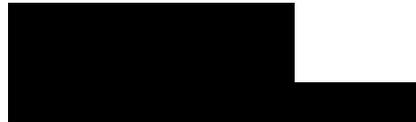




August 12, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your April 21, 2010 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of the International Association of Machinists and Aerospace Workers (IAM), District Lodge 142 (District Lodge 142) conducted on June 10, 2010.

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 no violation occurred which may have affected the outcome of the election.

You alleged that District Lodge 142 violated section 401(e) of the LMRDA, by improperly disqualifying you as a candidate for the office of Continental Vice-President in the June 2010 District Lodge 142 election. Section 401(e) requires that every member in good standing shall be eligible to be a candidate and to hold office, subject to section 504 and to reasonable qualifications uniformly imposed. Although you were nominated for the position of president, IAM Local Lodge 2339N (Local 2339N) disqualified you based on a 2008 IAM determination that you had misappropriated union funds and were permanently barred from holding any office or representing members of the IAM, pursuant to Article VII, Section 5 of the IAM Constitution and the IAM Shortage Policy. Specifically, the IAM determined, following a December 17, 2008 hearing, that you misappropriated Local 2339N funds totaling \$15,363.09 while acting in your capacity as Local 2339N president.

You assert that you were not afforded adequate due process rights under section 101(a)(5) of the LMRDA, prior to being disciplined in the form of a permanent office-holding disqualification. Department of Labor regulations at 29 C.F.R. § 452.50 provide that a union may bar a member guilty of misconduct from holding office without violating section 401(e), so long as the member has been afforded the rights guaranteed under section 101(a)(5) of the LMRDA. Section 101(a)(5) provides that a member may not be disciplined unless such member has been served with written specific charges;

given reasonable time to prepare his defense; and afforded a full and fair hearing. 29 U.S.C. § 411(a)(5).

In *Int'l Brotherhood of Boilermakers v. Hardeman*, the U.S. Supreme Court considered due process rights in the context of section 101(a)(5) and asserted that the courts should also examine whether the union member receiving the charges has been misled or otherwise prejudiced in the presentation of his or her defense. *Hardeman*, 401 U.S. 233, 245 (1971); see also *Frye v. United Steelworkers of America*, 767 F.2d 1216, 1223 (7th Cir. 1985) (holding that, "to establish a violation of 101(a)(5), a disciplined member must demonstrate that he was misled or otherwise prejudiced in the presentation of his defense"). The Department of Labor investigation revealed that your section 101 (a)(5) rights were accommodated by the union.

a. Written Specific Charges

The charges underlying the IAM determination that you misappropriated union funds were provided in a November 24, 2008 letter sent from IAM Secretary-Treasurer Warren Mart. While the letter apprising you of the charges against you arguably may not meet the standard for specific written notice, the investigation established that you were not misled or otherwise prejudiced in presenting your defense.

The Department's investigation revealed that on July 28, 2008, while Local 2339N was in trusteeship, the IAM held a hearing to inform Local 2339N members and former officers of financial irregularities and potential financial malpractices which supported the IAM's position to keep Local 2339N in trusteeship. The Department found that you were present at this July 28, 2008 hearing, and were presented with specific financial irregularities or malpractices that occurred prior to the imposition of the trusteeship. Former officers, including you, were then given the opportunity to respond to these reports of financial malpractice and also permitted to introduce documents to support any disagreement that you had with the malpractices being discussed. The Department found that you actively participated at this hearing, responding to issues of financial malpractice that were presented.

Following the decision to impose a trusteeship over Local 2339N, the IAM requested that Grand Lodge Auditor (GLA) Jane Tackett perform an audit of Local 2339N to review records, accounts, and transactions. GLA Tackett completed her audit in November 2008, which revealed that you and a number of other former Local 2339N officials were responsible for misappropriating union funds. IAM Representative, and trustee of Local 2339N, [REDACTED], confirmed that GLA Tackett's audit focused on the specific irregularities discussed at the July 28, 2008 trusteeship hearing. GLA Tackett concluded that these irregularities and malpractices discussed at the July 28, 2008 hearing constituted misappropriation of union funds, chargeable to former

officers. During its investigation, the Department interviewed GLA Tackett who explained that after completing her audit of the books and records of Local 2339N, she called the various officers whom she found to be responsible for losses in order to discuss the irregularities in detail. GLA Tackett called you on November 24, 2008, and stated that she wanted to meet with you. You confirmed that you received this call but declined to meet with GLA Tackett, asking that she put any request to meet with you in writing.

With these above-stated facts in mind, the Department reviewed the specifics of the November 24, 2008 charging letter. This charging letter provides: the amount of funds that the union alleged you misappropriated; the specific IAM constitutional provision requiring such discipline for misappropriated funds; the name of the Grand Lodge Auditor who investigated and submitted her findings of misappropriations; the date that this auditor contacted you to meet to discuss the details of each transaction that she found to be in violation of the IAM Constitution and Bylaws; as well as a full description of your rights to request a hearing, bring a representative from the IAM, present witnesses and evidence, and to cross-examine the GLA responsible for conducting the audit of Local 2339N. Regardless of whether the November 24, 2008 letter, standing alone, provided sufficiently specific charges related to the allegation that you misappropriated union funds, the Department determined that your attendance and active participation in the July 28, 2008 hearing, your phone conversation with GLA Tackett, as well as the specific reference to GLA Tackett's investigation as the basis for the misappropriation charges, collectively provided you with sufficient details so the you were on notice of the charges against you. Further, since you had knowledge of the alleged financial malpractices through your participation in the July 28, 2008 hearing, you were not misled or prejudiced in presenting a defense against these charges.

