U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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August 4, 2011

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your February 17, 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 (LMRDA or Act), 29 U.S.C. §§ 481 – 484, occurred in connection with the election of officers of the Transport Workers Union (TWU), Local 510, conducted on November 1, 2010.

The Department of Labor 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 that may have affected the outcome of the election.

You alleged that Local 510 violated section 401(e) of the LMRDA by improperly disciplining you and then disqualifying you as a candidate for the office of Financial Secretary Treasurer in the November 2010 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. Denying the right to run for office strips a member of his or her right to participate fully in the democratic union process, as guaranteed by Title IV of the LMRDA. Accordingly, a member cannot be denied the right to run for office unless he or she has been properly disciplined in accordance with section 101(a)(5) of the LMRDA. 5 C.F.R. § 452.50. Local 510 suspended you from your position as Secretary-Treasurer and from good standing in the union for six months, following charges of misconduct and a September 9, 2010 hearing, after which the Local 510 Executive Board determined that you were guilty of the charges. You alleged that the discipline against you, and thus the disqualification, was improper.

The charges that led to your suspension were that you had published emails with false misrepresentations, willfully distributed false information, deliberately interfered with an officer's position, failed to follow the TWU constitution, and failed to follow your

oath of office. The focus of the charges against you related to an incident in which you sent all five Local 510 station chairmen your proposal for an amendment to the local's bylaws and asked that it be posted and voted upon. You sent your proposal and correspondence concerning the amendment after it had been ruled out of order by Local 510 President Pete Hogan in a previous membership meeting.

You assert that you were not afforded adequate due process rights under section 101(a)(5) of the LMRDA prior to being disciplined. 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 you were accorded due process required by section 101(a)(5).

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 charges underlying the Local 510 determination that you be suspended were provided in an August 26, 2010 letter sent from Local 510 President Pete Hogan. This letter provided five charges that led to your suspension and informed you of your opportunity to appear and explain your conduct. Further, even if the written notice had not been sufficiently specific, the investigation established that you were not misled or otherwise prejudiced in presenting your defense.

The investigation revealed that a hearing was held on September 9, 2010. The hearing transcript revealed that you actively participated at this hearing, responded to the charges against you and that you understood those charges. The Department determined that your attendance and active participation in the September 9, 2010 hearing as well as the written notice setting forth the charges on August 26, 2010, provided you with sufficient details so that you were not misled or prejudiced in presenting a defense against these charges.

You also specifically alleged that you were charged under an improper constitutional provision, Article XXI, "Suspension of Local Officers." You alleged that you should

have been charged under Article XX, "Trial of Members." Under Article XX, the proceeding would have included a three member Trial Committee appointed by the Executive Board, rather than the Executive Board itself serving as the Trial Committee.

The Department investigated this allegation and determined that under the TWU International Constitution, Local 510 was free to charge you under either provision. While there is no evidence that you could not be charged under Article XX, there is also no evidence that Article XXI was not equally applicable. As a general rule, reference to a specific provision of the union's constitutions or bylaws is not required to meet the specificity requirement of Section 101(a)(5). *Hardeman*, 401 U.S. at 245. In fact, a "union may discipline its members for offenses not proscribed by written rules at all." *Id*. Here, however, you were given reference to the specific TWU constitutional provision under which you were charged, you had specific knowledge of the offense, and an opportunity to respond to the allegations.

b. Reasonable Time to Prepare a Defense

Under 101(a)(5), the Department also determined whether you were afforded reasonable time to prepare a defense. The investigation revealed that the notice of charges against you was dated August 26, 2010. If a union's notice provides less than one week for the accused member to prepare a defense, it is considered per se unreasonable. However, you were notified of the charges more than one week before the hearing, a reasonable time in which to prepare your defense. Further, you presented, and the investigation disclosed, no reason why this was not a sufficient time to present your defense. As such, you were provided reasonable time to prepare a defense to the charges against you.

