



December 8, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on June 19, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the Operative Plasterers' and Cement Masons' International Association of the United States and Canada (OPCMIA) Local 891, on June 25, 2011.

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 allegations, that there was no violation of the LMRDA.

You alleged that [REDACTED] was improperly ruled ineligible to run for business manager/financial secretary-treasurer. The LMRDA provides that members in good standing shall be eligible to be candidates in union elections and to hold office subject to reasonable qualifications that are uniformly imposed. See 29 U.S.C. § 481(e). Local 891 contends that [REDACTED] was disqualified from running for office because he was retired and was running for a full-time officer position.

Article 16, Section 1(A)(6) of the OPCMIA Constitution provides:

" . . . Notwithstanding any provision contained herein, Local Unions may include a provision in their By-Laws permitting retired members to hold Local Union Office, other than paid, full-time positions.

Article VI of the Local 891 Constitution and Bylaws provides:

Retired or inactive members in good standing shall be restricted from eligibility for nomination and election to the following offices: Business Manager, Business Agent, President and Vice President.

The investigation established that the business manager/financial secretary-treasurer position is a paid full-time position. The investigation also revealed that even though

██████ is an active member working at the trade, he has been receiving retiree pension checks since 2003. While the term "retired" is not defined in the OPCMIA Constitution, the International's interpretation of the Constitution is that members who collect pensions are considered retired. Under the LMRDA, the interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable. See 29 C.F.R. § 452.3. The Department accepts the interpretation as not clearly unreasonable. While the local may have permitted ██████ and others to run for similar positions in the past, a past practice of this sort does not modify the terms of the union constitutions at issue, which the union followed in this election. ██████ was properly ruled ineligible to run for this paid, full-time position pursuant to the OPCMIA Constitution and Local 891's Constitution because he received pension checks and is considered to be retired. There was no violation.

You further alleged that the local failed to follow its constitution and bylaws because the election committee was not allowed to decide ██████ eligibility. The investigation established that both the OPCMIA Constitution and the Local 891 Constitution contain a provision that states that the standing of candidates to run for office shall be checked by the Financial Secretary. Also, these provisions provide that if a dispute arises as to whether a member is in good standing and the financial secretary's books do not clearly establish the candidate's eligibility or ineligibility the election committee should determine the eligibility of the nominated candidate. However, the dispute in this case concerned ██████ retiree status, not his good standing. Inasmuch as the International Representative correctly determined that ██████ was not eligible to run for office, there was no violation.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Patrick D. Finley, General President
Operative Plasterers & Cement Masons International Association
11720 Beltsville Drive, Suite 700
Beltsville, MD 20705

Mary Battle, Business Manager/Financial Secretary-Treasurer
Operative Plasterers & Cement Masons Local 891
1517 Kenilworth Avenue, NE
Washington, DC 20019

Christopher B. Wilkinson
Associate Solicitor, Civil Rights and Labor-Management Division



December 8, 2011

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on June 27, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the Operative Plasterers' and Cement Masons' International Association of the United States and Canada (OPCMIA) Local 891, on June 25, 2011.

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

You alleged that you were improperly ruled ineligible to run for business manager/financial secretary-treasurer. The LMRDA provides that members in good standing shall be eligible to be candidates in union elections and to hold office subject to reasonable qualifications that are uniformly imposed. See 29 U.S.C. § 481(e). Local 891 contends that you were disqualified from running for office because you were retired and were running for a full-time officer position.

Article 16, Section 1(A)(6) of the OPCMIA Constitution provides:

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Article VI of the Local 891 Constitution and Bylaws provides:

Retired or inactive members in good standing shall be restricted from eligibility for nomination and election to the following offices: Business Manager, Business Agent, President and Vice President.

The investigation established that the business manager/financial secretary-treasurer position is a paid full-time position. The investigation also revealed that even though you are an active member working at the trade, you have been receiving retiree pension checks since 2003. While the term "retired" is not defined in the OPCMIA Constitution, the International's interpretation of the Constitution is that members who collect pensions are considered retired. Under the LMRDA, the interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable. See 29 C.F.R. § 452.3. The Department accepts the interpretation as not clearly unreasonable. While the local may have permitted you and others to run for similar positions in the past, a past practice of this sort does not modify the terms of the union constitutions at issue, which the union followed in this election. You were properly ruled ineligible to run for this paid, full-time position pursuant to the OPCMIA Constitution and Local 891's Constitution because you receive pension checks and are considered to be retired. There was no violation.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Patrick D. Finley, General President
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