



November 3, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on April 1, 2010. In the complaint, you alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act), 29 U.S.C. §§ 481-484, occurred in connection with the rerun election of Machinists District Lodge 142 General Chairperson Express Jet and the General Chairperson Continental which concluded on January 5-6, 2010.

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 specific allegations, that there was no violation of the Act that may have affected the election outcome. Following is an explanation of these findings.

You alleged that the District Lodge intentionally sabotaged your campaign as the District Lodge did not postpone the August 2009 rerun election until after you had mailed 12,000 campaign postcards at a cost of \$6,000. Section 401(c) of the Act, 29 U.S.C. § 481(c), states, “[a]dequate safeguards to insure a fair election shall be provided.” In this regard, union elections must be conducted in a manner that does not violate the fundamental precepts of fairness that are essential to the selection of leaders through a democratic electoral process. See 29 C.F.R. § 452.110.

The investigation disclosed that the rerun election for General Chairperson Express Jet and General Chairperson Continental was scheduled for August 2009, but subsequent to the absentee ballot mailing, it was discovered that the absentee ballot packages that Local Lodge 2339-H mailed to its members contained the voting instructions for a prior grievance committee election rather than the voting instructions for the upcoming August 2009 election. As a result, the International ordered the District Lodge to postpone the August 2009 election until December 2009. The International’s order was contemporaneous with the absentee ballot mailing and the time within which Local Lodge 2339-H learned that it indeed had mailed the wrong voting instructions to its

members. The investigation did not disclose any evidence that the International's decision to postpone the August 2009 rerun election until December 2009 was made in bad faith, was improperly motivated for political reasons, or was otherwise unreasonable. The Act was not violated.

You alleged that incumbent candidates engaged in impermissible campaigning when they distributed official union business cards along with their campaign materials while on paid union time. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy of any person. Thus, union officials may not campaign on time that is paid by the union, nor use union stationery, etc., to assist them in such campaigning. *See* 29 C.F.R. § 452.76. During the investigation, you named two incumbent candidates who allegedly campaigned while being paid by the union.

The investigation disclosed that one candidate was attending a meeting at a union facility when the alleged campaigning took place. The investigation did not corroborate that this candidate engaged in campaigning during that meeting. However, the investigation disclosed that the other candidate named did solicit a member's vote while the member was standing at the union table located in the airport crew room talking to the candidate about company-related issues. The investigation revealed that, during that conversation, the candidate handed the member a campaign postcard supportive of his candidacy along with his business card, and asked the member to vote for him. Campaigning that is incidental to legitimate union business does not violate the Act. Here, even if it cannot be said that the campaigning was incidental to union business, the investigation revealed that this was an isolated incident affecting one vote. The General Chairperson positions were won by more than one vote. Thus, any violation that may have possibly occurred did not affect the election outcome.

Further, your allegation that incumbent officers used their union-paid salaries to finance their campaigns, even if true, would not constitute a violation of the Act. The salaries, although paid by the union, were compensation for work performed by the incumbent officers on behalf of the union. Therefore, the salaries constituted the personal income of the officers. Thus, even if the incumbents did use such income to finance their campaign, the Act was not violated.

You alleged that the incumbent General Chairpersons campaigned and solicited members' votes during local lodge meetings. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits union officials from campaigning while being paid by the union. *See* 29 C.F.R. § 452.76. During the investigation, one of your observers stated that the General Chairpersons did not campaign or solicit members' votes during the election at the meetings she attended. Further, none of the union's members who were interviewed by the Department and who had attended local lodge meetings during the

election corroborated your claim that such campaigning or solicitation occurred. The Act was not violated.

You alleged that the Recording Secretary for Local Lodge 2339-H may have campaigned for certain candidates on union-paid time when members telephoned her to obtain information regarding the voting instructions. Section 401(g) of the Act, 29 U.S.C. § 481(g), prohibits union officials from campaigning while being paid by the union. During the investigation, you stated that you were not aware of any instance where the Recording Secretary solicited members' votes when they telephoned her to obtain information regarding the voting instructions. You stated that you only assumed that such campaigning may have occurred. Your assumption was not corroborated by the evidence.

