U.S. Department of Labor

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

March 28, 2014

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor on August 8, 2012, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the rerun election of officers conducted by the Amalgamated Transit Union (ATU) Local 1385 on April 18, 2012.

The Department conducted an investigation of your allegation. As a result of the investigation, the Department has concluded, with respect to your allegation, that litigation is not warranted in this case.

You alleged that Local 1385 violated the ATU Constitution and General Laws when it failed to conduct its April 2012 rerun election under a primary ballot system. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with its constitution and bylaws. Section 14.5(a) of the ATU Constitution and General Laws provides that local union officers may be elected either under a primary ballot system or under a plurality ballot system. A local union, upon approval of its membership, may change the voting system prescribed in its constitution and bylaws after a proposal for such change has been read at two regular local meetings and approved by two-thirds vote of the membership in attendance at the second meeting (section 13.2 of the ATU Constitution and General Laws). If the local fails to receive a quorum at two consecutive meetings, the local's executive board has the authority to adopt such proposal on behalf of the membership by two-thirds vote of the executive board members (section 13.2 of the ATU Constitution and General Laws).

The Department's review of the minutes for the local's September 26, 1996 membership meeting showed that the local read a proposal at that meeting that the voting process be changed from a primary ballot system to a plurality ballot system. The local, however, did not read the proposal at a second meeting; nor was it voted on by the membership at any such meeting. Thus, the local did not strictly comply with the procedures

prescribed in the ATU Constitution and General Laws for changing its voting policy to permit plurality balloting. The investigation disclosed, however, that the local has a long standing practice of conducting its officer elections by a plurality ballot system and that it has used that system for nearly 30 years.

In any event, the investigation revealed that at the time of the April 2012 election you had been a member of the Local 1385 for almost 15 years and were aware that the local had used the plurality ballot system for many election years. You also served as the vice president of the local from 2003 until 2010 and consented to use of a plurality voting system during your tenure in office. Further, prior to the January 2012 election, the International discussed with you whether a primary voting system or a plurality voting system should be used for that election. During such discussion you voluntarily consented to use of a plurality voting system for the January 2012 election.

You accepted the benefits of such use in the January 2012 election, as you were elected to the office of president in that election by a plurality of the votes cast. At no time during or after the January 2012 election or during the April 2012 election did you complain that a primary voting system should be used. In fact, you stated during the investigation that you initially agreed that the April 2012 election should be conducted using the plurality ballot system and not a primary ballot system. The investigation showed that you changed that position only after the candidate with whom you were politically aligned failed to receive a plurality of the votes cast for president in the April 2012 election, and the candidate who won that election was responsible for providing information to the ATU, which resulted in you being barred from serving as president, after being elected to that office in January 2012.

These facts do not provide a sufficient basis for the Department of Labor to file suit to overturn the election. Clearly, you had consented to use of the plurality ballot system for previous elections. Having consented to such use, you now seek to have the April 2012 election set aside based on practices in which you voluntarily participated to unseat the successful candidate for president. In *Marshall v. Local 1010, United Steelworkers of America, AFL-CIO, CLC*, 664 F.2d 144 (7th Cir. 1981) the court refused to order a new election where incumbent officers relied on practices in which they willingly participated as a basis for setting aside the election.

Accordingly, your complaint is dismissed and the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Lawrence J. Hanley, International President
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