



April 2, 2009



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (the Department) on January 7, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), 29 U.S.C. §481-484, occurred in connection with the election of officers conducted by Brotherhood of Locomotive Engineers and Trainmen (BLET), Iowa State Legislative Board (ISLB), on September 26, 2008.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded with respect to each allegation that either no violation of the LMRDA occurred or no violation affecting the outcome of the election occurred. This conclusion is explained below.

You alleged that ISLB failed to provide the membership with proper notice of the election. In this regard, you asserted that ISLB failed to send an election notice to all the members and failed to distribute the agenda for the quadrennial meeting in advance of the meeting. ISLB, as an intermediate body labor organization, elects its officers every four years in an election among delegates, i.e. legislative representatives, who have themselves been elected by secret ballot, consistent with Section 401(d) of the LMRDA. *See* 29 U.S.C. § 481(d). As a labor organization that chooses its officers by delegate election, Section 401(f) requires that ISLB conduct its quadrennial meeting, i.e. the convention during which the delegate election is held, in accordance with the constitution and bylaws insofar as they are not inconsistent with the provisions of the LMRDA. *See* 29 U.S.C. § 481(f) and 29 C.F.R. § 452.2. Because ISLB is not required to elect its officers by secret ballot among the membership, the Act does not require it to notify the entire membership of the upcoming election. Section 15(a) of the BLET Bylaws requires that state legislative boards convene at least quadrennially for the purpose of electing officers. Article V, Section 1 of the ISLB Bylaws states that the "officers are to be elected at the Regular (Quadrennial) Meeting of the Board," and Section 5 provides that all Divisions should be notified "sixty days in advance of the

general (quadrennial) meeting, if possible.” The investigation shows that Secretary-Treasurer Janet Schultz mailed an initial notification letter about the quadrennial meeting on May 3, 2008, to all of the Divisions’ legislative representatives and subsequently, on July 24, 2008, sent them a letter that included a notice of elections. Neither the BLET nor ISLB Bylaws require notification of the membership. Further, neither the LMRDA nor the Bylaws require distribution of a meeting agenda in advance of the quadrennial meeting. Accordingly, there was no violation.

You have alleged that all of the programs and presenters during the quadrennial meeting promoted the candidacy of the incumbent officers. The Department’s investigation found no evidence to support your allegation. The investigation showed that the guest speakers thanked the incumbents for inviting them to speak at the meeting, complimented them “for doing a great job,” and expressed other niceties incidental to their presentations. There was no endorsement of any candidate.

You alleged that ISLB funds were used for a party with the guest speakers and other supporters of the incumbent officers to reward them for campaigning during the business meeting. Section 401(g) of the LMRDA prohibits the expenditure of union funds to promote any person’s candidacy in an election. *See* 29 U.S.C. § 481(g) and 29 C.F.R. § 452.73. The Department’s investigation disclosed that, after the quadrennial meeting concluded, the ISLB chairman, first vice chairman, and secretary-treasurer took the speakers and guests out to dinner at union expense in order to thank them for participating in the meeting. However, as no speaker or guest engaged in any campaigning at the meeting, this expenditure of union funds did not promote any candidate, whether incumbent or challenger. No violation occurred.

You alleged that disparate candidate treatment occurred at the quadrennial meeting because incumbents were allowed more time to campaign than challengers. In particular, you claim that the roles Chairman Kurtz and Secretary-Treasurer Schultz played during the business portion of the meeting gave them additional opportunity to campaign. The Department’s regulations at 29 C.F.R. § 452.79 provide in pertinent part that

Where access to the convention floor is limited exclusively to delegates at a convention at which officers are to be elected, there must, nevertheless, be equal opportunity for all nominees to campaign.

The investigation does not support your allegation. Rather, the investigation disclosed that you, as well as all the candidates, were allowed to campaign during the social hour, meals, and breaks preceding the election. The investigation established that Kurtz ran the meeting by introducing the various speakers and that Schultz delivered a report

concerning ISLB's finances, but that neither engaged in any campaigning during this time. Thus, there was no violation.

You alleged that disparate candidate treatment also occurred because members were barred from the business and election portion of the meeting and thereby excluded from the election process. The investigation showed that those attendees who were neither voting delegates nor officers were asked to leave the business and election portion of the quadrennial meeting, which does not contravene the LMRDA or the Bylaws. The investigation disclosed that the only non-delegate, non-officer who was allowed to remain in the meeting was BLET Alternate Secretary-Treasurer Nelson, who had been a guest speaker and served as the meeting's parliamentarian. As discussed above, the investigation established that no campaigning took place during the business portion of the meeting. The investigation further revealed that, during the election portion of the meeting, before the vote was conducted for each office, each candidate for that office was given the opportunity to make a 10-minute campaign speech. Candidate [REDACTED], who had left the business portion of the meeting as requested, was likewise given the opportunity to make campaign remarks, but declined to do so. The investigation indicates that you delivered remarks before each of the three races in which you ran. Thus, the investigation shows that the candidates were given equal treatment. No violation occurred.

