U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
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August 27, 2020

Dear [redacted]

This Statement of Reasons is in response to your February 24, 2020, complaint filed with the Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of Local Union 100 (local or Local 100), International Brotherhood of Teamsters (International), conducted on December 19, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged the local improperly disqualified you from running for office because of your retired status. 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. 29 U.S.C. § 481(e). The local's candidacy qualifications are set forth in the International Constitution and its bylaws. Article II, Section 4(a) provides, in relevant part, that to be eligible for election to any office, a member must be in continuous good standing and actively employed at the craft within the jurisdiction of the local for a period of 24 consecutive months prior to the month preceding nominations. That provision defines "continuous good standing" to mean compliance with dues payment requirements of Article X, Section 5, for 24 consecutive months prior to the month of nominations, together with no interruptions in active membership in the local because of, among other things, withdrawals. Article XVIII, Section 6(b) provides that a withdrawal card shall be issued to any member, including a local officer, who has retired, except that a member who continues to work at the craft, including employment with the International or any affiliate, shall be required to retain active membership. Article XVIII, Section 6(c) affords locals the discretion to permit retirees to attend meetings but does not permit retirees and other inactive members to hold office and vote. The local bylaws reiterate the International Constitution's

requirement that retirees must be issued a withdrawal card upon retirement unless he or she continues to work at the craft, including employment with the international or affiliate. Local 100 Bylaws (Local Bylaws), Section 22, (C)(3). In addition, the Local Bylaws reiterate the International Constitution's mandate that a withdrawal card shall be issued to retired members and that those inactive members on withdrawal cards are ineligible to hold office or vote. *Id*. at Section 22, (B)(2) and (B)(3).

You were elected to office in 2010. You retired from UPS in 2011, when you began receiving pension benefits while continuing to hold office. You ran in two subsequent elections, winning office in 2013 and losing in the 2016 election. The local issued you a withdrawal card effective January 1, 2017. With respect to the challenged December 19, 2019 election, you did not maintain continuous employment for 24 months prior to the November 7, 2019 nominations meeting; the qualifying period was from November 2017-October 2019. The local credited you with the time you actually worked plus the additional months you successfully challenged in your NLRB suit claiming unfair labor practices and for which you received a monetary back pay award. In total, this credited time amounted to a maximum of 13 months – well below the requisite 24 months of continuous employment in the craft. You obtained the above employment during the qualifying period from the local's film referral list. The Department's investigation found that the film referral list only provides sporadic employment opportunities. However, the local has over 60 signatory employers with whom any member, retired or active, may obtain full or part-time employment at any time. You did not seek such employment, restricting your prospective employment to the sporadic film referral.

The union's candidacy qualification requirements restrict inactive members from qualifying for office. The union has two classes of members: active members and retired members. Active members include members temporarily laid off or otherwise unemployed for six months, after which time the union is required to issue such members a withdrawal card and cease deducting dues. IBT Constitution, Art. XVIII, Section 6(a). Members that are inactive for over 6 months cannot meet the candidacy qualifications for office; however, inactive members can meet the candidacy qualification if their period of unemployment is less than six months. In contrast, retirees – the other class of members with their own chapter – are treated differently with regard to the timing of the issuance of a withdrawal card. IBT Const. Art. XVIII, section 6(b) states: A withdrawal card shall be issued to any member, including a Local Union officer, who has retired, except that a member who continues to work at the craft, including employment with the International Union, or any affiliate, shall be required to retain active membership. Local Bylaws Section 22, A(c)(3), in essence, reiterates the International Constitution's provision.

Section 401(e) requires unions to conduct their elections in accordance with their constitutions and bylaws, but allows unions to interpret unclear provisions of their

governing documents. The government, among others, is required to accept that interpretation unless it is clearly unreasonable. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 453.3. The International has interpreted Art. XVIII, section (b) to mean that for retirees, a local must issue a withdrawal card to a retired member *immediately* upon his or her retirement. There is no six-month waiting period, as with temporarily unemployed members. Retired members cannot qualify for office unless they are employed continuously at the craft within the jurisdiction of the union throughout the qualifying period. For retirees, unlike active members temporarily unemployed, periods of unemployment of less than six months are a disqualification to office. Retirees are deemed inactive on the day on which their withdrawal card is effective.

The union has explained that the difference between active members, including the subclass of those temporarily unemployed, and retirees is that active members are dependent on an income solely derived from employment with one of the local's 60 signatory employers. By contrast, retired members receive an income derived from their pension. Any work retirees perform while on retirement status supplements their income. The International Constitution recognizes that difference, and the local's officers confirmed that Local 100 treats these two classes of members differently because each class has a different interest. The Department accepts the International's interpretation of its constitution because it is not clearly unreasonable.

Although the local permits retired members to obtain sporadic work from the film referral list, the local does not view such sporadically employed retirees as being "temporarily unemployed." Notably, the union's position on temporary employment is consistent with the Department's regulation addressing this issue. *See* 29 C.F.R. § 452.41. The Department's investigation established that because you retired from UPS, your receipt of the employer's pension does not restrict your employment with any of the over 60 signatory employers. You had the opportunity to obtain full or part-time employment with any of the 60 signatory employers at any time during the 24-month qualifying period but failed to do so. Instead, you placed your name on the film referral list, which resulted in your accumulating a maximum 13 months continuous work during the qualifying 24-month period. Finally, the Department's investigation demonstrated that the local applied its candidacy qualification uniformly to all retired members. The local properly disqualified you from running for office because you failed to meet the candidacy qualification requirement. There was no violation.