b. Reasonable Time to Prepare a Defense

You also assert that you were not afforded reasonable time to prepare a defense, in violation of section 101(a)(5). The Department's investigation revealed that you received notice of the charges against you on or before November 28, 2008. Despite receiving the charging letter on or before November 28, 2008, the Department determined that you were aware of these allegations of financial malpractice as early as July 28, 2008, and took the opportunity to respond to many of the allegations giving rise to the charges at the July 28, 2008 hearing. On November 28, 2008, you responded to the charges and requested a hearing. The IAM received this letter on December 1, 2008, and responded by letter on December 5, 2008, setting a hearing date for December 17, 2008. This December 5, 2008 letter setting forth the time and place of the hearing was sent via overnight mail. Also in this December 5, 2008 letter from the IAM, you were advised that GLA Tackett would be instructed to make her audit report and other

relevant documents available to you for your review prior to the hearing. Despite being sent via overnight mail, you state that you did not receive this December 5, 2008 letter until December 10, 2008.

Even assuming that you received the IAM's December 5, 2008 letter on December 10, 2008, you had seven days' notice of the specific date and time that the hearing would be held. Regardless of the date that you received the IAM's December 5, 2008 letter, you received the charging letter approximately 20 days prior to the hearing date (notice received on or before November 28, 2008 with a December 17, 2008 hearing), and had specific knowledge of and the opportunity to respond to these allegations of financial malpractice as early as July 28, 2008. As such, the Department found that you were provided reasonable time to prepare a defense to the charges of misappropriating union funds.

In addition to insufficient time to prepare a defense, you also stated that you were scheduled to work on December 17, 2008 and could not appear at the hearing. The Department's investigation revealed that you made no attempt to reschedule your work assignment so that you could attend the December 17, 2008 hearing. You summarily rejected the December 17, 2008 hearing date as an impossibility, without making any attempt to contact your employer to accommodate this scheduled hearing because you believed any attempt to change your schedule would be futile. Accordingly, the Department does not believe that the union was unreasonable in holding your hearing on December 17, 2008.

c. Afforded a Full and Fair Hearing

Finally, the Department's investigation determined that despite your failure to attend the December 17, 2008 hearing, a hearing was held and GLA Tackett presented evidence through documents and testimony relating to the reported misappropriations. The IAM Special Assistant overseeing the hearing was not involved in the investigation of the misappropriations. This Special Assistant considered the evidence presented and on January 6, 2009 issued his decision, finding that you were responsible for misappropriating \$15,363.09 in union funds. Despite your failure to attend this hearing, the Special Assistant carefully considered the evidence presented and actually reduced the amount of misappropriated funds allegedly chargeable to you from \$24,114.72 (as stated in the IAM's initial charging letter) to \$15,363.09. On January 13, 2009, you were sent a copy of the IAM decision and given the right to appeal the findings of misappropriation to the IAM Executive Council. On February 2, 2009, you appealed the decision of the Special Assistant.

The Department's investigation revealed that on March 13, 2009, the IAM sent you via

certified mail its decision to uphold the Special Assistant's decision that you misappropriated union funds in violation of Article VII, Section 5 of the IAM Constitution and are therefore disqualified from holding union office. Following its investigation, the Department determined that the process that the IAM followed in implementing its disciplinary measures adequately provided you with a full and fair hearing, with full appeal rights. Accordingly, prior to imposing its disciplinary action, the IAM satisfied the requirements of section 101(a)(5), such that there was no violation of section 401(e) when you were disqualified from running for District Lodge 142 office in the June 2010 election.

In addition to the allegations related to section 101(a)(5), you also alleged that during the Local Lodge elections to nominate candidates for District Lodge office, the President of Local Lodge 2339C, Marcus Valentino, did not allow for the election of a nominee for District Lodge 142 General Chairperson, Continental Airlines but appointed the nominee for that position. Section 401(b) of the Act requires that every local labor organization elect its officers by secret ballot, and section 401(e) requires that such elections of union officers be conducted in accordance with the union's constitution and bylaws. *See* 29 U.S.C. §§ 481(b) and (e). Specifically, you alleged members were denied the right to elect the Local 2339C nominee for District Lodge 142 office of General Chairperson of Continental Airlines when Valentino broke a tie-vote among members by appointing one candidate over the other.

The investigation revealed that President Valentino voted in the election for this office, which resulted in a tie. In order to break the tie vote, Valentino cast a deciding vote for one candidate, and by doing so, voted twice in the officer election. While the Department found that Valentino's actions in this election violated the Act, the violation had no effect on the outcome of the District Lodge 142 election.

The Department's investigation revealed that District Lodge 142 did not accept Local 2339C's nominee for General Chairperson Continental Airlines because of Valentino's violation. Further, District Lodge 142 only permitted the top two nominees among all the Local union elections to run as candidates in the District election. Valentino chose nominee [REDACTED] over [REDACTED]. The fact that neither [REDACTED] nor [REDACTED] received Local 2339C's nomination did not affect the outcome of the District Lodge election because [REDACTED] was nominated in 38 other local unions, which was the highest among candidates, while [REDACTED] received only one other nomination, which ranked him third among candidates, with [REDACTED] receiving 8 nominations. Since Local 2339C's nomination could not have placed [REDACTED] within the top two candidates and also did not affect [REDACTED] as the top nominee, there was no effect on the outcome of the District Lodge 142 election.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred affecting the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



Patricia Fox
Chief, Division of Enforcement
Office of Labor-Management Standards

cc: R. Thomas Buffenbarger
International President
International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772

International Association of Machinists and Aerospace Workers
District Lodge 142
400 N.E. 32nd Street
Kansas City, Missouri 64116

Katherine Bissell, Associate Solicitor for Civil Rights and Labor-Management