



January 30, 2012

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on August 9, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the International Association of Machinists and Aerospace Workers District Lodge 837, on March 26, 2011.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. The following is an explanation of this conclusion.

You alleged a number of violations of the provisions of Section 401(g) of the LMRDA, which prohibits the use of union funds or employer funds to promote the candidacy of any person. First, you asserted that the District 837 officers used the December 2010 Aero-Facts paper, a union-financed publication, to promote their candidacies and that [REDACTED] requested but was denied an opportunity to have a non-partisan article published in that issue. The provisions of Section 401(g) of the LMRDA prohibit any showing of preference by a union or its officers, which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may not attack a

candidate or urge the nomination or election of a candidate in a union-financed publication. *See* 29 C.F.R. § 452.75.

The Department's investigation disclosed that the December 2010 paper was the Christmas issue of the union publication. You believe that the paper was promotional in nature because it contained color photographs of the incumbent officers. The Department's review of the December issues of the publication from previous years showed that photographs of the incumbent officers and the officers' holiday messages routinely appeared in the paper. The December 2010 issue was no different. Further, the photographs of the incumbents in the December 2010 issue were not excessive. The tone and content of the publication did not encourage the reelection of the incumbents or discourage the candidacy of their opponents. Nor did the publication solicit members' votes. Thus, the publication did not constitute prohibited campaigning under Section 401(g). Further, even if it were true that the union refused to print [REDACTED] article in the publication, no other candidates were permitted to have an article printed in the publication. Thus, [REDACTED] was in no way politically disadvantaged. The LMRDA was not violated.

You alleged that on March 22, 2011, a member campaigned at Boeing Building 598 to an audience of about 50 employees and passed out literature supportive of the incumbent slate. Section 401(g) of the LMRDA prohibits the use of employer facilities to assist candidates in campaigning. The member accused of campaigning stated during the investigation that he never campaigned at Boeing Building 598. Further, two Boeing company officials and the election judge stated during the investigation that they were not aware of any person who reported hearing or witnessing any campaigning at Boeing Building 598. The LMRDA was not violated.

In connection with the alleged campaigning at Boeing Building 598, you alleged that two union officials campaigned at work facilities while on union time and employer time. During the investigation, one such official denied that he campaigned at any work facility. You were unable to provide and the investigation did not disclose any witnesses to this alleged campaigning. The investigation disclosed that the other official campaigned before and after his work hours and while he was on lunch break. He did not campaign on union time. The LMRDA was not violated.

You alleged that a Boeing official promoted the incumbent president during an employer-sponsored dinner held at a Boeing facility to honor union members. The investigation disclosed that, during a banquet sponsored by Boeing, a Boeing official gave a speech. During the speech, the official mentioned the upcoming election and told the audience "don't forget about [REDACTED]" or "remember [REDACTED] at the polls this weekend." "[REDACTED]" was a reference to incumbent president [REDACTED] who headed a slate of candidates. The official's statement, which promoted the candidacy of

the incumbent president and possibly his slate, constituted prohibited campaigning under 401(g). However, this violation did not affect the outcome of the election in that approximately 65 union members attended the banquet and the smallest vote margin was 191 votes. Thus, there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the union bulletin board located at a Washington, Missouri employer site was used to display the incumbents' campaign literature. The investigation disclosed that, during the election, the union permitted members to post campaign materials outside the union's locked bulletin board located at a Washington, Missouri employer site and on the wall next to that board. However, no campaign materials were posted inside that board. In any event, the investigation disclosed that the campaign materials of both the incumbent slate and your slate were posted outside the bulletin board. Eventually, all campaign materials were removed from this area after members complained about the postings. A company official stated that the union bulletin boards are used solely by the union and its members for union-related material. The company would have allowed campaign literature on or in the board as long as it was not objectionable. No issues regarding campaign literature were reported to RTI. The LMRDA was not violated.

You alleged that the union increased the frequency of distribution of Speed Facts, a union publication, during the election in an effort to promote the incumbents' candidacies and that the union used the publication to address campaign issues discussed in [REDACTED] campaign materials. Section 401(g) of the LMRDA prohibits use of a union-financed publication to discourage or urge a person's candidacy.

