U.S. Department of Labor

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

May 14, 2009

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on September 8, 2008. In that complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act or LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by Local 90, United Brotherhood of Carpenters and Joiners of America (UBC) on June 4, 2008.

The Department of Labor (Department) conducted an investigation of your complaint. As a result of the investigation, the Department has concluded with respect to your specific allegations that no violation of the Act occurred which may have affected the election outcome.

In the complaint, you alleged that two candidates may have failed to pay Local 90 (or local) for the cost of the labels that were used to make their campaign mailing while other candidates paid for the labels. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy of any person. The investigation disclosed that you paid the union $4.50 for the labels used for your campaign mailing and that the candidates that you mentioned purchased their own blank labels from an office supply store for $13.36 and that such labels were used to conduct their campaign mailing. Section 401(g) of the Act was not violated.

You also alleged that the two candidates were permitted to use the local's office secretary, supplies, and copier machine to make their campaign mailings. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy. Thus, candidates may not use union personnel, equipment or supplies to assist them in campaigning unless such assistance is available to all candidates. The Department's investigation disclosed that the candidates purchased and used their own office supplies to create the campaign literature and that they used their own personal resources to have the materials reproduced. The investigation also disclosed that any

clerical services the local's office secretary provided to the candidates in connection with the campaign mailing were made available to all candidates. Section 401(g) of the Act was not violated.

You alleged that the two candidates campaigned while on union time on the day of the election. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits campaigning while a person is being paid by the union or by an employer. The Department's review of leave statements for the candidates disclosed that both of them were on personal time off when you saw them campaigning. The Act was not violated.

You alleged that a candidate used union records to make campaign telephone calls to members. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to finance a candidate's campaign. Thus, union resources may not be used for campaign purposes unless such resources are available to all candidates. The investigation disclosed that the list the candidate used to make campaign telephone calls to members was a personal list he had compiled over a period of time. The investigation disclosed that the list was not compiled as a result of the candidate serving in union office or as a union employee. Further, the one member that you alleged received a campaign call from the candidate stated during the investigation that he provided his home telephone number to the candidate prior to the election in connection with a personal matter. The Act was not violated.

You alleged that members were denied the right to vote because the union provided only one polling place and the voting hours were from 1:00 p.m. until 7:00 p.m. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that a union provide its members with a reasonable opportunity to vote. Providing members a reasonable opportunity to vote may require establishing multiple polling sites or use of a mail ballot referendum when members are widely dispersed. It might also require the time period for voting to be extended to accommodate members who might otherwise be prevented from voting due to conflicting work schedules. *See* 29 C.F.R. §§ 452.94; *see also* 29 C.F.R. § 452.95 (election may require use of absentee ballots or other means of voting). In this case, the investigation disclosed that only voting in person at the one polling site was permitted and that voting hours were from 1:00 p.m. to 7:00 p.m. on a workday. The investigation also disclosed that the hours for the first work shift were from 7:00 a.m. until 3:30 p.m. and the hours for the second work shift were from 3:30 p.m. until 12:30 a.m. In addition, members were widely dispersed among 1,000 employers located in seven counties throughout southern Indiana. However, of those members interviewed by the Department during the investigation where distance or the polling hours may have been a factor, two members stated that they did not vote because they worked as late as 6:30 p.m. on election day, the polls closed at 7:00 p.m., and it would have taken them more than one hour to travel from their work location to the polling place. The remainder of the members stated that they could have voted but chose not to for

reasons unrelated to distance or the polling hours. The investigation did not show that the voting arrangements provided by Local 90 during the challenged election resulted in a determinative number of members being prevented from voting as a result of the distance to the polling place and the limited polling hours. Under these circumstances, the evidence is not sufficient to conclude that the Act was violated.

You alleged that a candidate who is the coordinator of a joint training facility solicited the votes of apprentices at the facility. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits a person from campaigning while being paid by the union or by an employer. The investigation disclosed that, while the candidate was on personal time, he asked the one member that you alleged was the subject of such campaigning if he knew that the candidate was running for office. When the member told the candidate that he did not intend to vote for him the conversation ended. Further, the member was not eligible to vote. The investigation also disclosed that the member did not observe the candidate soliciting votes from any other person. The Act was not violated.

