U.S. Department of Labor

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

June 14, 2011

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your September 14, 2010 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 – 484, occurred in connection with the election of officers of the International Alliance of Theatrical Stage Employees of the United States and Canada (IATSE), Local 600 conducted on May 14, 2010.

The Department 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 which may have affected the outcome of the election.

You alleged that Local 600 applied an unreasonable Working-at-the-Trade rule (WAT rule) for candidate qualification during the May 2010 election 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. 29 U.S.C. § 481(e). Here, IATSE adopted a WAT rule at the July 2009 International Convention. The newly-adopted WAT rule required that in order to be eligible to hold union office a member must have worked at least 120 days, under the union's jurisdiction, over the preceding 36 month period. *See* IATSE Constitution, Article 19, Section 4. Further, this constitutional amendment provided that "time served as an officer of a local union shall be applicable towards the 120 days in the past 36 months requirement." *Id*.

Specifically, you asserted that the WAT rule is unreasonable because the union counted time served as a local officer towards the WAT rule and also because, within the context of the WAT rule, the union interpreted the term "jurisdiction" to only include work performed under the union's collective bargaining agreements (CBA), rather than the union's geographical jurisdiction.

The Department's interpretive regulations presume that unions may apply a working-at-the-trade candidate qualification. In particular, the regulations state that "it would ordinarily be reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period." 29 C.F.R. § 452.41. And, this regulation further explains that "[a WAT rule] should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working." 29 C.F.R. § 452.41. Moreover, it is recognized that union officials and employees should not be prevented from running for office or seeking re-election because their service to the union may limit their ability to satisfy the WAT rule. *See Brock v. Local 630, Int'l Brotherhood of Teamsters*, 662 F.Supp. 118, 124 (C.D. Cal. 1987).

In this matter, it is reasonable for the union to assert that working as a union officer requires knowledge of the members' working conditions and jobs being performed; requires knowledge of the interests of union members working within the local's collective bargaining agreements; and requires working on organizing efforts, which are all valuable services to the overall performance of the union. Certainly, serving as a union officer or employee constitutes a "good reason" for not being actively employed in the craft for a certain period of time. Accordingly, the Department did not find the union's treatment of incumbent officers as unreasonable.

The Department also investigated your assertion that the union has unreasonably interpreted "jurisdiction" within the context of the WAT rule as meaning work under a Local 600 CBA. It is well-established that when union officials have offered an interpretation of the constitution that is not clearly unreasonable, the Department will defer to the union. *See* 29 C.F.R. § 452.3. *See also United Brotherhood of Carpenters, Lathers Local 42-L v. United Brotherhood of Carpenters*, 73 F.3d 958, 961 (9th Cir. 1996); *Busch v. Givens*, 627 F.2d 978, 980 (9th Cir. 1980); *Stelling v. Int'l Brotherhood of Electrical Workers, Local 1547*, 587 F.2d 1379, 1389 (9th Cir. 1978). As you have stated in your protest, the union's constitution does, in one section, define jurisdiction in geographical terms, *i.e.*, "the United States and its territories." *Local 600 Constitution*, Article 1, Section 3. However, the union's constitution must be read and interpreted in its entirety.

The Department reviewed the Local 600 Constitution and found that Article 13 "Working Conditions," Sections 10-12, 14, and 17, repeatedly refer to "jurisdiction" as meaning CBA work and not the geographical location. For example, Article 13, Section 11 (Member's Duty) states that "it shall be the duty of every member when working with or selecting an employee for work *within the territory and jurisdiction* of this Guild, to see that said employee is a member in good standing of this Guild." (emphasis added). Further, Article 13, Section 17 (Overseas Assignments) states that "a member of this Guild who desires to accept an assignment to work *over which this Guild has jurisdiction, but which will carry the member outside the United States and territories*, must have the proposed working conditions and wages approved…" (emphasis added). The union repeatedly separates the geographical nature of the work from the jurisdictional

nature of the work, demonstrating that the union does use the term jurisdiction to refer to work under a CBA. The Department determined that the union's interpretation of "jurisdiction" within the context of the WAT rule as meaning work under a Local 600 CBA is a fair and reasonable interpretation. This is not a violation of the LMRDA.

