U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

June 24, 2009

Dear :

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("Department") on March 9, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("the Act"), as amended, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of Communications Workers of America, AFL-CIO ("CWA") Local 84755 (a/k/a International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-CWA "IUE-CWA" Local 755) (the "Local"), completed on November 12, 2008. This was the Local's first general election following a trusteeship that had been imposed on November 16, 2006 and November 2007 merger with IUE-CWA locals 797 and 768.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that is properly before the Department, that no violation occurred that may have affected the outcome of the election.

You alleged that the Local failed to provide the membership reasonable notice of the nominations meeting. Although the Act does not require specific procedures or times for notice of nominations, it does require that notice be reasonably calculated to reach all members in good standing. 29 C.F.R. § 452.56. The Department's investigation revealed that the Local issued two nominations notices. The first one, dated August 21, 2008, announcing a September 28, 2008, nominations meeting was posted at all of the plants and the union hall. Shortly after this notice was posted, Dayton Legal Blank, the outside election vendor hired to handle the Local's election, informed the Local that it needed to postpone the Local's nominations meeting and election. Thereafter, Trusteeship administrator Steve Lykins drafted a second nominations notice, dated September 24, 2008, which rescheduled the nominations meeting to October 12, 2008, and the election to November 12, 2008. This notice was mailed to all members and was also posted at all of the plants and the union hall. The investigation further revealed

that the mailing list used for the second notice contained incomplete or no addresses for approximately 870 members. After notification of this problem, the Local worked to obtain correct addresses and on October 2, 2008, or shortly thereafter, CWA National Union, on behalf of the Local, mailed the notice to the 870 members. The Local's failure to use an up-to-date mailing list violated Section 401(c) of the Act, which requires that unions have adequate safeguards to insure a fair election.

However, in order for a violation to be actionable there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, the Union was ultimately able to mail notices to all members before the date of the nominations meeting and there is no evidence that anyone was denied the opportunity to nominate a candidate for office due to the delay in notification. Therefore, the violation did not affect the outcome of the election.

You also alleged that Local was not given full autonomy to conduct the election because there was no official election committee appointed. The Department's investigation revealed that the administrator overseeing the election did not appoint an election committee. While the CWA Constitution, Article XV, Section4(a), provides for locals to select an election committee to conduct all elections and determine all questions concerning conduct and challenges to elections, the Constitution also permits the CWA Executive Board to appoint a temporary administrator to conduct the affairs of a Local, as had happened here. It is reasonable for the CWA to interpret these two provisions as permitting Administrator Lykins, who was authorized to act on behalf of the Local, to run the election without an appointed committee. *See*, 29 C.F.R. 452.3 ("The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable.").

You next alleged that the union did not provide the membership reasonable notice when it changed the date of the officer election at DMAX Ltd. facility from Wednesday, November 12, 2008, to Friday, November 7, 2008. The Department's investigation did not substantiate this allegation. The investigation revealed that the Local did not change the date of the election, but instead added an additional day for early voting because, after the November 12 election day had been established, the employer announced a layoff that took place several days before the vote. Further, any members laid off from DMAX as of the November 12 election day were also able to vote at the union hall. These facts do not constitute a denial of the right to vote or a violation of the Act.

You also alleged that the Local denied members the right to vote when it failed to issue absentee ballots to at least 64 people who had requested one. The Department's investigation verified that absentee ballots were not provided. However, the facts do not establish a violation of the Act. There is no requirement that a union provide absentee ballots. The regulations simply require that where "a substantial number or a particular segment of the members will not be able to exercise their right to vote in

person" absentee ballots or other means of voting must be made available. 29 C.F.R. §452.95. In this case, there is no evidence those requesting absentee ballots constituted "a substantial number or particular segment of the members" unable to exercise their right to vote. Where the Local determined that there was no geographically convenient or appropriate accommodation to hold the election, as in the case of the unit in Connersville, Indiana, it provided mail ballots.

You further alleged that the union failed to hold nominations for the DMAX Ltd. chief steward/shop chairman position at the October 12, 2008 nominations meeting. The investigation determined that the DMAX chief steward was a voting member of the Local's Executive Board under the Local 797's previous by-laws and transition rules established in the merger agreement, and thus was required to be elected by secret ballot under the Act. 29 U.S.C. §§ 402(n), 481(b). The post-transition rules and the newly adopted Local bylaws, however, do not designate the chief steward as a voting member of the board. Therefore, the position is no longer an "officer" under the Act and the Secretary no longer has jurisdiction over that position.

Finally, the Department's investigation revealed that the Local failed to retain unused ballots after the election from three polling sites and failed to retain a voter eligibility list, in violation of Section 401(e) of the Act. 29 U.S.C. § 481(e), which requires that all records pertaining to the election be preserved for one year. The Department, however, found no evidence of voter fraud or other irregularities at those or any other sites. Therefore, the Department concluded that the violation had no effect on the outcome of the election.

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

Sincerely,

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