You also alleged that the coordinator of a joint training facility announced his candidacy and solicited apprentices' votes during an apprenticeship class that was being taught at the facility. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits a candidate from campaigning while being paid by the union or an employer. That provision also prohibits the use of an employer facility or a union facility to assist a candidate in campaigning unless such assistance is available to all candidates. The investigation disclosed that, during a leadership class for the apprentices, an instructor asked the coordinator to discuss where he would like to see the apprentice program in the next several years, as part of a class exercise. Immediately after the coordinator completed his discussion, the instructor asked the students to engage in this same exercise. You may have construed the coordinator's discussion as campaigning. However, the instructor who was teaching the apprenticeship class when the alleged incident took place did not corroborate that such campaigning occurred. In addition, none of the apprentices who attended the class and were interviewed by the Department during the investigation stated that the candidate campaigned during the class. Section 401(g) of the Act was not violated.

You alleged that three members who were at the joint training facility attending an apprenticeship course heard the coordinator of the facility campaigning in the break room at that facility. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union or employer funds to promote the candidacy of any person. Thus, a union facility or an employer facility may not be used to assist a candidate in campaigning unless such assistance is available to all candidates. During the investigation, the three apprentices stated that the coordinator made statements critical of your candidacy while they were in the break room at the joint training facility. During the investigation, the coordinator denied making such statements. In any event, the three

members were ineligible to vote. Thus, any violation that may have possibly occurred did not affect the election outcome.

You alleged that the union permitted ineligible members to vote in the election. This allegation was substantiated by the investigation. Section 401(e) of the Act, 29 U.S.C. § 481 (e), requires that an election of union officers be conducted in accordance with the union's constitution and bylaws. *See* 29 U.S.C. § 481(e). Section 401(f) of the Act, 29 U.S.C. § 481(f), provides a similar requirement regarding conventions at which union officers are chosen by a convention of delegates. The voter eligibility provision of the UBC constitution provides that an individual must have been a member of the local for twelve consecutive months to vote. The investigation disclosed that the local included the ballots of three individuals in the vote count for the regular election of union officers who had not been members for the qualifying period. The local also included these ballots in the vote count for the election of convention delegates. Thus, the local failed to conduct these elections in accordance with the UBC's constitution, in violation of sections 401 (e) and (f) of the Act, respectively. However, the smallest vote margin in the union officer election exceeded three votes. Thus, the violation did not affect that election. On the other hand, the races for those candidates who placed ninth and tenth in the election for convention delegates were decided by only three votes. Therefore, the violation may have affected the outcome of those races. However, the UBC ordered a rerun of the delegate election prior to you filing a complaint with Department. The rerun election has been completed. Thus, the union has remedied this violation.

You alleged that that the local should not have allowed campaigning outside the polling place because the UBC constitution does not permit such campaigning. The investigation disclosed that the UBC constitution is silent concerning such campaigning and, thus, it does not prohibit campaigning outside the polling place. The Act contains no such prohibition. Neither the UBC constitution nor the Act was violated.

You alleged that the combined nominations and election notice was not mailed within the timeframes prescribed in the UBC constitution. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct its election of officers in accordance with the union's constitution and bylaws. The investigation disclosed that the UBC constitution requires that the notice be mailed to members not less than 15 days prior to nominations and not more than sixty days prior to the election. The investigation disclosed that the combined nominations and election notice was mailed April 9, nominations took place May 7 and the election was June 4. Thus, the notice was mailed to members in accordance with the timeframes prescribed in the UBC constitution. Neither the UBC constitution nor the Act was violated.

For the reasons set forth above, it is concluded either that no violation of the Act occurred or that any violation that occurred did not affect the election outcome. Therefore, I have closed the file on this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement
Office of Labor-Management Standards

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