The investigation showed that the frequency of the distribution of the publication did not increase during the election. In fact, such distribution increased after the election was completed. In addition, although the publication contained an article concerning the production control positions at the St. Clair facility, one of [REDACTED] campaign issues, the article was published in response to employees' complaints to the union concerning such positions. The union's article was unrelated to [REDACTED] campaign literature, which raised similar issues. Further, the union's article did not include any statements about the incumbent candidates, the opposition candidates, or the impending election. The LMRDA was not violated.

You alleged that union funds were used to purchase folding chairs and that the names of District 837 candidates were printed on the chairs. The investigation disclosed that the union gave these chairs to stewards and safety men in December 2010 as Christmas gifts. The names on the chairs were [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The name of union organizer [REDACTED] the union's logo, and the words "District 837" also were printed on the chairs. The chairs did not contain any

campaign slogans or include words that solicited members' votes. The LMRDA was not violated.

You alleged that opposition candidates were targeted by management in an attempt to restrict their ability to campaign at a work facility. The [REDACTED] candidates were also told by another company's supervisor not to campaign at the worksite although the incumbent candidates and supporters were allowed to campaign there.

The investigation disclosed that a labor relations manager for an employer sent out an email to managers requesting that they watch out for prohibited campaigning at the work facilities. The manager's email was precipitated solely by complaints from employees about certain candidates campaigning on company time. In the email, the manager provided the names of those candidates. The dissemination of the email was not an attempt by management to target particular candidates or influence the outcome of the election. The other supervisor's email was sent to a small group of business representatives and plant chairmen and generally addressed campaigning policies at the company. Neither email mentioned slates, could be considered campaigning, and they appeared to be written to prevent future problems. Further, the employer's campaign rules were applied uniformly to all candidates regardless of their slate affiliation. The LMRDA was not violated.

Your final allegation concerning the use of union funds or employer funds to promote a person's candidacy is that the spring 2011 issue of the International's Machinists Journal and the International's website contained an article that promoted the candidacy of the incumbent District 837 President. The International also allowed [REDACTED], [REDACTED], and [REDACTED] to skip the annual MNPL Conference so that they could campaign. On March 23, 2011, all three incumbent candidates were at the GKN gates campaigning.

The investigation disclosed that a picture of the International President along with other labor leaders, including the District 837 President, was included in the International magazine along with an article during the election period. The article does not mention the District 837 President or the election. In addition, an article entitled, "District 837 President Named Labor Man of the Year," was posted on the International's website during the election period. The president's nomination for that award was made about one year prior to the election by a non-union organization. The website included a short article about the president's award and included his picture. The article does not mention the upcoming election or his candidacy nor does it solicit members' votes. The three officers requested to be excused from the conference because of a scheduling conflict, not for campaigning. The state representatives attended instead. Attendance at the MNPL Conference is voluntary. The LMRDA was not violated.

Second, you alleged violations of the adequate safeguards provision of the LMRDA. Section 401(c) of the Act requires a union to provide adequate safeguards to ensure a fair election. You asserted that an election official promoted the candidacy of the incumbent candidates while members were in the voting area. The adequate safeguards contemplated by the LMRDA include a prohibition against campaigning within the polling place. *See* 29 C.F.R. § 452.111. You stated during the investigation that the election judge told you that he removed an election official from the polls because the official was campaigning in the polling area while members were voting.

During the investigation, the election judge failed to corroborate that he removed or told anyone that he removed the election official from the polls. In addition, the election judge did not corroborate that the election official was campaigning in the voting area or outside the room where the polls were located. Further, although your observer stated during the investigation that she heard the election official campaigning while he was outside the polling room, your observer was not able to provide any information during the investigation concerning the content of any such campaign statements. Thus, the evidence does not provide an adequate basis for finding probable cause to believe that the LMRDA was violated.

You alleged that an election official, rather than the voter, inserted voted ballots into the automated machines used to read and tally the votes on each ballot. The investigation disclosed that members were required to insert their voted ballots into the vote tally machines face down after they marked their ballots. The election official stated during the investigation that the only ballot he inserted into a vote tally machine was his own ballot. No voters corroborated your allegation that the election official inserted their voted ballots into a vote tally machine. The LMRDA was not violated.

