the election. The Department's investigation found no evidence that the failure to maintain this record had any effect on the outcome of the election.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: John Seid, President
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