



January 15, 2010

Dear |||||:

This Statement of Reasons is in response to your June 23, 2009, 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, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of District Lodge 142 (District or District Lodge), International Association of Machinists and Aerospace Workers (IAM), completed on July 9, 2008.

The Department of Labor (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 that may have affected the outcome of the election.

You alleged that the District improperly allowed ||||| to run for a District position even though he had not satisfied the District's meeting attendance requirement. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires that a union conduct its election of union officers in accordance with the requirements of the union's constitution and bylaws. *See also* 29 C.F.R. § 452.2. Article VII, Section 2 of the District's bylaws states that a candidate must have attended 50% of regular local lodge meetings during the twelve months preceding the close of nominations. This requirement does not apply to members prevented from attending due to work, disability, or illness.

The investigation determined that ||||| transferred from Houston to Newark during the 2008 election year. During that year, there were eight meetings where there was a quorum at |||||'s assigned location. The evidence collected during the investigation indicated that ||||| attended three of those meetings and likely attended a fourth. Further, ||||| had asked to be excused from several meetings in Houston, but his requests were denied because they were not submitted ten days ahead of time, as required by local bylaws. The District's bylaws, however, contain no advance notice requirement for excused absences. The

Department confirmed that ||| was working during at least one of the Houston meetings. Therefore, out of eight possible meetings, ||| attended three meetings, there is evidence that he attended a fourth meeting, and he had a valid excuse for his absence at a fifth meeting. ||| thus satisfied the 50% attendance requirement and was eligible to run for office. There was no violation of the Act.

You further alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), when it declared ||| (|||) ineligible to run for a General Chairperson (GC)-Continental position because she was an ExpressJet employee. Under its regulations, the Department accepts the interpretation consistently placed on a union’s constitution by its governing body unless the interpretation is clearly unreasonable. See 29 C.F.R. § 452.3. Article VII, Section 15 of the District’s bylaws states that when members of a company represented by a District reach a justifiable number, General Chairperson positions are created to represent those members. Based on past practice, the District interpreted this provision to mean that candidates must be employed by the company whose workers’ interests they seek to represent if a dedicated position for that company exists. ||| could have run for the newly created GC-ExpressJet position but chose not to do so. The Department’s investigation showed that every other nominee was employed by the company whose employees those nominees sought to represent. ExpressJet employees had run for the GC-Continental position in the past, but that was before the GC-ExpressJet position was created. The District’s interpretation of its constitution was not clearly unreasonable. There was no violation of the LMRDA.

You alleged that the District encouraged a “ghost ticket” to exclude certain candidates from appearing on the ballot. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires that a reasonable opportunity be given for the nomination of candidates. See 29 C.F.R. § 452.56. You asserted that the District asked five members to run for local lodge nominations and to later reject those nominations prior to the election in order to prevent certain other members from appearing on the ballot. Four of these members denied any involvement in a “ghost ticket.” One member confirmed that a District representative asked him to run, but he stated that he was not told to withdraw his nomination and he did not in fact withdraw. The Department’s investigation found that every candidate who received at least one local lodge nomination had an opportunity to appear on the ballot. The Department found no evidence that members were not allowed to be nominated in the election. There was no violation of the Act.

You alleged that District officials intimidated members who tried to run for District positions. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires that unions provide adequate safeguards to ensure a fair election. See 29 C.F.R. § 452.110(a). Specifically,

you claimed that union officials intimidated candidates ||| and |||. The Department interviewed Romanausky, who stated that she was not intimidated or confronted. In fact, ||| was nominated for the GC-ExpressJet position and declared the winner of that race. ||| informed the Department that she was asked to leave a Jacksonville local meeting and felt intimidated at a Charlotte local meeting. The investigation determined that ||| was asked to leave the Jacksonville meeting because it was a local executive board meeting that she did not have a right to attend. Regardless, ||| was ultimately nominated for a GC-Continental position. The Department's investigation did not support your allegation. There was no violation of the Act.

You also alleged that Local 2339-N's former president, |||, threatened members that, if they did not vote for preferred candidates, their employment would be jeopardized and that she campaigned within fifty feet of the local election balloting area, in violation of the adequate safeguards provision of Section 401(c). 29 U.S.C. § 481(c). The Department interviewed |||, who denied the allegations. The District's former Secretary-Treasurer was present at the election and said that ||| was not campaigning and did not threaten members. One of the election tellers also said that she did not see ||| campaigning. The Department's investigation did not support your allegation. There was no violation of the LMRDA.

