



January 27, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor on March 25, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers of the American Maritime Officers (AMO) union, conducted on December 6, 2010.

The Department conducted an investigation of your allegations. As a result of that investigation, the Department has concluded that there was no violation of the LMRDA that may have affected the outcome of the election. The basis for the Department's decision follows.

You alleged that the AMO National President, in order to gain an unfair campaign advantage over your slate and in violation of the AMO Constitution, did not relinquish custody of nominations letters to the Credentials Committee as soon as practicable. You believe that confidential information in the nominations letters was used to allow the incumbent slate to begin campaigning two weeks prior to when nominations were announced.

Section 401(e) of the LMRDA requires, among other things, that a reasonable opportunity shall be given for the nomination of candidates. The LMRDA does not prescribe particular procedures for the nominations of candidates, allowing unions to employ any method that will provide a reasonable opportunity for making nominations. See 29 C.F.R. § 452.57(a). Article XI, section 1(b) provides, in relevant part, that any member may submit his or her name for nominations "to the Credentials Committee, in care of the National President" who is "charged with the safekeeping of these [nominations] letters and shall turn them over to the Credentials Committee." That provision lists seven requirements for the contents of the nominations letter.

Nominations letters were required to be received no later than July 6, 2010. The investigation disclosed that all nominations letters were received between June 7 and July 6. Upon receipt of each nominations letter, the Special Assistant to the National

President promptly opened the letter to review it for any deficiencies with respect to the seven requirements. Any defects were immediately related to the nominee who then had the opportunity to timely correct such deficiencies. Thereafter, the Special Assistant retained the nominations letter under lock and key, relinquishing custody of the letters to the Credentials Committee on July 12, 2010, the first day that the Credentials Committee convened.

The union's preliminary review of the nominations letters afforded members a greater amount of time to rectify any deficiencies in the letters and avoided unnecessary delays in the nominations process. The National President fulfilled his constitutional obligation of "safekeeping" the nominations letters, and timely relinquished the letters to the Credentials Committee, as required under Article XI, section 1(b).

The investigation did not reveal evidence that the review of the nominations letters resulted in a campaign advantage for the incumbent slate. The nominations letters basically indicated the intent to run for office. The incumbent slate gained no campaigning advantage by learning of your intent to run for office, as you had declared your intent months earlier on your campaign website, launched in April 2010. Nothing from the nominations letters was used in the incumbent slate campaign. There was no violation.

You alleged that a member of the incumbent slate used a cell phone paid for by the union while attending a campaign event sponsored by your slate. Specifically, you alleged [REDACTED], National Executive Board Member for Inland Waters, attended a July 27, 2010 meeting, hosted by you and two other members of the insurgent slate, taking notes and using a cell phone that may have belonged to the union.

Section 401(g) of the LMRDA prohibits the use of union or employer equipment, among other things, for campaigning purposes. The investigation disclosed that the cell phone in question belonged to [REDACTED] not the union. There was no violation.

You alleged that the incumbent slate members used confidential information contained in pension records, information that belonged exclusively to the pension administrators and to the union, to promote their candidacies. As evidence, you point to an August 9, 2010 posting on the incumbent slate's website that announced "[I]ast year, [REDACTED] received an in-service lump-sum pension benefit from the AMO Pension Plan in excess of \$1 million." You believe that this information could only have been obtained from the union's confidential pension records, to which the incumbent slate had access.

Use of confidential information available only to the union or employer would violate section 401(g) of the LMRDA, where the information is used to promote or denigrate a candidate. The incumbent officers denied using any confidential information in the pension records. The investigation disclosed that during your campaign, you publicly admitted to receiving a lump-sum pension payment. Even without that information, members could estimate another member's lump sum pension entitlement using formulas developed by the pension administrators and inserting known numerical facts, i.e., years of service. The investigation disclosed that you worked for the highest paying contractor for 20 years in the capacity of captain. Applying the appropriate formula would produce a sum approximating \$1 million. The estimated amount of your lump-sum pension benefit that was used in the campaign was not confidential in nature such that it was in the exclusive province of union officers. There was no violation.