You alleged that a representative of the company that supplied the vote tally machines was able to see the voted ballots as voters fed them into the machines. You also alleged that when voters failed to vote for the required number of candidates on the ballot the representative brought this to their attention. The investigation disclosed that the voter placed his or her voted ballots into the ballot tally machine face down. If a voter was having trouble inserting the ballot into the machine, the representative instructed the voter on how to insert the ballot into the machine, but he did not directly handle the ballot himself. With respect to your allegation that the representative informed members when they failed to vote for the required number of candidates on the ballot, the investigation revealed that the machines could not read ballots that contained under-votes (where a ballot is read as containing no vote in a race) or over-votes (where more than one candidate is selected for the same race). Under such circumstances, the machine sent out a warning signal alerting the representative of the problem. The representative gave the voter the option of voting a new ballot or having the

representative override the machine so that the machine would read the ballot. The LMRDA was not violated.

You alleged that the incumbent slate distributed absentee ballot request cards to members and that, prior to passing out such cards, the incumbents indicated on the cards the reason why the requestor wanted to vote by absentee ballot. The investigation disclosed that the union's past practice permits candidates to distribute absentee request cards to members. Before distributing such cards during the election, the incumbent slate indicated on the card that the member would be on vacation on the day of the election, and for that reason, the member was requesting an absentee ballot. However, the investigation disclosed that the union determined the validity of each absentee ballot request before the union granted or denied any such request. As a result, only those members who were eligible to vote by absent ballot were mailed such ballots. The LMRDA was not violated.

You alleged that the union failed to post membership meeting notices at the employer facilities for the January 2011 meeting and that attendance at such meeting was used in determining candidate eligibility. The investigation disclosed that the union provided copies of the January 2011 meeting notice to the plant chairmen who gave them to representatives of the labor relations department at each facility to post. No member complained to the union that the notices were not posted or that the member was not aware of the date, time and place of the January 2011 meeting. Further, with the exception of holidays, the membership meetings are held every second Sunday of each month at the union hall. The second Sunday of January 2011 (January 9, 2011) was not a holiday and, thus, members should have known that the membership meeting would be conducted as scheduled. Further, any member who was unsure as to whether the January 2011 meeting would be conducted could have contacted the union. The LMRDA was not violated.

You alleged that the incumbents used the words "Machinists Union DL 837" on the envelopes used for their campaign mailings to mislead the membership into believing that the mailings concerned official union business. The investigation disclosed that the words "Machinists 837" and the slate's return address were printed on the envelopes used for the incumbents' campaign mailings. The envelopes did not contain the union's logo, contained different fonts, and the address on such envelopes was different from the union's office address. [REDACTED] name was also included on the envelopes for his slate's campaign mailings. Further, once a member opened the envelope it was clear from its content that the materials were campaign literature and did not concern official union business. The LMRDA was not violated.

You alleged that each opposition candidate was required to submit information to the union regarding how the candidate wanted his name to appear on the ballot, but the

incumbent secretary-treasurer was permitted to submit such information to the union on behalf of his entire slate. The investigation disclosed that neither the election judge nor any other election official required the opposition candidates to individually submit information to the union regarding the way the candidates wanted their names to appear on the ballot. The candidates themselves determined the manner in which such information would be submitted to the union. Every candidate was given an opportunity to request how his or her name should appear on the ballot. The LMRDA was not violated.

You alleged that your observer witnessed the election judge mark ballots before he inserted them into the vote tally machine. The investigation disclosed that the members voted their ballots by using a pen or a pencil to mark the boxes next to their choice of candidates on the ballot. The vote tally machine was not able to read a ballot if a mark in a box was too light. When this occurred, the election judge used a writing instrument and darkened the mark that the voter had already placed in a box on the ballot so that the machine could read the mark. In fact, the candidates had agreed prior to the balloting that, if the machine was not able to read a ballot because a mark in a box was too light, the election judge should darken such mark with a pen or a pencil so that the vote tally machine could read and count the vote. The LMRDA was not violated.

You alleged that your observer saw an election official fill out a ballot for a voter and that employers' names were printed on the detachable ballot stubs. During the investigation, none of the polling officials who were present at the polls during the balloting corroborated the observer's claim that an election teller filled out a ballot for a voter. In addition, the election official denied that he filled out a ballot for a voter. Further, the union's election rules do not prohibit the employer's name from appearing on the detachable stubs. In any event, the voter detached the stubs from the voted ballots before inserting the ballots into the vote tally machine. The LMRDA was not violated.