c. Afforded a Full and Fair Hearing

You also alleged that the hearing you received was not a fair hearing because the Executive Board was biased and you were given an unduly harsh sentence that went beyond TWU's authority in Article XXI. In order to prove a violation of 101(a)(5) part c, there must be specific factual allegations where bias can be inferred. *See Frye,* 767 F. 2d at 1225. You made various allegations, including that the Executive Board's motive was to block smaller stations from having representatives as your amendment sought to do and that the same Board that issued your suspension letter would not admit a mistake and reverse your suspension in a hearing process. However, as stated in *Frye*, "while a history of conflict and animosity between a member of a union and its governing body may set the stage for harsh or improper treatment of that member, charges that bias undermined the fairness of a disciplinary proceeding must be supported by specific factual allegation from which the operation of bias can be inferred." *Id.* Ultimately, the Department's role in investigating your allegation is limited to whether you were given

proper due process rights under section 101(a)(5). There was no evidence that bias led to any deprivation of your full and fair hearing rights. The transcript of your three hour hearing demonstrates that you had full knowledge of the charges against you, you were afforded the ability to call your own witnesses, and did, in fact, call [redacted], BWI Station Chairman, to testify. You also presented a lengthy defense to explain your actions at the hearing. Further, as stated above, there is no evidence that TWU Local 510 was not free to charge you under either constitutional provision.

The Department also found that under Article XXI, TWU Local 510 was not outside its authority in issuing your discipline. Article XXI states that the union "shall either reinstate the accused to his office or remove him from his office, *or may take other appropriate action* (emphasis added)." While removal from office and suspension of membership may have been a strong punishment, as a general rule, courts will not review the propriety of the penalty imposed by the union. *McKee v. Teamsters, Local 166*, 82 LRRM 3126 (C.D. Cal. 1973). Following its investigation, the Department determined that the process that TWU Local 510 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 TWU 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 510 office in the November 2010 election.

In addition to the allegation related to your being ruled ineligible to run for office, you raised other allegations in your complaint.

You alleged that sitting Executive Board member [redacted].served on the Election Committee in violation of the Local 510 bylaws. According to the TWU Local 510 Bylaws, Article 8, Section 1 states that, "no member of the Election Committee shall either hold a position, or run for office."

The investigation verified that Spencer was an executive board member at the time he was elected to and served on the Election Committee. Therefore, a violation of the LMRDA occurred. In order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). Here, Spencer did not seek re-election and was thus not a candidate in the November 2010 election of Local 510 officers. Moreover, the investigation uncovered no evidence that Spencer did anything that favored one candidate over any other candidate. Therefore, there was no effect on the outcome of the election.

You also alleged that members employed at the Washington National Airport (DCA) location were not properly notified about the nominations meeting. You based your allegation on a statement made by a member that he never saw a nomination notice

posted and did not know about the nominations meeting. The LMRDA does not prescribe particular procedures for the nomination of candidates, and unions may use any method that provides a reasonable opportunity for making nominations. *See* 29 CFR § 452.56. The investigation revealed that DCA Station Chairman [redacted] was responsible for posting the nomination notice and found that Hanley created and posted the notice at least 20 days prior to the nominations meeting. The Department interviewed multiple members employed at the DCA location; all but one witness stated that they had seen the notice posted. Further, one of the members interviewed attended the meeting and made a nomination. The DCA nomination meeting was held August 18, 2010, and 13 members signed the meeting sign-in sheet throughout the day.

While the investigation determined that the notice had been posted, Local 510 did not retain a copy of the DCA notice of nominations. Section 401(e) of the LMRDA requires that a union maintain all election records for one year. The union's failure to retain this record violated the LMRDA. However, there was no effect on the outcome of the election caused by this violation, because the investigation determined that members had reasonable notice of the nominations process.

In addition to these allegations, you raised an issue concerning mailing of ballot packages that had not been raised in your protest to Local 510. As this allegation was not properly before the Department, it was not investigated or considered. 29 C.F.R. § 452,136(b-1).

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

Sincerely,

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Chief, Division of Enforcement

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