You alleged that ballots were kept at an unsecured location at the District Lodge, in violation of the adequate safeguards provision of Section 401(c). 29 U.S.C. § 481(c). A candidate's observer, |||, arrived at the District's re-tally prior to the tellers and noticed that the ballot envelopes were already opened and lying on a table in the conference room. ||| and the District's secretaries had access to the ballots. District officials also admitted that the ballots were kept in an unlocked closet and office prior to the day of the re-tally and that all of the ballot envelopes were opened before the re-tally. The District's failure to provide adequate safeguards to secure the ballots violates Section 401(c) of the Act. Section 402(c) of the Act, 29 U.S.C. § 482(c), provides that an election may only be overturned where the violation may have affected the outcome of the election. The Department recounted the ballots and found that there was no change in the result of any races from the original local lodge tallies or the District's re-tally. The Department also sent a questionnaire to fifteen local lodges asking them to verify that the tally sheets in the District's possession were the same sheets they had originally submitted. These local lodges reported that the tally sheets were authentic. Accordingly, this violation did not affect the outcome of the election.

You also alleged that the District re-tallied the ballots prior to the designated date and time, resulting in observer ||| not being present. Section 401(c) of the

Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election, including the right of any candidate to have an observer present at every phase of the ballot counting and tallying process. *See* 29 C.F.R. § 452.107. The Department's investigation revealed that the District tellers began re-tallying ballots for all uncontested positions on July 8, 2008, one day prior to the designated date of the re-tally. This violated Section 401(c)'s adequate safeguards provision because a member was denied an opportunity to observe the full re-tally process. However, the Department verified the authenticity of several local lodge tally sheets and recounted the ballots, finding no change in outcome from the results published in the original tally or the District's re-tally. There was no violation of the Act that may have affected the election outcome.

You alleged that mail notice was not provided to all members and that the notice did not contain the date, time, and location of the election. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires that the union provide notice of the election by mail to each voter at his last known address. *See* 29 C.F.R. §452.99. The Department reviewed the District's mailing log, which indicates that notices were mailed to members at their last known home address in November 2007. The District had your correct address on file. These notices contained the date, time, and place of the election. As the Department's investigation did not corroborate your allegation, there was no violation of the Act.

You alleged that absentee ballots were not timely mailed because a local official had to use his own funds for election expenses, thereby denying eligible members the right to vote in violation of Section 401(e). 29 U.S.C. § 481(e). You also stated that the absentee ballots sent by the Local contained an incorrect return address and that the notice posted at the Local contained an incorrect address to request such ballots. The Department's investigation found that the District sent ballot packages to the Local in conformity with the District's bylaws. The Department confirmed that the return address on the absentee ballots and the address on the posted notice were both correct. There was no evidence that any union members did not receive their absentee ballots in a timely manner or were unable to vote due to a delay in receipt. There was no violation of the LMRDA.

You alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because a delay in Local Lodge 2339-N's receipt of a voter eligibility list resulted in ineligible members voting. You stated that the Local allowed ineligible members to vote because the voter eligibility list did not arrive until 2 p.m. on the day of the election. The Department's investigation revealed that the eligibility list arrived less than an hour after the polls opened. Six members voted before the list arrived. For those six members, the Local required the voter to seal the envelope with the ballot inside and stapled a stub containing the member's name to

the envelope. Once the list arrived, the Local confirmed the eligibility of all six voters and separated the stubs from the sealed envelopes. There was no violation of the Act.

You further alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because the District provided only two tellers for the District's re-tally. This violated Article VII, Section 10 of the District's bylaws, which states that all ballots must be turned over to three District election tellers. There was no evidence of any misconduct by the tellers, however, and the Department's recount found no changes in outcome in any race from the District's re-tally results. This violation had no effect on the outcome of the election.

You also alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because one of the District's tellers was a candidate. The IAM constitution and the District bylaws are silent as to whether a candidate may serve as an election teller. Although this is not a preferred practice, it is not a violation of the LMRDA.

You alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because Local Lodge 2339-N did not appoint tellers for the Local's ballot count thirty days before the election. Article VII, Section 8 of the District's bylaws provides that each Local president shall appoint at least three tellers at its first meeting in May. The Department reviewed the Local's April and May 2008 meeting minutes and did not find any mention of the appointment of tellers. The Local, therefore, violated Section 401(e) of the Act by failing to appoint its tellers at the May meeting. The Department found, however, that three tellers were eventually appointed for the Local's ballot tally, there was no evidence of any teller misconduct, and the Department's recount revealed no changes in the outcome of any races. This violation had no effect on the outcome of the election.

You also alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because one teller arrived late for the Local Lodge 2339-N ballot count. The Local complied with the District's bylaws by appointing three tellers for the ballot tally, even if one was late. This was not a violation of the LMRDA.

You also alleged that the District failed to follow its constitution and bylaws, in violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), because late arriving ballots were counted in the re-tally. Article VII, Section 10 of the District's bylaws provides that each local lodge must send their ballots and tally sheets to the District within 72 hours of the close of the polls. This provision also states that a failure of the local lodge to promptly submit the ballots and tally sheets may disqualify the local lodge from having its votes tabulated. The Department's investigation revealed that several local