You alleged that the union failed to comply with a member of your slate's reasonable request for a list of all members' email addresses for the purpose of distributing campaign literature.

Section 401(c) of the LMRDA requires unions to, among other things, 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 in good standing. The investigation disclosed that the union does not maintain an email list of its 4,000 members. Although the union does transmit its online monthly newsletter *AMO Currents* via email, that list of approximately 3,000 subscribers contains the email addresses of both members and non-members. Since many of the email addresses use nicknames or abbreviations, and there is no name or AMO membership status associated with each email address, the union was unable to segregate union member email addresses from non-union member email addresses in order to accommodate distribution of campaign literature by email. Thus the union does not maintain a list of all members' email addresses or a partial list of members' email addresses from which it could distribute via email candidate campaign literature. There was no violation of the LMRDA.

You alleged that the union denied 230 eligible members the right to vote when it did not include their ballots in the tally.

Section 401(e) of the LMRDA, provides in relevant part, that all members in good standing shall be eligible to vote. The AMO Constitution, Article IV, section 9 provides, in relevant part, that "[o]nly members in good standing shall be allowed to vote . . . in any election of National Officers and National Executive Board Members." The union constitution defines member to mean a person who has filed an appropriate application for membership, fully satisfied the initiation fee, and who has been accepted as a

member. See Article XXII, section 10. AMO refers to such persons who have fulfilled these requirements as “full book” members while persons who have applied for membership but have not paid their initiation fee in full are referred to as “applicants.” AMO defines a “member in good standing” as a member whose dues are paid through the current quarter and who is not under suspension or sentence of expulsion. See Article XXII, section 11. Only full book members who are in good standing are eligible to vote in AMO officer elections.

The Department identified 136 full book members whose votes were not counted. A review of the dues history of these 136 full book members confirmed that 134 of them had not paid their 4<sup>th</sup> quarter dues in full by the cutoff date, and thus were not members in good standing. The union properly did not include these members’ ballots in the tally since they did not satisfy the voter eligibility requirements. However, the investigation revealed that the remaining two members were in fact eligible to vote as they had paid their 4<sup>th</sup> quarter dues in full by the November 30, 2010 cutoff date. Consequently, the union should have included in its tally the ballots cast by those two members.

In addition, the Department identified 77 applicant members whose votes were not counted. A review of the dues history of these 77 applicants revealed that the union properly excluded from its tally the ballots of 68 applicants since those applicants had not fulfilled the requirements for full book membership by the cutoff date. However, the Department’s review revealed that the ballots of nine applicants should have been included in the tally because they had attained full book membership by paying all initiation and 4<sup>th</sup> quarter dues in full by the November 30, 2010 cutoff date.

The union therefore should have included the ballots of the 11 members cited above whose ballots were improperly disqualified in the tally. Nevertheless, the union’s denial of the right to vote to those 11 members may not have affected the outcome of the election as the lowest margin of victory was 23 votes for the office of National Vice President Great Lakes. There was no violation that may have affected the outcome of the election.

In connection with this allegation, you asserted that the union not did give members sufficient notice of the amount of their delinquencies and of the voter eligibility requirements. The union provided notice regarding the December 6, 2010 election and the voter eligibility requirements in the August, September, October, and November issues of the union newsletter. The investigation further disclosed that any member in doubt as to the amount of dues owed could contact the union as to the exact amount due and some members in fact did make such inquiries. Given these circumstances, the union properly disqualified those 134 full book members and 68 applicants who had not paid their dues for the requisite period or had not obtained full membership status.

For the reasons set forth above, it is concluded that your complaint to the Department with regard to the above allegation is dismissed, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Thomas J. Bethel, National President  
American Maritime Officers  
2 West Dixie Highway  
Dania Beach, Florida 33004

Christopher B. Wilkinson, Associate Solicitor  
Civil Rights and Labor-Management Division