You alleged that an atmosphere of intimidation permeated the quadrennial meeting. In this regard, you alleged that Legislative Representatives [REDACTED], [REDACTED], and [REDACTED] declined their nominations so quickly, it appeared they had been pressured not to run. The investigation found no evidence to support your allegation. The investigation showed that [REDACTED] declined his nomination because he was not interested in holding ISLB office at the time. Further, [REDACTED] never declined a nomination because he was not even nominated for any position. Moreover, [REDACTED] did not decline a nomination; on the contrary, he was nominated and won the election for the auditor position. No violation occurred.

You alleged that candidates were denied access to the ISLB membership records, thereby denying them opportunities to campaign. Specifically, you contend that you requested from BLET's national office an address list of ISLB's current legislative representatives, but you never received it. Section 401(c) of the Act, requires that candidates for office be treated equally with respect to distribution of campaign literature and also provides that candidates have an opportunity to inspect a list of members' names and address one time within 30 days prior to the election. These rights apply to intermediate body elections, even when they are delegate elections. *See* 29 C.F.R. §§ 452.81 and 452.80. Candidates are not, however, entitled to a copy of the list. The Department's regulations at 29 C.F.R. § 452.71 make clear that if a union allows any candidate to use its membership list for a purpose other than inspection, the union

must notify the other candidates and allow them to use the list for the same purpose. The investigation revealed no evidence that any candidate was allowed to use BLET's membership list for a purpose other than inspection or that any candidate other than you even requested to use BLET's list in any manner. Moreover, the investigation shows that you received the information requested; by telephone, BLET provided you the most current information from its files that was responsive to your request. There was no violation.

You also alleged that ISLB funds were spent after the election to send the incumbents' supporters on trips as a reward for their support. As stated above, Section 401(g) prohibits the expenditure of union funds to promote any person's candidacy in an election. The Act does not restrict a labor organization from spending funds on legitimate union business. Article V, Section 6 of the ISLB Bylaws provides that the Chairman may attend or participate in any meeting he believes would be advantageous to ISLB, BLET, and locomotive engineers and trainmen in general. That same provision also provides that "the Chairperson may call in any member of the BLET to assist him/her. Members called to be paid as a Delegate." The investigation shows that Chairman Kurtz was authorized pursuant to this provision to select individuals of his choosing to represent ISLB at seminars, training, and conferences beneficial to the union. The investigation found no evidence that these trips involved anything other than legitimate union business. The investigation did not establish that the trips to these functions were used as rewards to those who had supported Kurtz during the election. The investigation revealed that Kurtz on occasion has selected you to participate in a trip, although you declined to do so. No violation occurred.

You alleged that ineligible legislative representatives voted in the election. You contend that those legislative representatives' Divisions did not have the requisite number of assessable members to have a voting delegate. Section 5(d) of the BLET Bylaws requires that each Division in a state must have 25 or more assessable members in order to be represented at the quadrennial meeting by a delegate. It further notes that Divisions chartered before January 1, 2004, will retain the previous threshold level of 12 assessable members. The investigation included a review of delegate allocation. The investigation disclosed that even though an incorrect number of members was written on the credential form for the legislative representative from Division 117, that Division indeed had more than 25 assessable members. The investigation also showed that Division 699, which, like all Divisions within ISLB, had been in existence since well before 2004, was eligible to have a voting delegate because it had 16 members. There was no violation.

You alleged that, during the quadrennial meeting, law firms and BLET provided food, beverages, and gifts to benefit the candidacies of the incumbents. As stated above, Section 401(g) of the Act prohibits the expenditure of union funds to promote any

person's candidacy. Section 401(g) also prohibits contributions by any employer to promote a candidate in a union's election. *See* 29 C.F.R. § 452.78. The investigation revealed that the gifts, drinks, and meals, distributed to and consumed by all attendees at the quadrennial meeting, promoted no candidate. Therefore, no violation occurred.

You alleged that ISLB funds were used to prepare the materials, including the financial report, distributed to all legislative representatives at the quadrennial meeting. Expenditures for these materials constitute ordinary and legitimate union business expenses and are not prohibited by the LMRDA. Further, neither the BLET nor ISLB Bylaws restrict the use of funds for ordinary union business. Accordingly, no violation occurred.

You alleged that the quadrennial meeting was held without authorization by the executive board. No provision of the Act requires an executive board to authorize such a gathering, and there are no provisions in the BLET or ISLB Bylaws requiring such authorization. No violation occurred.

Further, you alleged that there was no opportunity to present a minority report at the quadrennial meeting. The LMRDA does not require a union to receive minority reports during a convention. Nor do the Bylaws of either ISLB or BLET so require. No violation occurred.

Finally, you alleged that Secretary-Treasurer Schultz distributed checks bearing her signature, as well as Chairman Kurtz's signature, to all the delegates before the election. Article XI of the ISLB Bylaws provides that delegates be paid at the close of the meeting. The investigation established that these checks were reimbursements to the delegates for their expenses related to attending the quadrennial meeting and were distributed before the election because everyone leaves so quickly after the election. The investigation showed that Schultz made no statements that could be construed as campaigning when she distributed the checks. Thus, although the timing of the check distribution violated the Bylaws and constitutes a technical violation, no violation affecting the outcome of the election occurred.

For the reasons set forth above, the Department has concluded that there was no violation of the LMRDA, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

cc: Mr. Edward W. Rodzwick

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