You alleged UPS Sharonville management treated you less favorably than other candidates when they demanded that only you leave UPS premises while you were campaigning. Specifically, you alleged that your 20-minute confrontation with UPS management denied you the opportunity to campaign to approximately 100 members on the premises. Section 401(c) provides, in relevant part, that unions shall provide adequate safeguards to ensure a fair election. Adequate safeguards include the equal

treatment of candidates. *See* 29 U.S.C. § 481(c); 29 C.F.R. §§ 452.66, 452.67. Employers have a right to set their own employee campaigning policy as long as their policy is applied equally to all candidates. UPS Sharonville has a "no-solicitation" policy that prohibits employees from distributing campaign material while on work status, but permits its employees to place campaign material in non-work areas. Non-employees, however, are prohibited from entering the employer's premises without express permission from management. Similarly, union officers who are not UPS employees must follow UPS policy.

The Department's investigation disclosed that you were campaigning on the employer's premises on November 20, 2019, without UPS's permission. Between 6:30 p.m. and 7 p.m., before any shift changes occurred, management advised you of its no-solicitation policy because you were not an employee, having retired from UPS in 2011. You refused to leave and continued to campaign. Even assuming that your conversation with management was 20 minutes long, you were not denied the opportunity to campaign to many members because few, if any, members were in the area at that time given no shift changes occurred during that timeframe. But more importantly, you were not treated less favorably by the employer, despite your failure to follow the employer's rules to obtain prior permission before campaigning. In fact, the employer permitted you to continue campaigning, which you did. There was no violation.

You alleged that the local failed to mail its combined nominations and election notice to all members prior to the nominations meeting. Section 401(e) requires that unions provide members with a reasonable opportunity to nominate candidates. 29 U.S.C. § 481(e). Further, the Department's regulations state that unions must provide a reasonable opportunity for the nomination of candidates by posting or mailing nominations notices in sufficient time to permit members to nominate the candidates of their choice and in accordance with their constitution and bylaws. 29 C.F.R. § 452.56. Election notice requirements are more stringent; unions must mail an election notice to all members at his or her last known home address not less than fifteen days prior to the election, among other requirements. 29 U.S.C. § 481(e); 29 C.F.R. § 452.99. A union may combine nominations and election notices into one notice, but must then satisfy the LMRDA's more stringent election notice standard. Although the International Constitution is silent on the issue of nominations and election notices, the Local Bylaws address both notices. Section 19(B) provides that, at least 20 days prior to the nominations meeting, specific notice of the date, time and place of the nominations meeting and the offices to be filled shall be mailed or published in any local publication mailed to the membership, except that a notice of nominations and election may be combined. The Local's Bylaws impose a higher standard for a nominations notice than does the LMRDA.

The investigation disclosed that the local failed to mail to all members its combined notice of nominations/election prior to the November 7, 2019 nominations meeting. The local mailed a combined nominations and election notice on October 9, 2019. The local used the International's database, TITAN, to compile members' names and addresses. Not included in the local's mailing list were the names of anyone who appeared as a Code 18, signifying a termination of employment, or those not current in dues payments while on layoff status. The local mailed 4,238 combined notices. Ballots, which served as an election notice, were mailed on November 26, 2019 to 4,548 members. The increase in membership included new hires, suspended members who regained good standing after notices were mailed, members heretofore identified as Code 18, as well as 17 re-hired employees previously identified as terminated from employment.

A review of the local's election records showed that 14 of the 17 re-hired members were not mailed a notice. However, 16 of those 17 rehires were mailed a ballot which contained the election notice. Four of the 17 re-hires voted in the election. Although the local violated its bylaws by not mailing a nominations/election notice to 14 re-hired members, there was no effect on the outcome of the election. The lowest margin of victory was 39 votes, exceeding the number of re-hired members (17) who were not mailed a ballot; the effect of the violation is further decreased to 13 because four rehires voted. There was no violation that may have affected the outcome of the election.

In a related allegation, you asserted that the local did not mail a combined nominations/election notice to members employed by Ryder. Specifically, you alleged the local was politically motivated to disenfranchise Ryder members because a large number of Ryder members favored your candidacy. Section 401(e) requires that all eligible members have the right to vote in a covered officer election. 29 U.S.C. § 481(e). Further, section 401(c) imposes a general mandate that adequate safeguards to ensure a fair election shall be provided, which include safeguards not contained in a union's constitution or bylaws, but nevertheless must be observed. 29 U.S.C. § 481(c); 29 C.F.R. § 452.110. To support this allegation, you provided the names of three Ryder members whom you alleged did not receive notice. The Department's investigation disclosed that the local mailed every member of Ryder a combined nominations and election notice as well as a ballot because the local has experienced delays in Ryder's dues deduction process. To avoid disenfranchising any of those members whose dues payments were delayed, all of whom were on dues check-off, all Ryder members were mailed a notice and a ballot. The local's actions are consistent with the Department's regulations addressing this issue. *See* 29 C.F.R. § 452.37(b) (members whose dues are withheld by the employer for payment to the union pursuant to checkoff authorization may not be declared ineligible to vote). Further, the Department's investigation disclosed that each of your three witnesses cast a ballot in the election. The local

provided its members at the Ryder facility with the opportunity to vote and provided adequate safeguards to ensure a fair election. There was no violation.

Sincerely,

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