U.S. Department of Labor

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

June 26, 2012

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint filed February 1, 2012 with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Union of Elevator Constructors, Local 2 on October 25, 2011.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation occurred which may have affected the outcome of the election.

You alleged that the union violated section 401(e) of the LMRDA by declaring you ineligible to run for union office due to your non-payment of "fines" levied against you as a result of union disciplinary action. You assert that the union constitution does not provide for loss of good standing for non-payment of disciplinary fines. Section 401(e) of the LMRDA requires that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed.

Article XIV, Section 1 of the International Constitution provides that members owing three months, but less than six months, of dues and/or assessments shall lose their good standing and also shall be automatically suspended from membership without notice. Suspended members are denied all rights and privileges of membership including attending union meetings. Suspended members who fail to pay for five months shall be notified by the financial secretary and expelled if the member is six months in arrears. Article XIV, Section 2. We note that Article XIV refers to both "fines" and "disciplinary assessments" interchangeably. Article XIV, Section 3.

The investigation found that the union does not consider you to be a member in good standing because you have failed to pay fines levied against you as a result of disciplinary violations. In particular, in 2007, you were found guilty of violating Article XVIII, Sections 1(6) and 1(8) of the International Constitution. According to documents provided by the union, these violations carried a $2,000 fine. The evidence shows that you appealed the Local Executive Board's decision to the International's General Executive Board (GEB). The GEB upheld the finding, but held the fine in abeyance until the next International Convention (2011), provided that in the interim you were not found guilty of additional disciplinary violations.

In 2008, you were charged with violating Article XVIII, Sections 1(6), 1(8), and 1(9) of the International Constitution. You were convicted of the charges and this time fined a total of $12,000 by the Local Executive Board. You appealed the local's decision to the GEB, which upheld the decision, but reduced the fine to $5,000 (with $261.04 payable immediately) and held the remainder in abeyance for the length of the collective bargaining agreement. Because the union's decision to hold the $2,000 fine in abeyance was contingent upon you not being found guilty of additional disciplinary violations until 2011, your 2008 conviction made the $2,000 fine due to the union. Despite the fact that the union sends you a monthly statement notifying you of this outstanding debt, you conceded that you have not paid the fine.

You correctly state that the constitution references suspension of membership rights for non-payment of dues and assessments rather than non-payment of fines. However, during its investigation, the Department found that the union has a past practice of consistently interpreting disciplinary fines as "disciplinary assessments" for purposes of determining good standing and eligibility to run for union office. The investigation revealed that at least four other members of Local 2 received identical treatment – that is, failure to pay disciplinary fines resulted in a loss of good standing until the fine was paid.

The LMRDA requires that the Department defer to a union's interpretation of its constitution unless the interpretation is "clearly unreasonable." 29 C.F.R. § 452.3; *see also English v. Cunningham*, 282 F.2d 848, 850 (D.C. Cir. 1960). The union's constitution could be more precise and explain that a "disciplinary assessment" or "fine" is not the same as an "assessment," as this term is generally used; however, the Department does not find it clearly unreasonable for the union to interpret its "disciplinary assessments" to include fines. Accordingly, it was not unreasonable for the union to conclude that your failure to pay the 2007 disciplinary fine rendered you ineligible to run for union office in the 2011 officer election.

Although we determined that the union's interpretation of "assessments" to include outstanding disciplinary fines and disciplinary assessments is not clearly unreasonable, we also evaluated the underlying disciplinary action to verify that the union afforded you your rights under the LMRDA. With regard to union discipline and disqualification of a union member, the Department's Interpretive Regulations provide that section 401(e)'s eligibility requirement was not intended to limit the right of a labor organization to take disciplinary action against members guilty of misconduct, so long as such action is conducted in accordance with section 101(a)(5), 29 U.S.C. § 411(a)(5), of the LMRDA and in accordance with the union's constitution. *See* 29 C.F.R. § 452.50. Section 101(a)(5) safeguards against improper disciplinary action, providing that no member of a labor organization may be fined, suspended, expelled, or otherwise disciplined unless the member has been (1) served with written specific charges; (2) given a reasonable time to prepare his defense; and (3) afforded a full and fair hearing. 29 U.S.C. § 411(a)(5). The Department's investigation revealed that the union accommodated your rights under section 101(a)(5).