You also alleged that the union sent campaign emails to the Local 600 membership in violation of Section 401(g) of the LMRDA. Section 401(g) prohibits the use of union funds to promote any candidate for union office. Specifically, you alleged that the union sent emails on April 16, 2010 and May 8, 2010, to rebut positions taken in your campaign emails concerning whether or not members should vote to dissolve Local 600's non-profit mutual benefit corporate status. The Department's investigation found that contemporaneous with the election, the local membership was voting on a resolution regarding the corporate status of Local 600. Campaign materials related to this issue of corporate status were sent from both incumbent and insurgent candidates.

In order to ascertain whether a union funded communication constitutes promotion of a candidate in violation of Section 401(g), the Department evaluates the timing, tone, and content of the particular communication. First, the Department reviewed the overall content of these emails and found that neither email mentions the May 2010 officer election. Further, no candidates for the upcoming election were named or discussed. Rather, the content of these emails deals entirely with the corporate dissolution vote. While the issue of corporate dissolution was a campaign issue raised by candidates during the election period, these particular emails do not frame the dissolution vote as a campaign issue as there is no mention of the upcoming election or any candidates by name.

Second, with respect to tone, the two emails do not promote or disparage any candidate. There is no electioneering. Rather, the emails state the union's position on this important issue that the membership will be voting on. The union's emails address this issue in a matter-of-fact way without making any reference to the election or any individual's candidacy.

Third, the Department reviewed the timing of the two emails and determined that since both emails were sent within one month of the May 2010 election, the timing is the only factor that weighs in favor of a finding that the email communications constituted campaigning. Accordingly, the overall tone, content, and timing of these two email communications did not endorse, promote, or disparage any candidate in the May 2010 election, and therefore, there was no violation of the LMRDA.

You also alleged that incumbent President, [redacted] used the union's membership email database which contains over 6,000 email addresses to send campaign mailings to over 6,000 members. However, the union did not make this database available to other candidates. Instead, Local 600 created an email database with Action Mailing Services (AMS) and permitted all candidates to pay AMS a fee to send campaign emails through this membership database. The email database created for the mailing service made

available for use by candidates contained less than 6,000 email addresses. As stated above, Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote any candidate for union office. Section 401(c) prohibits unions from discriminating in favor of or against any candidate.

The Department's investigation revealed that President [redacted] only sent campaign emails to approximately 3,800 Local 600 members. This list included email addresses that members provided to President [redacted], including members who had visited his campaign website and submitted their email addresses. [redacted] uploaded his list of email addresses to Constant Contact and used Constant Contact rather than AMS to send his campaign emails. Further, you also take issue with [redacted] s use of Constant Contact to send his campaign emails rather than AMS the union provided mailing service. The Department's investigation disclosed that candidates were not prohibited from using other email services to send campaign communications. The Department determined that President [redacted] did not access the Local 600 official email database for his campaign communications, but instead sent campaign communications to a limited group of email addresses that he had personally compiled and maintained. There was no violation of the Act.

You also alleged that individuals may have filed false spam email reports with AMS in order to have insurgent candidate campaign emails blocked in violation of Section 401(c) of the LMRDA. The Department's investigation disclosed that AMS received reports of spam email relating to two insurgent candidates' campaign email blasts. During the Department's investigation, AMS explained that the email blasts were delayed less than 24 hours and were ultimately delivered to the recipients. The evidence provided by AMS failed to even suggest any malicious intent relating to the spam reports. Moreover, you did not provide any evidence to support a finding of tampering or wrongdoing by any candidate for union office. Accordingly, there is no violation of the Act.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Matthew D. Loeb, International President
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June 14, 2011

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your September 22, 2010 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 – 484, occurred in connection with the election of officers of the International Alliance of Theatrical Stage Employees of the United States and Canada (IATSE), Local 600 conducted on May 14, 2010.

The Department 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 which may have affected the outcome of the election.

