U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
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March 13, 2014

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint received by the U.S. Department of Labor on August 26, 2013, 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 officers of Local 341 Laborers International Union of North America (LIUNA), in May 2013.

The Department conducted an investigation of your allegations. As a result of that investigation, the Department has concluded that there was no violation of the LMRDA.

You alleged that the local's "working at the calling" requirement is unreasonable because the local's job referral system unreasonably requires unemployed members seeking qualifying employment to be physically present at the union hall every week, Monday through Saturday, at 9:00 a.m. You further allege that you were improperly disqualified for office when the local determined that you were not "working at the calling."

Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. The Department of Labor specifically recognizes the reasonableness of working at the trade requirements at 29 C.F.R. § 452.41 of its regulations. However, the Department's regulations further provide that in applying a working at the trade rule, an unemployed member is considered to be working at the trade if actively seeking qualifying employment. The regulation further provides that a working at the trade rule should not be so inflexible as to disqualify members who are familiar with the trade but who, because of illness, economic conditions, or other good reasons are temporarily not working.

With respect to your first allegation regarding the requirement that members seeking employment be physically present at the union hall, the Department of Labor investigation disclosed that the local has two methods available to unemployed members seeking to obtain employment. Members may come to the union hiring hall, open six days at 9:00 a.m., when the dispatcher announces the currently available jobs and the number of laborers needed to fill those jobs. However, a member may, on his own initiative, contact a signatory employer and ask the employer to request his name for future jobs. According to your estimate, 95% of the jobs obtained by members are obtained using the latter method. The local's referral system is not unreasonable as it is flexible enough to allow unemployed members to seek employment on their own initiative. There was no violation.

With regard to your allegation that you were improperly disqualified under the rule, in your interview with Department of Labor investigators, you admitted that you did not work a single day as a laborer from May 2012 to May 2013, the requisite candidacy qualification period. However, you told Department investigators that you were actively seeking employment during that time period and that you were physically present at the hiring hall for 75-100 calls. You also stated that you were unable to work for four months (August 21, 2012 - January 21, 2013) because you broke your arm, but that you were available for work from February to March 2013 as a flagger, the only type of work you could perform after your injury.

Your statements to the Department differ from your statements to the local election judges. The investigation revealed that upon the election judges' inquiry into your work history to determine eligibility, you refused to answer why you did not attend work calls for the months in which you were not convalescing from your broken arm, and that you were very inconsistent regarding dates as related to your work history. You admitted to the judges that you only started attending work calls more recent to nominations, around April 2013. Based on the work history statement you provided the election judges, the local disqualified you from running for office because you were not continuously and actively seeking employment as a laborer and therefore you were not "working at the calling."

When asked by the Department, you refused to clarify your conflicting statements. In any event, the Department's investigation revealed that you, by your own admission, refused a number of jobs when the local offered them to you. Further, you were unavailable for flagging jobs from February 2013 to April 5, 2013, because you allowed your certification to lapse and did not renew it until April 6, 2013. The local had grounds to disqualify you as a candidate for president, because you did not actively and continuously seek employment. There was no violation.

In a related allegation, you alleged that the "working at the calling" qualification was not uniformly imposed because Local 341's referral system requires members living and seeking employment in Anchorage to be physically present at the union hall six days a week, but members living 75 miles outside the Anchorage area are permitted to remain at home and respond to dispatcher calls. As noted above, candidacy qualifications must be uniformly imposed under section 401(c). However, uniformity of the candidacy qualification is subject to a standard of reasonableness. It would be unreasonable to require those who live 75 miles or more from the hiring hall to be physically present for work calls, given the loss of time and expense of commuting to and from the hiring hall. Moreover, another opportunity is available to all members: members may ask an employer to request their names for a job. According to your statement to the Department, confirmed by the local, the majority of members obtain employment in this manner. You had the option of requesting an employer to request you for a job for which you qualified. There was no violation.

You also alleged that three of the four election judges were not impartial because they had performed some service for the local, under the supervision and control of the incumbent officers, which would necessarily obligate the election judges to favor the incumbents. Specifically, you alleged that one of the election judges was an attorney employed by the local; another member had been sent to represent the local's interests, all expenses paid, to the Republican National Convention; the third election judge was employed at the local's training school. You believe that only "normal" members should serve as election judges.

Section 401 safeguards democratic processes by prescribing minimum standards for the regular periodic election of officers but does not prescribe in detail election procedures which must be followed. 29 C.F.R. § 452.96. Unions are free to establish procedures for elections as long as they are fair to all members and consistent with the union's constitution and section 401. *Id.* There is nothing inherently unfair in permitting members who are lawyers or who have performed services for the local from serving as election judges. In addition, neither the union constitution nor section 402 prohibits such members from serving as election judges. The investigation disclosed no evidence that the election judges were anything but impartial and favored no candidate over any other. The election judges asked you numerous questions regarding your work history, and excused four months of the twelve-month eligibility period because of your injury, and did so without demanding proof of your injury, other than your unsworn statement. They based their decision only on the information you provided them. There was no violation.

For the reasons set forth above, it is concluded that your administrative complaint to the Department with regard to the above allegations is dismissed, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. Joey Merrick
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