1. Written Specific Charges

The Department reviewed the two disciplinary charges filed against you. With regard to the 2007 charge, the union provided the formal notice of charges that you received, and the Department determined that the union provided written specific charges of the alleged violations of the union's constitution.

With regard to the 2008 charge, the union was not able to provide a copy of the formal notice of charges that you received; however, the union provided the actual charges which were filed by a member of Local 2. The Department confirmed that the subsequent disciplinary hearings addressed the same allegations as those contained in the 2008 charge, and you appear to have been well-aware of the allegations against you. Further, you have not alleged that the 2008 notice failed to contain written specific charges. Accordingly, the Department determined that the union provided written specific charges in the 2008 disciplinary action.

2. Reasonable Time to Prepare a Defense

The Department reviewed the time between the filing of the charges and when your hearings were held. In both disciplinary actions, the union satisfied its constitutional requirement that a disciplinary hearing may not occur within less than 10 days of receipt of the charges. International Constitution, Article XVIII, Section 4. Regarding

the 2007 disciplinary action, the record revealed that you formally received written charges by letter dated December 19, 2006 and your hearing was conducted on January 3, 2007. Regarding the 2008 disciplinary action, the record revealed that charges were filed against you on May 19, 2008 and your hearing was conducted on August 12, 2008.

During the investigation, you did not allege that you received untimely notice prior to the hearing. Given the timing of the charges and subsequent disciplinary hearings, the Department concluded that you were given a reasonable amount of time to prepare your defense under section 101(a)(5).

3. Afforded a Full and Fair Hearing

The Department reviewed the records from both disciplinary actions, including both trial transcripts, to evaluate whether you were afforded a full and fair hearing, as required by section 101(a)(5). The Department found that in both actions you were present throughout the hearing, submitted evidence in your defense, and cross-examined witnesses offering testimony in support of the charges. Further, no members of the Local Executive Board who served as the trial body were charging parties. Finally, in both instances, you were given the opportunity to appeal the Local's decision to the GEB, of which you took advantage. The Department determined that you were provided a full and fair hearing in both disciplinary actions. Accordingly, the union has satisfied its duty to provide you your section 101(a)(5) rights prior to imposing disciplinary action.

In a related allegation, you assert that the union failed to uniformly apply a candidate qualification in violation of section 401(e) when incumbent Business Manager [redacted] was permitted to run for office, despite owing a debt to the union. Section 401(e) requires that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. Specifically, you alleged that in 2007 the union made overpayments to [redacted] 401k retirement account and that [redacted] should have been responsible for reimbursing the union plus interest. [redacted] paid back the overpayments without any interest. The Department's investigation revealed that the union's policy of charging interest and fees did not start until 2009. Accordingly, [redacted] was not charged interest. [redacted] was not subject to any disciplinary action or fines, because the overpayments resulted from mistakes made by the payroll processor. As such, the union did not fail to uniformly apply a candidate qualification. There is no violation of the LMRDA.

You also alleged that the union improperly permitted incumbent Business Manager [redacted] and incumbent President Valone to run for office in violation of section 401(e) of the Act. Section 401(e) requires that a union conduct its election in accordance with its constitution and bylaws and that all candidates for office must satisfy the union's reasonable eligibility requirements. You alleged that [redacted] and Valone should not have been eligible to run for union office because they each failed to carry out their fiduciary duties. While union officials have certain fiduciary duties owed to the union, the investigation established that such fiduciary duties are not candidacy requirements in the union's constitution, or otherwise. Accordingly, this is not a violation of Title IV of the LMRDA.

In addition, you raised several allegations that are outside the scope of Title IV of the LMRDA. Specifically, you protested the high interest rate that the union applies to unpaid fines; you challenged the fact that Local 2 did not attempt to collect debts through a third-party collection agency, as permitted by the Local 2 Constitution; you alleged that the union is causing you financial harm by not allowing you to run for office and attend union meetings because the union provides discounted dues payments for those members that attend the union meetings; and you alleged that the union has silenced your freedom of speech by declaring you ineligible to run for union office. These allegations were not investigated because they are not covered under Title IV of the LMRDA.

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,

Patricia Fox, Chief
Division of Enforcement

cc: Mr. Dana A. Brigham, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Mr. John Valone
President, Local 2
International Union of Elevator Constructors
5860 W. 111th Street
Chicago Ridge, IL 60415

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