



August 20, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to your May 19, 2010 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, occurred in connection with the election of officers of the International Union of Roofers, Waterproofers, and Allied Workers (Roofers), Local 36 (Local 36) conducted on May 15, 2010, to bring Local 36 out of trusteeship.

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 Local 36 violated section 401(e) of the LMRDA, by improperly disqualifying you as a candidate for the office of Local 36 Business Manager in the May 2010 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 Business Manager, the union disqualified you based on a 2009 determination that barred you from holding union office for five years. Specifically, the Roofers determined, following a November 10, 2009 hearing, that you violated Article IV Section 1(d) of the Roofers Constitution and failed to reveal to the Election Chairman that you had an arrest record or any convictions during a previous nominations meeting.

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 five year 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). You have specifically alleged that you were not provided a full and fair hearing during your disciplinary proceeding before the Local Executive Board. The Department's investigation revealed that your section 101(a)(5) rights were accommodated by the union.

The Department's investigation disclosed that on June 29, 2009, Local 36 member [REDACTED] filed written charges against you with the Local Executive Board, stating that you violated Article IV, Section 1(d) of the Roofers Constitution and also had failed to reveal to Chairman [REDACTED] during a prior nominations meeting that you had an arrest record or past convictions. On July 16, 2009, the Local Executive Board held a hearing on these charges which resulted in your removal from office as Business Manager and your expulsion from union membership.

The Department's investigation found that you appealed the result of the initial July 2009 hearing to the International Executive Board. The Department determined that you were permitted to attend this second hearing, present new evidence to the International Executive Board, cross-examine witnesses and evidence presented, and received a second hearing determination that analyzed and opined upon the merits of the charges against you. Courts have held that a new and independent determination on the merits of the charges, where new evidence is admitted and charged parties are permitted to attend the hearing and cross-examine witnesses and evidence may cure defects in prior proceedings before the trial board of the local union. *See Perry v. Milk Drivers and Dairy Employees Union*, 656 F.2d 536 (9th Cir. 1981); *Goodman v. Laborers International Union of North America, Local 135*, 742 F.2d 780 (3d Cir. 1984). The Department reviewed the proceedings before the International Executive Board and is satisfied that you were essentially granted a new hearing, which was full and fair under section 101(a)(5). Thus, the Department finds that this second hearing cured any procedural defects that occurred during your trial before Local 36. Accordingly, prior to imposing its disciplinary action, the Roofers 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 Local 36 office in the May 2010 election.

You also alleged that Local 36 violated section 401(e) of the Act by prohibiting a member in good standing from nominating candidates for the May 2010 election. Section 401(e) requires that every member in good standing shall be given a reasonable opportunity to nominate candidates. You alleged that [REDACTED] was a member in good standing at the time of the April 13, 2010 nomination meeting but was prohibited from nominating candidates for union office. The union contended that [REDACTED] failed to pay the full member initiation fee, and therefore, cannot be recognized as a member.

The Department's investigation revealed that [REDACTED] was a member in good standing at the time of the nominations meeting and should have been permitted to nominate candidates. The Department found that [REDACTED] consistently pays her union dues, maintains a union membership card, attends local union membership meetings, and receives union correspondence. In fact, the union mailed her the notice of nominations and election, as well as a ballot for the May 2010 election, which was cast and counted. Regarding the initiation fee, you explained that [REDACTED]'s initiation fee was discounted with the backing of the membership. It appears that other prospective members have also been admitted to the union with discounted initiation fees, and further, there does not appear to be any provision in the Roofers Constitution prohibiting the membership from approving a discounted initiation fee for a prospective member. While the Department found that Local 36 violated the Act by prohibiting [REDACTED] from nominating candidates for the May 2010 election, this violation had no effect on the outcome of the election because all individuals that [REDACTED] wished to nominate were nominated by other members.

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

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