



January 26, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on May 27, 2008, with the Department of Labor 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 run-off election for the second assistant general chairman of the General Committee of Adjustment, GO-898 of the United Transportation Union (International or UTU), which was conducted on June 28, 2007.

The Department of Labor (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 of the LMRDA to be remedied.

You alleged that [REDACTED] was not eligible to run for the office of second assistant general chairman of the General Committee of Adjustment, GO-898, because he did not have seniority rights.

Article 7(d) of the UTU Constitution provides:

[a] member is ineligible to run who "does not hold seniority rights in transportation services, other fields of employment, trades and industries, whether in public or private employment where the UTU holds the contract, except this does not apply when a member is dismissed from service and his case is being appealed.

The International has interpreted the word seniority in this provision as that seniority that can be exercised by a member to return to work or "exercisable seniority."

The investigation established that [REDACTED] ran for the office of Assistant General Chairman of the General Committee of Adjustment on June 28, 2007. He won the election, but by letter dated October 31, 2007, International President Thompson

removed him from his position based on a complaint regarding his qualifications for office. International President Thompson ruled that since [REDACTED] had agreed not to exercise his seniority in connection with an award from Norfolk Southern Railroad concerning a job-related injury, he did not meet the Article 7(d) seniority requirement as he did not have "exercisable seniority." On November 18, 2007, [REDACTED] appealed his removal to the international board of directors. By letter dated April 30, 2008, the international board of directors reinstated [REDACTED] to office.

In the August 2007 election for international officers, Thompson ruled certain other candidates ineligible for office because they did not have "exercisable seniority." The Department found that the union's interpretation of Article 7(d) of its constitution as requiring "exercisable seniority" was not clearly unreasonable and further found such interpretation to be consistent with a ruling issued by former International President Fred Hardin in 1988 and the union's past actions. See 29 C.F.R. § 452.3. The union was also consistent in its application of the interpretation during the August 2007 international election in that all candidates who ran for office had exercisable seniority.

Yet, with regard to [REDACTED], the Department found that the union acted inconsistently with its interpretation of Article 7(d) and in violation of section 401(e) of the LMRDA, 29 U.S.C. §481(e), by reinstating an ineligible candidate. Once informed that [REDACTED]'s reinstatement violated 401(e) of the LMRDA, the General Committee of Adjustment, GO 898, (GCA), amended its bylaws to eliminate the second assistant general chairman position held by [REDACTED]. In accordance with its bylaws, members of the GCA voted by a two-thirds majority vote to eliminate the position. Inasmuch as the position is not required in the international constitution, the GCA has the authority to amend its bylaws in such a manner. Even though the GCA has hired [REDACTED] as an employee to carry out the representational duties he previously performed, such duties are not executive functions or governing body functions that would make the position covered by Title IV. Accordingly, since the position has been eliminated as an elected office, there is no position to rerun, and there is no remedial action for the Department to now take.

For the reasons set forth above, I am closing our file in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

cc: Mr. M.B. Futhey, International President

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