



October 24, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on April 28, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of union officers conducted by the Air Line Pilots Association Local Executive Council 12 (Council) from October 15, 2010 to November 10, 2010.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA. Following is an explanation of this conclusion.

You alleged that the incumbent officers had advance notice of the nomination and election process, which advantaged their candidacy and disadvantaged the candidacy of the opposition candidates. Section 401(c) of the LMRDA contains a requirement that adequate safeguards to ensure a fair election must be provided. This is interpreted as imposing on a union's conduct of its election of officers a general rule of fairness. *See* 29 C.F.R. § 452.110.

The Department's investigation disclosed that the contested election was the regularly scheduled election of Council officers, which, pursuant to the National constitution and bylaws, is to occur once every three years. Thus, you knew or could have found out through a reasonable inquiry when the nomination and election process would commence. In fact, on August 2, 2010, you contacted the Council concerning the upcoming election and the union informed you that the election would take place in late September or in October. Further, you acknowledged during the investigation that you had access to the National constitution and bylaws, that they contain language that informed the membership as to when the election process would take place, and that you were aware that the regularly scheduled election of Council officers would be

conducted in 2010. No incumbent candidates had an unfair political advantage over the opposition candidates. No violation occurred.

In addition, you alleged that the Council failed to comply with the constitution in that the Council did not notify the membership of the election process until September 9, 2010. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. It appears that the basis for this allegation is your belief that the National constitution required the Council to provide notice to the membership concerning the nominations process prior to the Council's mailing of the nomination ballots to members.

However, the Department's review of the constitution disclosed that it contains no such requirement. Instead, the constitution requires a union official to mail a nomination certificate and related nominations forms to the Council Chairperson at the time nominating ballots are mailed to active members and requires the official to designate a reasonable deadline for the receipt of the nomination results. The constitution further requires that the nominating ballots be mailed to members no later than six months prior to the commencement date of the term of office. The investigation determined that the Council complied with these constitutional requirements regarding the nominations process. The LMRDA was not violated.

Also, your allegation that the Council failed to comply with a July 8, 2010 letter from the National was not corroborated by the investigation. Specifically, the investigation showed that the letter advised the Council to begin making plans to schedule the nomination meeting and to notify the membership of the upcoming nominations and election process. The letter did not contain any specific deadline by which the Council had to begin making such plans or provide such notification. Further, although you claim that the letter directed the Council to forward a copy of the letter to all members, the Department's review of the letter substantiated that it contained no such directive. The Act was not violated.

In connection with your allegation that the Council failed to comply with the July 8 letter, you asserted that the letter contained information concerning the distribution process for campaign literature and other election-related guidelines, and that you would have started sending out campaign materials to members as early as August 2010 had the Council immediately forwarded a copy of the letter to the members. Section 401 (c) of the LMRDA requires a union to comply with all reasonable requests of any candidate to distribute campaign literature by mail or otherwise at the candidate's expense.

The investigation disclosed that the union informed you as early as August 2 of the nominations/election process. Once you received this information, you could have requested the union to distribute your campaign materials, but you did not make any

request until September 2010. No candidate, including the incumbents, sent out campaign materials prior to September 2010 and you were the first candidate for whom the union sent out a campaign mailing. The union also conducted nine email campaign distributions on your behalf at your request. In any event, you were nominated for office. The Act was not violated.

You further alleged that, although the numerous communications that the Council officers sent to members during the nomination and election period did not constitute official campaigning, this communication allowed members to become familiar with the names of the officers. Section 401(g) of the LMRDA prohibits union- financed election campaigns. However, section 401(g) does not prohibit impartial publications of election information or those concerning notices or factual statements of issues not involving candidates. *See* 29 C.F.R. §452.73.

The investigation disclosed that the communications disseminated by the Council during the nomination/election period were impartial, factual in nature, and did not criticize or promote the candidacy of any person. The Act was not violated.

Finally, you alleged that campaign materials were posted outside the glass-enclosed union bulletin board located at the O'Hare Flight Operations Office. Section 401(g) of the LMRDA prohibits union and employer financed election campaigns. Thus, candidates may not use union or employer facilities to assist them in campaigning.

The investigation disclosed that no prohibited campaign materials were posted inside the locked bulletin board. Although such materials may have been posted on the outside of the glass-enclosed board, it was an ordinary business practice for members to post material in this location and no members were prevented from posting materials on the outside of the board. In fact, you stated during the investigation that members routinely made such postings. Further, although you claim that campaign postings contained offensive statements that you considered to be lies and misinformation, the statements you provided amounted to normal campaign rhetoric. In any event, the LMRDA does not and unions may not regulate the contents of campaign literature, even if such literature contains inaccuracies. *See* 29 C.F.R. § 452.70. The Act was not violated.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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