



September 29, 2010


Dear |||||:

This Statement of Reasons is in response to your complaint filed on June 14, 2010. You alleged that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the International Longshoremen's Association Local 1692 election held on April 20, 2009.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election.

You alleged that the union failed to provide proper notice of the election in violation of Section 401(e) of the Act because the notice combined the election and nominations into one meeting. Section 401(e) of the LMRDA provides that "not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address." Nominations were originally intended to be held at the January 6, 2009 union meeting and notice of nominations was mailed to every member on December 15, 2008. The union failed to reach a quorum of all ten members, as required by the union's Bylaws, at its nominations meeting in January. The union then sent a combined notice regarding the nominations and the election to the last known home address of all ten members on March 26, 2009, within the requisite 15 day period prior to the April 20, 2009 election. Thus there was no violation with respect to the notice.

You also allege that it was improper for the nominations and election to be held in the same meeting. Section 401(e) of the LMRDA provides that union elections must be conducted in accordance with the constitution and bylaws of the organization. According to the ILA Constitution, Article XIII, Section 1(b), "nominations shall be made at a regular or special meeting held on written notice at least fifteen days prior to the election." The investigation revealed that nominations and the election were held at the same meeting, in violation of the union's constitution and bylaws and thus, in violation of the Act. See 29 C.F.R. § 452.2.

Section 402(c) of the LMRDA provides that a union election will only set aside where a violation may have affected the outcome of the election. The Department's investigation did not find any evidence indicating that the union's decision to hold the nominations and election at the same meeting had any effect on the outcome of the election. All of the potential candidates were aware of the impending election prior to the meeting and had the opportunity to campaign as early as December, when the initial election notice was mailed. Thus, there was no violation of the Act that may have had an effect on the outcome of the election.

You also alleged that you were not given the opportunity to inspect the union mailing list containing the names and last known addresses of the nine other union members. Section 401(c) of the Act requires that each candidate for office "has a right...to inspect a list containing the names and last known addresses of all members of the labor organization." The Department's investigation determined that you never made a request to inspect the mailing list and thus, the union did not unlawfully deny you access to the list. Therefore, no violation of the Act occurred.

You alleged you were denied the opportunity to distribute campaign literature because the elections occurred within minutes of the nominations. Under the LMRDA, the union is required to "comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members." The investigation revealed that you never requested that the union distribute your campaign literature. You were made aware of upcoming elections as early as December 2008 when the first election notice was mailed to members. You were again notified of the upcoming election in the March notice and could have campaigned during that time prior to the April election. There is no requirement that a candidate be formally nominated to be entitled to distribute campaign literature. However, a union is only required to distribute literature for a bona fide candidate seeking to be nominated who makes a request. You did not make any such request. Thus, no violation occurred.

You alleged that the union failed to hold a timely election because the election was delayed past the January, 2009 deadline. The union's bylaws state that nominations shall be held in January of the election year. The LMRDA also requires that "every local labor organization shall elect its officers not less often than once every three years." The previous election was held on March 24, 2006. The investigation revealed that by holding the election in April, the union failed to meet the three year deadline by 27 days and violated the Act. Further, the union's failure to have a quorum at its January meeting caused it to violate its constitutional requirement to have nominations in January, as discussed above.

Section 402(b) of the LMRDA provides that the Secretary may only seek to set aside a union election where the violation at issue has not been remedied. Here, the violations concerning the timing of the election were remedied when the election was held on April 20, 2009 with a full quorum. Therefore, the Department determined that the actions taken by the union subsequent to the violation sufficiently remedied the violation of the Act that no action need be taken by the Department.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act which may have affected the outcome of the election that has not been remedied. Accordingly, I am closing the file on this matter.

Sincerely,

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Chief, Division of Enforcement

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