You alleged that some voters were not required to show identification in order to obtain a ballot and vote. The investigation showed that the election judge witnessed an election official give one voter a ballot without requiring the voter to first show identification. Apparently, the election official knew the voter personally and, thus, he did not ask the voter for identification. After the election judge witnessed this incident, he reminded all election officials that every voter must show identification to vote even if an official personally knows a voter. To the extent that the election official's failure to require one voter to show identification before being permitted to vote violated the LMRDA, this one vote did not affect the outcome of the election.

You alleged that the incumbents and their supporters campaigned within 25 feet of the polling place and that voters were allowed to discuss election issues within the polling

place. The investigation disclosed that the union's election rules prohibit campaigning within 25 feet of the north and south sides of the polling site and within 50 feet of the east and west sides of the that site. The LMRDA does not prohibit campaigning outside the polling place, but recognizes that unions may do so. *See* 29 C.F.R. § 452.111. During the investigation, the Department interviewed union officials, members and at least one union employee who were present in the polling area and outside the polling site during the balloting. None of these individuals stated that they witnessed campaigning in any restricted area outside the polling site. The LMRDA was not violated.

You alleged that there was no accountability for all the official ballots that were printed and that ballots were discarded. The investigation failed to determine the precise number of ballots that were printed. However, the official vote tally showed that 2,715 ballots were cast in the election. Also, the election records reflected the names of 2,709 eligible voters as having voted, for a discrepancy of six votes ($2,715 - 2,709 = 6$). Therefore, the number of ballots cast did not substantially differ from the number of members whose names appeared in the election records as having voted. Under these circumstances, the evidence does not provide an adequate basis for finding probable cause to believe that ballot fraud or other election impropriety occurred. In any event, the smallest vote margin was 191 votes and, thus, the six votes did not affect the outcome of the election. Regarding your allegation that ballots were discarded, the investigation disclosed that there were isolated instances where an election official inadvertently gave a voter more than one ballot to vote. However, no witnesses corroborated the allegation that any ballots were discarded. No violation occurred that may have affected the election outcome.

You alleged that the union mailed multiple absentee ballots to the same address in addition to giving out ballots to those members who had already been mailed an absentee ballot. The investigation disclosed that some members requested absentee ballots multiple times because the union had determined that they were ineligible to vote by absentee ballot and, therefore, denied their previous requests for an absentee ballot. The union, however, did not mail multiple absentee ballots to the same address. The union mailed only one absentee ballot to the home address of each member who requested and was eligible to vote by absentee ballot. If a member came into vote after already submitting a request for an absentee ballot, he or she voted a challenged ballot. Election officials later matched absentee ballots with the requests and reconciled all challenged ballots from the polls. The LMRDA was not violated.

You alleged that your observer was not afforded an opportunity to effectively exercise her right as an observer. The adequate safeguards provision of Section 401(c) of the Act includes the right of any candidate to have an observer at the polls and at the counting of the ballots. The Department's regulation, at 29 C.F.R. § 452.107, requires more than the mere presence of observers at the ballot count; effective observation is required.

The investigation disclosed that the dimension of the one room used for the polling area was approximately 20 feet by 40 feet. During the balloting, your observer was restricted to an area located closest to the voter registration check-in tables. From that location your observer was not able to see voters' identification or the names of the voters as voter eligibility was checked. In addition, your observer was prevented from witnessing a test run on the vote tally machines and was unable to view the vote counters on the machines to ensure that they had been set at zero before the balloting commenced. Therefore, the observer was denied adequate opportunity to effectively observe the polling process, in violation of the adequate safeguards provision of Section 401(c) of the LMRDA. However, the violation did not affect the outcome of the election. The investigation did not disclose any impropriety with respect to the vote tally machines used to read and calculate the votes. Further, the election records indicated that 2,715 ballots were cast. The names of 2,709 voters were indicated in the election records as having voted, for a discrepancy of six voters ($2715 - 2709 = 6$). The smallest vote margin was 191 votes. Thus, the observer violation did not affect the outcome of the election.

You alleged that the incumbent secretary-treasurer changed the mail-out policy for campaign literature in the middle of the election process. The investigation disclosed that at the beginning of the election there was no formal policy in place for campaign mailings. In the middle of the election period, the incumbent secretary-treasurer asked that all campaign mailing requests be made at least 48 hours prior to the mailing. A certified letter was mailed to all candidates informing them of the campaign mailing rule. The rule was applied uniformly to all candidates. No candidates were denied the opportunity to send out campaign mailings. The LMRDA was not violated.

