



August 20, 2010


Dear |||:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on May 29, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as made applicable to federal sector unions by 29 C.F.R. §458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. §7120, occurred in connection with the election of officers for Local 4 of the International Federation of Professional and Technical Engineers, completed on January 13, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations affecting the outcome of the election occurred.

You allege that the Local improperly denied you the opportunity to run for both the offices of President and Executive Council Member in the January 2010 election. The Department’s investigation verified that although the Local permitted persons to be nominated for multiple offices, the Local allowed candidates to run for only one office. Section 401(e) of the Act provides, among other things, that every member in good standing shall be eligible to be a candidate and to hold office subject to “reasonable qualifications uniformly imposed” and that covered elections shall be conducted in accordance with the constitution and bylaws of the union in so far as they are not inconsistent with the provisions of the Act. Further, the Department accepts “the interpretation consistently placed on a union's constitution by the responsible union official or governing body [...] unless the interpretation is clearly unreasonable.” See 29 C.F.R. 452.3. Article XII, paragraph 9 of the Local’s Bylaws states: “When there are two (2) or more candidates for an office, the candidate receiving the most votes shall be declared elected.”

The Department’s investigation revealed that the Local based its decision to not allow multi-office candidacies on Article XII’s unqualified statement that the candidate with the most votes “shall be declared elected,” the lack of any provision allowing for multi-

office candidacy, and the lack of a requirement that an elected candidate relinquish all but one position to which he or she was elected. The Local determined that one person holding multiple offices would not be in the best interest of the union. This interpretation is consistent with the terms of the Local's Bylaws, is not clearly unreasonable, and is not inconsistent with the Act. There was no violation of the Act.

You also allege that the Election Administrator, |||||, edited the candidate statement you submitted to the Local for publication in the Local's December 2009 newsletter on December 9, 2009. Specifically, you allege that |||| removed the reference to your website without your consent or prior knowledge. Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate in the distribution of campaign literature and to have adequate safeguards to ensure a fair election.

The investigation revealed that on December 1, 2009, |||| informed candidates by email that they were entitled to publish a statement in the Local's December newsletter and that he would not edit their statements. In response, you submitted a statement with the heading "|||||||," your campaign website. Upon review, |||| informed you that the Local objected to inclusion of your website because its name wrongly created the impression that the IFPTE unlawfully endorsed your candidacy.

The investigation further revealed that on Thursday, December 17, 2009, you met with IFPTE President Junemann regarding this matter and that he reiterated the conclusion that your website's name created the impression of an unlawful endorsement and instructed you to discontinue use of the domain name. On Monday, December 21, 2009, the Local sent the newsletter to the printers with your statement included but with the domain name replaced with your name, which did not appear elsewhere in your statement. Under Article XII (4) of the Local's Bylaws, the newsletter, which also contained the election notice, was required to be mailed by December 24, 2009. The Local mailed the newsletter on December 22, 2009. You allege that on or about December 24, 2009, you contacted Boyd and informed him that you had changed the name of your website and wanted to include it in your statement. Given the Local's Section 401(c) obligations to refrain from discrimination and safeguard the fairness of the election, its reasonable position regarding the impression of an unlawful endorsement, the time constraints for mailing the notice of election, and the lack of timely communication from you following the meeting with Junemann, the Local's edits to your statement did not improperly discriminate against a candidate for office or otherwise violate of the Act.

You also allege that the Local delayed your campaign mailing by withdrawing its offer to use its bulk rate mail permit to mail candidate's campaign literature. Section 401(c)

of the Act provides the unions are to comply with all reasonable requests of any candidates to have campaign literature distributed by the labor organization, at the candidate's expense. The investigation revealed that on December 29, 2009, the Local informed candidates by email that they would be allowed to use the Local's bulk rate permit for their campaign literature mailings. The Local, however, withdrew this offer and informed candidates of this by email on Friday, January 8, 2010. You allege that you were prepared to mail your campaign literature bulk rate on January 8, but the change in policy and resulting need to obtain postage for a first class mailing delayed your mailing to Monday, January 11. You acknowledge your mailing was received by members on January 12, 2010. In order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, your mailing reached its intended recipients. Further, the Department's experience is that first class mail is delivered much faster than bulk mail, indicating that your campaign material likely arrived sooner than it would have if it had been sent bulk mail on January 8. Thus, even if the Local's withdrawal of its bulk rate mail offer constituted a violation, there was no effect on the outcome of the election.

You also allege that the Local failed to timely respond to your request to inspect the membership list. Article XII 10(d) of the Local's Bylaws states that "the Secretary shall make available for inspection by any bona fide candidate the membership list covered by the Local security arrangements. Such inspection shall be arranged for in advance by the Secretary." As stated above, Section 401(e) of the Act provides that covered elections be conducted in accordance with the union's constitution and bylaws.

The Department's investigation revealed that the Local had assigned the duty of maintaining the membership list to the 2nd Vice-President Jack Bemis, your opponent for the office of President, rather than the Secretary. The Local had done so since 1994 because the Secretary was not a full-time union officer. However, the investigation further revealed that you were afforded the opportunity to inspect the membership list on January 11, 2010, when you selected recipients for your campaign mailing. Thus, to the extent the Local's delegation of membership list duties to the 2nd Vice-President constitutes a violation of Bylaws and, therefore, the Act, there was no effect on the outcome of the election.