You alleged that Local 600 applied an unreasonable Working-at-the-Trade rule (WAT rule) for candidate qualification during the May 2010 election 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. 29 U.S.C. § 481(e). Here, delegates voted to adopt a WAT rule at the July 2009 International Convention. The newly-adopted WAT rule required that in order to be eligible to hold union office a member must have worked at least 120 days, under the union's jurisdiction, over the preceding 36-month period. *See* IATSE Constitution, Article 19, Section 4. Further, this constitutional amendment provided that "time served as an officer of a local union shall be applicable towards the '120 days in the past 36 months' requirement." *Id*. Specifically, you asserted that the WAT rule is unreasonable because (1) the WAT rule may disproportionately discriminate against women, minorities, and older union members; and (2) the union's interpretation of the term "jurisdiction" as only including work performed under the union's collective bargaining agreements (CBA), rather than the union's geographical jurisdiction is unlawful.

You alleged that the WAT rule is an unreasonable qualification for candidacy because it disproportionately discriminates against women, minorities, and older union members. The Department's interpretive regulations presume that it is reasonable for unions to apply a working-at-the-trade candidate qualification. In particular, the regulations state that "it would ordinarily be reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period." 29 C.F.R. § 452.41. However, the Department's interpretive regulations prohibit unions from adopting candidate qualifications that violate Federal law, such as the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA). *See* 29 C.F.R. § 452.46. These particular Federal laws protect women, minorities, and older workers from employment discrimination.

The WAT rule at issue is not discriminatory on its face, as all members regardless of gender, race, nationality, and age are treated the same, *i.e.*, each member seeking office must work 120 days, under the union's jurisdiction, over the 36 months immediately preceding the election in order to qualify for union office. You have asserted that you believe that this facially-neutral WAT rule will act to disproportionately bar women, minorities, and older members from qualifying for union office because these groups of individuals receive less union work than younger white males in the industry. Your alleged Title IV violation is predicated upon your belief that this particular industry operates by discriminating against certain protected classes. However, the assertion that the industry discriminates against certain protected groups is beyond the scope of the investigation as well as the parameters of Title IV of the LMRDA.

The Department also investigated your assertion that the union has unreasonably interpreted "jurisdiction" within the context of the WAT rule as meaning work under a Local 600 CBA. It is well-established that when union officials have offered an interpretation of the constitution that is not clearly unreasonable, the Department will defer to the union. *See* 29 C.F.R. § 452.3. *See also United Brotherhood of Carpenters, Lathers Local 42-L v. United Brotherhood of Carpenters*, 73 F.3d 958, 961 (9th Cir. 1996); *Busch v. Givens*, 627 F.2d 978, 980 (9th Cir. 1980); *Stelling v. Int'l Brotherhood of Electrical Workers, Local 1547*, 587 F.2d 1379, 1389 (9th Cir. 1978). As you have stated in your protest, the union's constitution does, in one section, define jurisdiction in geographical terms, *i.e.*, "the United States and its territories." *Local 600 Constitution*, Article 1, Section 3. However, the union's constitution must be read and interpreted in its entirety.

The Department reviewed the Local 600 Constitution and found that Article 13 "Working Conditions," Sections 10-12, 14, and 17, repeatedly refer to "jurisdiction" as meaning CBA work and not the geographical location. For example, Article 13, Section 11 (Member's Duty) states that "it shall be the duty of every member when working with or selecting an employee for work *within the territory and jurisdiction* of this Guild, to see that said employee is a member in good standing of this Guild." (emphasis

added). Further, Article 13, Section 17 (Overseas Assignments) states that "a member of this Guild who desires to accept an assignment to work *over which this Guild has jurisdiction, but which will carry the member outside the United States and territories*, must have the proposed working conditions and wages approved…" (emphasis added). The union repeatedly separates the geographical nature of the work from the jurisdictional nature of the work, demonstrating that the union does use the term jurisdiction to refer to work under a CBA. The Department determined that the union's interpretation of "jurisdiction" within the context of the WAT rule as meaning work under a Local 600 CBA is a fair and reasonable interpretation. This is not a violation of the LMRDA.

