



February 2, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor ("The Department") on November 17, 2008 alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA" or "the Act"), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of Local 494 of the Office and Professional Employees International Union, AFL-CIO ("Local 494") completed on June 19, 2008.

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 either no violation occurred or that there was no violation that may have affected the outcome of the election.

You alleged that retirees were improperly allowed to vote in the union elections held in June 2008, citing various provisions of the Local 494 Bylaws ("Bylaws"). Section 401(e) of the LMRDA requires that elections shall be conducted in accordance with the constitution and bylaws of the union, insofar as they are not inconsistent with Title IV of the Act. 29 U.S.C. § 481(e). The union's interpretation of the constitution and bylaws is accepted unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3. Your allegation consists of two separate but related points, which are discussed in turn below.

First, you allege that retirees were improperly allowed to vote because they do not pay dues to Local 494. In this regard, you allege that retiree dues are forwarded in equal parts to the International Union and to the retiree chapter of Local 494 and, thus, the dues are not retained by Local 494.

The Department's investigation did not substantiate your allegation that the Bylaws prohibit voting by retirees who follow the dues structure of Local 494. Article IV, Section 4, Subsections (a) & (b) of the OPEIU Constitution grant Local Unions the

authority to provide Local Union retirees with the right to vote in union elections where the following conditions are met: (1) receipt by a Local Union of dues or fees it may establish for non-active members that are currently due; (2) continued payment of the fees or dues; (3) payment of one-half the amount of those dues or fees to the International Union; and (4) an express provision in the Local Union Constitution authorizing retirees to vote for election of Local Union officers. It is not disputed that: (1) Local 494 receives \$1.00 per month for retired members, as established in Article XVI, Section 1(a) of its Bylaws; (2) such payments were current at the time of the election; (3) Local 494 pays to the International Union one-half the rate of dues it receives from its retirees; and (4) that there is a provision in Local 494's Bylaws (Article XIII, Section 14) expressly providing Local 494 retirees the right to vote.

The International Union, which is responsible for interpreting the constitution, reasonably takes the position that the fact that Local 494 remits one-half of the dues payment to the retiree chapter of Local 494 does not violate the constitution or provide a basis for denying retired members the right to vote in the election. Accordingly, there was no violation of the LMRDA.

Second, you allege that, because the Bylaws do not permit retirees to vote for the Collective Bargaining Committee ("CBC") or Stewards, retirees should not be able to vote for the President, because the President serves as Chairperson of the CBC and generally "deals with" the grievance procedure. The Department's investigation did not substantiate your allegation. Article V, Section 6(b) of the Bylaws states that retirees in good standing are members of the union and allowed to vote in accordance with Article XIII. Article XIII, Section 2 states that "the Officers and Members of the Executive Board shall be elected *by the membership*" (emphasis added). The only limitation on this right is found in Article XIII, Section 14, which states that retirees in good standing "shall be entitled to vote in this Union's elections with the exception of the Collective Bargaining Committee and Stewards"

It is the union's interpretation that these provisions permit retirees to vote for the office of President, because the specific exceptions apply only to specific positions. The union's rationale is that the role of the President is far different than those of a member of the CBC or a Steward. The President's role as Chairperson of the CBC is to represent the local as its chief spokesperson, which is different from the role of other members on the CBC. Additionally, the President is also the Chairperson for all Local 494 committees (except for the Election Committee), thus the President's role as chairperson for the CBC is not a special or unique position for the President. Further, the President is charged with not only dealing with the grievance procedure, as Stewards occasionally do, but in overseeing all communication between the employer and the union – a duty solely reserved for the President. In short, the union's interpretation is that the President's duties are far more expansive than simply their duties pertaining to

the CBC or the grievance procedure, and thus the language in Article XIII, Section 14 does not prohibit retirees from voting for the office of President.

Further, Local 494's past practice clearly allows retirees to vote for the office of President, as they had done so dating back at least as far as the last amendment of the Bylaws in May 1985. Previous attempts to modify the Bylaws to change this practice demonstrate an understanding that the Bylaws were valid, and that modifying them was the proper way to address the issue

In light of all these facts, the Department concludes that the union's interpretation of the relevant portions of the bylaws is reasonable. *See* 29 U.S.C. § 481(e), 29 C.F.R. § 452.3. Thus, there was no violation of the LMRDA.

For the reasons set forth above, it is concluded that the Department of Labor cannot bring an action under section 402 of the LMRDA, and I have closed the file in this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Michael Goodwin, President
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