You also allege that your opponent in the race for President, incumbent 2nd Vice-President Jack Bemis, was allowed to send out emails to the membership in order to promote his candidacy. As stated above, Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate. The Department's investigation found that in early 2007 the Local's former president, ||| |||, had charged Bemis with the duty of sending emails to the membership on his behalf.

Following ||||'s retirement in August 2009, the interim president and 1st Vice-President, Mike Russo, continued the practice. During the 2010 election, Russo had Bemis send two emails to the membership, one a reminder about a holiday luncheon and the other a reminder about the election. The emails at issue contained the phrase "President Russo Sends" in the text and did not promote Bemis's candidacy. There was no violation of the Act.

You also allege that you were improperly denied your right to have an observer at the vote tally. Section 401(c) requires that unions have adequate safeguards to insure a fair election, including the right of a candidate to have an observer at the polls and counting of ballots. The Local's Bylaws also provided for candidates to have observers. The Local's election rules, however, required candidates to submit the names of observers in writing to election officials and that observers be members in good standing.

The investigation confirmed that Election Chair ||||| denied entry to the tally to your observer, |||||, on grounds that her name had not been given to him in writing before the tally. You allege that ||||| verbally waived the requirement in a telephone conversation with you, an allegation that ||||| denies. The investigation further found that ||||| was an associate member of the Local and thus did not meet the good standing requirement for observers. The Department also conducted a recount of the ballots during its investigation. The recount disclosed no evidence of voter fraud or other irregularities that affected the outcome of the election. Therefore, even if the Department were to credit your allegation that the Local verbally waived the written notice requirement and failed to inform you of your observer's ineligibility prior to her showing up at the tally and were to find that this constitutes a violation of the Act, a denial of your right to have an observer in this situation would not have had an effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Jack Bemis, President  
IFPTE Local 4

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Dear |||||:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on May 13, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as made applicable to federal sector unions by 29 C.F.R. §458.29 and the Civil Service Reform Act of 1978, 5 U.S.C. §7120, occurred in connection with the election of officers for Local 4 of the International Federation of Professional and Technical Engineers, AFL-CIO & CLC, completed on January 13, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations affecting the outcome of the election occurred.

You allege that the Local improperly used its newsletter to disseminate an article that was critical of candidate for President, |||||. Section 401(c) of the Act requires unions to refrain from discrimination in favor or against any candidate and section 401(g) of the Act prohibits the use of union resources for campaigning. The investigation revealed that the Local published an article rebutting allegations ||||| made against the Local's officers during a union meeting prior to the election. The investigation further revealed that the newsletter was published after the election had been completed. As the article was not campaign material and ||||| was not a candidate for office at the time it was published, there was no violation of the Act.

You also allege that a candidate in the race for President, incumbent 2nd Vice-President Jack Bemis, was allowed to send out emails to the membership in order to promote his candidacy. As stated above, Section 401(c) of the Act requires unions to refrain from

discrimination in favor or against any candidate. The Department's investigation found that in early 2007 the Local's former President, ||| |||, had charged Bemis with the duty of sending emails to the membership on his behalf. Following ||| ||| 's retirement in August 2009, the interim president and 1st Vice-President, Mike Russo, continued the practice. During the 2010 election, Russo had Bemis send two emails to the membership, one a reminder about a holiday luncheon and the other a reminder about the election. The emails at issue contained the phrase "President Russo Sends" in the text and did not promote Bemis's candidacy. There was no violation of the Act.

You also allege that the Local failed to send timely notice of the election to the membership. Section 401(e) of the Act requires that notice of the election must be mailed to each member at his last known address at least 15 days prior to the election. The investigation revealed that the Local included the election notice in its December 2009 newsletter which it mailed to members at their home addresses on December 22, 2009, more than fifteen days before the January 13, 2010, election. In addition, the Local sent the membership an email regarding the election and posted election notices at worksites. The investigation also revealed that the IFPTE updates the Local regarding member addresses based on delivery information for its quarterly newsletters. The Local also requests address changes in the "officer update" section of an email it sends to the membership following each monthly meeting. The investigation found no evidence that anyone failed to vote because he or she did not know when the election was. There was no violation of the Act.

You also allege that candidate ||| ||| was improperly denied her right to have an observer at the vote tally. Section 401(c) requires that unions have adequate safeguards to insure a fair election, including the right of a candidate to have an observer at the polls and counting of ballots. The Local's Bylaws also provided for candidates to have observers. The Local's election rules, however, required candidates to submit the names of observers in writing to election officials and that observers be members in good standing.

The investigation confirmed that Election Chair ||| ||| denied entry to the tally to ||| ||| 's observer, ||| |||, on grounds that her name had not been given to him in writing before the tally. ||| ||| alleged that ||| ||| verbally waived the requirement in a telephone conversation with her, an allegation that ||| ||| denies. The investigation further found that ||| ||| was an associate member of the Local and thus did not meet the good standing requirement for observers. The Department also conducted a recount of the ballots during its investigation. The recount disclosed no evidence of voter fraud or other irregularities that affected the outcome of the election. Therefore, even if the Department were to credit ||| ||| 's allegation that the Local verbally waived the written notice requirement and failed to inform her of her

observer's ineligibility prior to the observer showing up at the tally and were to find that this constitutes a violation of the Act, a denial of the right to have an observer in this situation would not have had an effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Jack Bemis, President  
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