



June 20, 2013

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed March 19, 2013 with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Brotherhood of Teamsters, Local 120 on December 22, 2011.

While your complaint raised several allegations, we have determined that all except one of these allegations are not properly before the Department. With respect to that one allegation, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of these conclusions.

Initially, you alleged that Local 120 violated the LMRDA by allowing [REDACTED] to run as a candidate for Business Agent because he had not satisfied the union's 24-month continuous good standing requirement. The Department determined that Business Agent is not an officer position under section 3(n) of the LMRDA, and therefore, Title IV's election safeguards do not apply to the position of Business Agent. *See* 29 U.S.C. § 402(n); *See also* 29 C.F.R. § 452.17. Further, the Department found that during the internal protest period, you filed an election complaint with the Joint Council Executive Board but failed to appeal the Joint Council's decision to the General Executive Board (GEB). *See* IBT Constitution, Article XXII, Section 5(b). Accordingly, you failed to properly exhaust this protest under the union's internal protest procedures. For both reasons, this allegation was not investigated.

Similarly, you alleged that the union violated the LMRDA by permitting [REDACTED] to run for Trustee because he failed to satisfy the continuous good standing requirement. Evidence that you provided revealed that you received information relating to [REDACTED]

eligibility on February 6, 2013; however, you failed to protest the matter to the union until February 14, 2013. The union's protest procedures require that a member file a post-election protest within 72 hours of knowledge of a potential violation. *See* IBT Constitution, Article XXII, Section 5(b). You failed to file a protest within this 72-hour period, and therefore, your protest was not properly exhausted with the union. Further, the Department reviewed [REDACTED] dues payment history and found no evidence suggesting that [REDACTED] fell out of continuous good standing in the 24 months prior to nominations. Therefore, the Department dismissed this allegation.

Next, on January 31, 2013, you filed a post-election protest alleging that incumbent officers used union funds to promote their candidacies in the December 2011 election in violation of section 401(g) of the LMRDA. Your protest was based on information published in a November 9, 2012 Independent Review Board Report (IRB Report) detailing financial improprieties committed by incumbent officers. *See* IRB Report, pp. 116-117 (Nov. 9, 2012). By email, you requested and received a copy of the IRB Report on November 16, 2012; however, you did not file a protest regarding this information until January 31, 2013, well outside the union's required 72-hour protest period. You have argued that you did not read the IRB Report until January 30, 2013. Failure to read the report when it was otherwise publically available is not a justifiable reason for extending the time in which you are required to invoke internal union remedies. Furthermore, your claimed failure to read the report does not change the fact that you had knowledge of the report and a copy of it in November 2012, and failed to file a post-election protest for more than two months. Because you failed to properly exhaust this allegation before the union, the Department dismissed this allegation.

The Department found that one of your allegations was properly before it for investigation. You alleged that Local 120 removed your campaign postings at various worksites during the election period in violation of section 401(c) of the LMRDA. This allegation is properly before the Department because you followed the union's internal election protest procedures and you received a final decision from the union on February 22, 2013. Section 401(c) prohibits disparate treatment among candidates and also requires that unions provide adequate safeguards to insure a fair election. *See* 29 C.F.R. § 452.110. Specifically, you alleged that union stewards and incumbent officers removed campaign literature that you posted at seven of Local 120's worksites.

The Department's investigation revealed that certain postings by your campaign at these seven locations were improperly removed, in violation of the LMRDA. The Department also found that in some instances your literature was properly removed

because it was posted in a restricted area of the worksite or was posted on top of the union's official bulletin board, improperly covering the union's official notices. The Department is only authorized to supervise a new election where the violations of the LMRDA "may have affected the outcome" of the election. *See* 29 U.S.C. § 482(c).

The investigation disclosed that after your campaign posters were removed, you continued to campaign at these worksites, distributing and posting additional campaign materials. Further, you sent a campaign mailing to the membership. This subsequent campaigning at worksites and your ability to send a campaign mailer indicates that the effect on the election of any improper removal of your campaign material was limited, because you had the ability to spread your campaign message to potential voters. Nevertheless, even if the violation you alleged might have affected the vote of every member at these seven locations, there would have been no effect on the outcome of the election. In total, there were 860 members working at the seven affected worksites. The margin of victory for the local president's race from the OLMS recount was 1,191. Accordingly, the violation could not have affected the outcome of your race.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Mr. William Moore
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