



January 4, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your July 28, 2009 complaint filed with the United States Department of Labor (Department) 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 U.S. Airline Pilots Association (USAPA or union) election of officers held on May 12, 2009 which was a union-ordered rerun of the union's regular election, held on March 2, 2009.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department concluded, with respect to each of your specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that the union failed to follow its constitution and bylaws when it took the names of three presidential candidates off the rerun ballot. You alleged that the candidates were improperly allowed to withdraw their names from the ballot.

Section 401(e) of the LMRDA requires that elections be conducted in accordance with the union's constitution and bylaws. Article III, Section 4F of the USAPA Constitution states that "[a] nominated member may also request to withdraw from nomination at any time prior to the distribution of the election notice by notifying the Secretary-Treasurer in written form ... The Secretary-Treasurer shall honor such a request unless the ballot change is not feasible due to time constraints."

The investigation revealed that three candidates were on the ballot for the original election and that all three submitted the proper withdrawal forms addressed to the secretary-treasurer. The forms were received by the union prior to the distribution of the rerun ballots and election notice. The investigation also revealed that none of the

three candidates expressed any concerns about the withdrawal process and were not pressured or coerced to withdraw. Moreover, the withdrawal of the candidates was not inconsistent with the union's constitution and therefore did not violate section 401(e) of the LMRDA.

You alleged that the union failed to provide a reasonable opportunity for nominations because nominations were not reopened for the rerun election. You also alleged that this practice violated Article III, Section 4 of the union constitution which provides for the nomination provision for national elections requiring that members be in good standing, sets the timeframe for establishing a schedule for elections that is sent out in the notice of election, and provides that a member in good standing can self-nominate or be nominated by another active member.

Section 401(e) of the LMRDA provides that unions must provide a reasonable opportunity to nominate candidates for election. You do not allege that the union failed to provide a reasonable opportunity for nominations to occur in the original election. Moreover, there is no statutory or regulatory provision under the LMRDA that requires a reopening of nominations for a union's voluntary rerun election. The USAPA election rules stated that a nomination period was not required because this was a rerun election. Moreover, the decision not to reopen nominations for a rerun election does not violate the constitution because it is silent on this issue. Accordingly, the union's failure to reopen nominations does not violate the statute or the union constitution.

You also stated in your complaint that the Department has a standard practice of reopening nominations in elections supervised by the Department. In general, the Department's position is that a new election includes nominations. Under certain circumstances, however, the Department will supervise a new election without requiring new nominations. While union-initiated rerun elections need not be run under the same practices that the Department would use in a supervised rerun election, the factual basis of your allegation is not correct.

You also allege that the union's failure to reopen nominations "unfairly tilted the election in favor of the new incumbent." You reasoned that if you had been on the ballot, a different set of candidates might have reached the runoff election. Section 401(c) of the LMRDA requires that labor organizations provide adequate safeguards to ensure fair union elections. 29 U.S.C. § 481(c). Department regulations indicate that this provision provides a general rule of fairness. 29 C.F.R. § 452.110(a).

Your only objection to the original election was that you were not permitted to run for office. The decision to permit you to run in the rerun election corrected that violation. Regarding your contention that reopening nominations was required, it is not possible

to recreate the precise conditions of the original election, and one can not presuppose that a different set of candidates in a runoff of the new election would be the same candidates that would have been in the runoff of the first election, as you contend. Moreover, the failure of the union to reopen nominations in an effort to recreate the original election does not constitute a practice that is generally unfair. There is no support for your contention that the union's failure to reopen nominations was unfair or constituted a violation of the LMRDA's adequate safeguards provision. Accordingly, there was no violation of the LMRDA.

You also alleged that you were denied an adequate opportunity to campaign. You allege that the decision not to reopen nominations shortened the election cycle and limited the amount of time you had to campaign. Section 401(c) of the LMRDA provides that unions must comply with reasonable requests to distribute campaign literature and to refrain from discrimination for or against bona fide candidates with regard to issues such as the use of member lists and the costs of campaign mailings. Department regulations provide that there must be a reasonable period prior to the election during which office seekers may engage in campaigning. 29 C.F.R. § 452.79. What constitutes a reasonable period, the regulations states, depends upon the circumstances. *Id.*

Here, union members are airline pilots who are constantly traveling and most of the campaigning was done via e-mail and the internet, rather than face-to-face or by regular mail. The investigation revealed that you sent a campaign e-mail to members, established a campaign website, and posted campaign messages to union websites. Because you had ample time to campaign using these methods, there is no support for your contention that you were denied an adequate opportunity to campaign. There is no evidence that the union denied your request to distribute your literature nor is there any evidence that the union discriminated in any way with regard to your campaign efforts. Accordingly, there was no violation of the LMRDA.

You also alleged that the vendor for campaign e-mail distribution encountered problems during the initial election and not all e-mails were sent out. You did not raise this issue internally within the union. Section 402(a) of the LMRDA provides that before a complaint may be filed with the Department, the member must exhaust the remedies available under the union's constitution and bylaws. Because you did not exhaust your internal union remedies prior to making this allegation, the issue was considered to be out of scope and not investigated.

In your complaint you alleged that you were improperly excluded from the ballot in the initial election. Your exclusion from the ballot was the subject of your earlier internal union election protest. The union issued a final decision on March 9, 2009, which

determined that you were improperly excluded from the ballot for the March 2, 2009 election. The decision provided the remedy of a rerun election which was held on May 12, 2009. Section 402(a) of the LMRDA provides that a member must file his complaint with the Department within one month of receiving an unfavorable final decision from the union. Because you did not file a complainant about this allegation within one month after a decision was rendered on this issue and because the union provided a remedy for this issue, your allegation was determined to be out of scope and not investigated.

For the reasons set forth above, it is concluded that with respect to each of your specific allegations that no violation of the LMRDA occurred that may have affected the election. Accordingly, I have closed the file in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

cc: Michael J. Cleary, President
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