U.S. Department of Labor

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

March 15, 2012

[redacted]

Dear [redacted]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on October 25, 2011, alleging that a violation 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 International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts, Local 631, on June 1, 2011.

The Department of Labor conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to the specific allegation, that the LMRDA was not violated. Following is an explanation of this conclusion.

You alleged that the union denied you the right to run for business representative when the union improperly found that you were an employer. The LMRDA provides that every member in good standing is eligible to be a candidate and to hold office. 29 U.S.C. § 481(e). However, the Department recognizes that a union may impose through its constitution or bylaws candidacy eligibility requirements that limit the ability of an "employer" to be a candidate for union office. *See* 29 C.F.R. § 452.47.

Local 631's constitution imposes such a limitation on candidacy. Specifically, Article VI, section 1 of the Local 631 constitution reads in part, "[t]o be eligible for office, a person must have been a member in good standing for a period of two (2) years and *not be disqualified from holding office under any applicable Governmental Law*." (Emphasis added). The union has interpreted the phrase "Governmental Law" to include any federal law. Inasmuch as the Labor Management Relations Act (LMRA) makes it unlawful for any employer to dominate or interfere with administration of any labor organization, *see* 29 C.F.R. § 452.47; 29 U.S.C. § 158(a)(2), the union has construed the "*not be disqualified from holding office under any applicable Governmental Law*" language in Article VI, section 1 of the constitution as limiting the right of an employer to be a candidate for union office.

The term "employer" is broadly defined in the LMRDA, 29 U.S.C. § 402(e), to include any employer within the meaning of any law of the United States. 29 C.F.R. § 451.3(a)(3) (such laws would include, among others, the Railway Labor Act, the Fair Labor Standards Act, the LMRA, and the Internal Revenue Code).

The investigation disclosed that you were an "employer," within the meaning of section 3(e) of the LMRDA, 29 U.S.C. § 402(e), during the two-year qualifying period for candidacy. Specifically, the investigation disclosed that you are a managing partner of and hold an equal interest in Entertainment Installation Services (EIS), a limited liability company. The investigation further disclosed that EIS employed at least two workers in 2009. In addition, EIS employed another worker in 2011. The Department's review of EIS' financial records showed that you authorized the disbursements that were made from EIS' bank account to these individuals in compensation for the work they performed on behalf of EIS. Thus, it was reasonable for the union to have concluded that you were an employer and to have disqualified your candidacy on that basis.

An overall consideration in determining whether a member may fairly be denied the right to be a candidate for union office based on status as an employer is whether there is a reasonable basis for assuming that the "employer" would be subject to a conflict of interest in carrying out his representative duties for employees and rank and file union members. *See* 29 C.F.R. § 452.47.

The investigation revealed that EIS provides production rigging, stage carpentry and scenic elements to various employers in the entertainment business. Some of these companies are located within the geographic jurisdiction of Local 631. As a result, EIS and Local 631 conduct business with many of the same employers. Also, EIS has occasion to bid against Local 631 and compete with Local 631 members for the same jobs with such employers. In addition, you and the other managing partners of EIS solicit Local 631 members for work on behalf of EIS and the employers with which EIS does business, thereby circumventing Local 631's job referral process. Further, as a union officer, you would have been required to represent Local 631 and its membership in all dealings with employers, including those employers with which EIS may do business. Based on these facts, you would be in a position as an owner of EIS to make decisions that would be beneficial to EIS but detrimental to Local 631 and its membership when carrying out your representative duties for employees and rank and file union members. Thus, it is reasonable to assume that as an employer you would be subject to a conflict of interest in carrying out representative duties if you were permitted to serve in union office. Thus, the LMRDA was not violated when Local 631 disqualified you from candidacy as an employer.

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,

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Chief, Division of Enforcement

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