In addition, you have alleged to the Department that the WAT rule is unlawful because the union counts time served as a local officer towards meeting the 120-day requirement. This particular allegation was not initially included in your election protest to the union, and thus, was not properly exhausted as required by Section 402 of the LMRDA. *See* 29 U.S.C. § 482(a). Section 402 limits the Department of Labor's authority and a court's jurisdiction over allegations raised by aggrieved union members who have not exhausted their internal union remedies. *See Martin v. Local 480, Int'l Brotherhood of Teamsters*, 946 F.2d 457, 461 (6th Cir. 1991). However, this same allegation was properly exhausted and presented to the Department by another Local 600 member's complaint.

The Department did investigate this allegation in response to his complaint and determined that the union's treatment of incumbent officers was reasonable. Specifically, the Department's regulations presume that it is reasonable for a union to apply a WAT rule to candidate eligibility. *See* 29 C.F.R. § 452.41. Further, "[a WAT rule] should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working." 29 C.F.R. § 452.41. It is also recognized that union officials and employees should not be prevented from running for office or seeking re-election because their service to the union may limit their ability to satisfy the WAT rule. *See Brock v. Local 630, Int'l Brotherhood of Teamsters*, 662 F.Supp. 118, 124 (C.D. Cal. 1987). Here, it is reasonable for the union to assert that working as a union officer requires knowledge of the members' working conditions and jobs being performed; requires knowledge of the interests of union member working within the local's collective bargaining agreements; and requires working on organizing efforts, which are all valuable services to the overall performance of the union. Certainly, serving as a union officer or employee constitutes a "good reason" for not being actively employed in the craft for a certain period of time. Accordingly, the union's treatment of incumbent officers was reasonable.

You further alleged that the union failed to provide members with adequate notice of indebtedness, resulting in "secret suspensions" which prevented members from voting,

nominating, and being nominated in violation of Section 401(e). In particular, you asserted that the union's dues collection system is controlled by difficult rules that are hard to follow and that Local 600 should provide more advanced notice before suspending members for failing to pay dues or assessments. You identified members who may have been disqualified or may know others who were disqualified.

During the Department's investigation, Local 600 officials stated that members are only suspended if they are in arrears for more than 60 days from the date that the union notifies them of the dues or assessments owed. While a member is not held responsible for an employer's failure to remit timely assessments, the union notifies the member of any such arrearage and allows the member 60 days to pay before losing good standing. During the Department's investigation, the election committee explained that members in arrears each received two 30-day notices prior to being suspended.

The investigation further disclosed that the Quarterly Dues/Assessments Notices are sent to members and clearly state that payments must be paid by the "Due Before" date identified at the top of the billing notice. Union officials stated that if the union does not receive the stated amount within 60 calendar days of the "Due Before" date, the member is suspended from membership. A suspended member is no longer in good standing and is not eligible to vote in union elections. Members are instructed to call the local union to determine if they are eligible to enter into a payment plan if unable to pay the total amount due. The Department's investigation found that members were properly notified of their financial obligations in accordance with the union bylaws.

In response to your allegation that specific members may have been improperly suspended, the Department interviewed Local 600 member [redacted] The Department's investigation revealed that [redacted] owed $3.85 in assessments. His employer failed to pay his 1% assessment for the one day he worked during the past year. [redacted] admitted to having received his regular Dues/Assessments billing statement, which stated that he owed $3.85. Since [redacted] did not pay this arrearage until after the due date, he was properly disqualified from running for a union officer position, but was able to run for union delegate.

Local 600 member [redacted] was late for one quarterly payment during the two-year continuous good standing period. The Department found that [redacted] was properly notified, as he admitted that he received a dues bill for that quarter stating that he was in arrears 30 to 60 days. During the investigation, [redacted] stated that he paid these owed dues late. Finally, the Department reviewed [redacted] s membership status. The Department found that [redacted] was deemed ineligible in the election because she failed to remain in good standing for the two-year continuous good standing period. [redacted] did not contest the eligibility finding and admitted that she received

notices of owed dues, but did not pay the back dues. Accordingly, there is no violation of the Act.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Matthew D. Loeb, International President
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