You alleged that the signature on the absentee request card and the signature on the absentee ballot stub for the same person did not match and that these discrepancies were noted when the union reconciled the signatures on the cards with those on the ballot stubs. The investigation disclosed that the election chairman compared the signature on the stub with the signature on the request card for the same person and did not notice any discrepancies. The complaint did not note any specific discrepancies. In any event, the investigation did not disclose that absentee ballots were voted by anyone other than the voters who had requested them. There were no ballot irregularities. The LMRDA was not violated.

You alleged that the election judge allowed members to vote by absentee ballot even though they circled more than one reason on the absentee ballot request card for requesting such ballot. The investigation disclosed that the International's guidelines provide various reasons for which a member may submit an absentee ballot request card. The guidelines do not limit the number of reasons a member may indicate on the

card for requesting an absentee ballot. There were no instances where an absentee request was rejected for having more than one reason marked. The LMRDA was not violated.

You alleged that the ballots were not numbered consecutively. The investigation showed that the International has a policy that requires the ballots to contain a numbered, detachable stub upon which the voter is required to provide identifying information. The investigation disclosed that the perforated stubs attached to the ballots used for the election were not numbered. The union therefore attached stickers containing numbers to the ballot stubs. The LMRDA was not violated.

You alleged that absentee ballots were mailed to members late and that they did not have sufficient time to receive, vote and return their ballots. The investigation disclosed that all of the absentee ballots were mailed on March 11, 2011, and the ballot tally was conducted on March 26, 2011. Thus, members had 15 days to receive, vote, and return their absentee ballots. The LMRDA was not violated.

You alleged that voters were permitted to use their employee clock numbers instead of their union card numbers when providing their personal information on the detachable ballot stub. The investigation disclosed that the union has a consistent past practice and an established policy of permitting voters to use their employee clock number or their union card number on the ballot stub. The LMRDA was not violated.

In addition, you alleged that a member was denied the right to run for office even though he met the meeting attendance requirement for candidacy. Section 401(e) of the LMRDA provides that "every member in good standing shall be eligible to be a candidate and to hold office." The investigation disclosed that the union's constitution and bylaws require a member to attend at least six membership meetings during the 12 months prior to the election to be eligible for candidacy.

The investigation further disclosed that the member attended three meetings and that he was excused from three other meetings during that period. Attachment B of the International's official policy governing elections prescribes the following method for determining candidacy eligibility when a member has been granted an excuse from attending a membership meeting: "take the number of meetings held; then subtract the number for which the member was excused; divide by two and round all fractions down in favor of the member." The investigation showed that there were 12 membership meetings held during the qualifying period; the member was excused from three such meetings, leaving nine meetings; nine meetings divided by two equals four and a half which was rounded down to four. The member was credited with attending only three of the requisite four meetings. Thus, he failed to meet the meeting attendance requirement for candidacy. No member who did not meet that requirement

was permitted to run for office. The rule was applied uniformly to all members. The LMRDA was not violated.

You further alleged violations of the anti-discrimination provision of Section 401(c) of the LMRDA which requires a union to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. First, you alleged that the incumbent slate obtained a list of the names of those members who had requested absentee ballots from the union. The investigation disclosed that candidates created their own personal lists of members who had requested absentee ballots by soliciting this information from members. The union did not provide a list concerning such members to any candidate. The LMRDA was not violated.

Second, you alleged discriminatory treatment with respect to a list of potential candidates. You contended that an incumbent officer had access to a union list of potential candidates prior to the nominations meeting and that he used the list to contact a candidate and harass him about not being part of the incumbent slate. The investigation disclosed candidates usually give a list of potential candidates' names to the district prior to election to verify eligibility. The incumbent secretary-treasurer contacted a candidate to ask if he wanted to join his slate. The candidate noted that he informed the officer he planned to run as an independent and that the officer did not threaten or harass him. The officer did not have access to any information about the candidates prior to any other candidates and did not use any list submitted to the district to contact the candidate. The LMRDA was not violated.

Finally, you alleged that the incumbents and their supporters threatened and intimidated members. The investigation disclosed a supporter of the incumbent slate and a supporter of the opposing slate were involved in a dispute. However, the investigation did not disclose that the union or any member interfered or attempted to interfere with the right of any member to nominate or to be a candidate, or to support and vote for the candidates of the member's choice. The LMRDA was not violated.

For the reasons set forth above, it is concluded that there was no violation of the Act that may have affected the outcome of the election and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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