



February 18, 2009



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on April 18, 2008, with the Department of Labor ("Department") alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by Laborers International Union of North America (LIUNA), Local 368 (local), on August 22, 2008.

The Department conducted an investigation of your allegation. As a result of our investigation, the Department has concluded, with respect to your allegation, that there was no violation that may have affected the outcome of the election.

You alleged that you were improperly disqualified for office because you had not "worked at the calling" for the one-year period prior to nominations. Under the LMRDA, it is ordinarily considered reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period. In applying such a rule, an unemployed member is considered to be working at the trade if he is actively seeking such employment. Such a requirement should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working. *See* 29 CFR § 452.41.

Pursuant to Article V, Section 4, of LIUNA's Uniform Local Union Constitution (ULUC), no one shall be eligible to hold any office in the local union if the person has not been regularly working at the calling of the International Union during the entire year immediately prior to nomination. "Working at the calling" is defined in Article V, Section 4, to include:

- d. Periods of unemployment where the member was available for and continuously and actively sought employment at the calling which shall be understood to require full compliance

with the lawful rules of the referral service or hiring hall, if any, operated by the local Union . . .

You acknowledged that you did not work at the calling during the entire year prior to nominations, but you claimed that the local had only referred you for one job, which was cancelled. A review of the hiring hall records covering the six months prior to the implementation of new hiring procedures on September 1, 2007, revealed that the local had, in fact, referred you to only one job as a forklift driver under the old procedures. You signed up for the job referral and were interviewed, but you were not selected.

Under the new hiring hall procedures, out-of-work members are listed on one or more "skill sheets" for job referrals according to their competencies and any certifications they have. When an employer places a job order for a laborer with a particular skill, the local refers members at the top of the list for that particular skill. The investigation revealed that after these new procedures were put into effect, Deputy Trustee [REDACTED] asked you to sign up on more skill sheets (other than forklift driver), but you only added your name to the skill sheets for water truck and plaster mortar mixer. [REDACTED] further stated that members are required to call in by the fifth business day of each month to remain on the list. The investigation revealed that you missed the hiring hall check-in dates for November 2007, December 2007 and February 2008. In addition, although your name was on the top of the out-of work list in March 2008, you did not call in for April 2008 and your name was deleted from the list on April 7, 2008. The investigation revealed that the election judges determined that jobs were plentiful during this period and that you should have been able to work on some of these jobs, but by limiting yourself to just three skill sets (forklift, water truck and plaster mortar mixer), you were only eligible for low demand jobs. The investigation revealed that you failed to adhere to the new hiring hall procedures by failing to regularly call in to ensure a position on the out-of-work list. Because you were not actively seeking employment, the local properly disqualified you for office for your failure to work at the calling as required by Article V, Section 4 of LIUNA's local constitution. There was no violation of the LMRDA.

You also alleged that the election judges improperly concluded that you were an employer and disqualified you for office. Under the LMRDA, employers may be members of a union, but may not be candidates for office or serve as officers. *See* 29 CFR § 452.47. However, it is not necessary to resolve this issue because you were properly found disqualified for office because you did not "work at the calling" as required by the local's constitution.

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 regarding this allegation.

Sincerely,

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Chief, Division of Enforcement

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