The investigation did not disclose any instance during which the Recording Secretary solicited members' votes when they telephoned her to obtain information regarding the voting instructions. Nor is there any evidence that the Recording Secretary engaged in such solicitation during any other time while she was being paid by the union. The Recording Secretary denied engaging in the alleged campaign activity, and no member represented that the Recording Secretary campaigned in this manner. The Act was not violated.

You alleged that some members received absentee ballot packages that did not contain voting instructions. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation did not disclose the name of any member whose absentee ballot package did not contain voting instructions; nor were you able to provide the name of any such member. Further, the absentee ballot package that you and your observer received contained such instructions. The Act was not violated.

You alleged that the blank ballot packages were left unattended in the office of Local Lodge 2339-H until they were mailed to members. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation disclosed that the Recording Secretary is responsible for retaining possession of the blank ballot packages until they are mailed to members. During the election, such packages were stored in the union office shared by the Recording Secretary and the Secretary Treasurer until the ballot mailing. The investigation showed that only these two officials had a key to the office and that the office door remained locked when neither official was in the office. The Department's investigation included a review of the ballots for evidence of ballot fraud or tampering. The Department's review of the voted ballots and the election records did not disclose any evidence of ballot irregularities or other election improprieties. There was no violation of the Act that would provide a basis for litigation by the Department.

You alleged that a campaign postcard was found in a voting booth at the Local Lodge 2339-H polling site during voting hours. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. To this end, the Act prohibits campaigning within the polling place. *See* 29 C.F.R. § 452.111. The investigation disclosed that, during voting hours, your observer found one campaign post card in a voting booth. However, the investigation did not disclose that campaigning occurred in the polling place. Further, prior to your observer informing an election official that a campaign post card had been left in a voting booth, the election officials checked each booth for campaign materials every ten minutes. After the observer informed the election official that a campaign post card had been left in a voting booth, the election officials checked the booths for campaign materials after each voter exited a voting booth. The Act was not violated.

You alleged that the voted ballots were left unattended in the District Lodge office from December 2009 until the ballot tally on January 5, 2010, rather than being mailed back to a post office box and then picked up from that box for tallying on the day of the tally in the presence of observers. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election.

The investigation disclosed that members mailed their voted ballots to a post office box obtained by their respective local lodges. In turn, the local lodges mailed all of the voted ballots received from their respective members to the District Lodge office. The District Lodge started receiving ballots in December 2009. When voted ballots were received by the District Lodge, they were locked in a closet in the union office conference room until they were removed from the closet by the Secretary Treasurer, in the presence of an observer, for tallying on January 5, 2010. Prior to their removal from the closet, the ballots remained locked in the closet at all times and only the Secretary Treasurer had a key to the closet. When the election officials arrived at the tally room to count the ballots on the day of the tally, all of the ballots were in their original sealed envelopes. Further, although the voted ballots were secured at the union's office rather than being mailed back to a post office box, the union's constitution does not require that such ballots be mailed to a post office box. Review of the ballots by the Department revealed no evidence of ballot tampering or other irregularities. The Act was not violated.

You alleged that the voting instructions used by Local Lodge 2338-H indicated that voted ballots had to be sealed in the plain envelope provided in the ballot package but that no plain envelope was included in the package. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation disclosed that the absentee ballot package that Local Lodge 2339-H mailed to its members contained an outer ballot envelope and a plain envelope with the word

"Ballot" stamped on it, which served as the inner/secret ballot envelope. The Department's review of the absentee ballots voided by Local Lodge 2339-H revealed that none of them were voided for failure to use the secret ballot envelope. Thus, it is reasonable to conclude that voters understood that the envelope with the word "Ballot" stamped on it constituted the plain/secret ballot envelope. The Act was not violated.

You alleged that the voting instructions directed members to vote for "three candidates only" for the office of Continental General Chairperson, but the instructions did not inform members that the union would void the vote for that office if a member voted for fewer than three candidates, i.e., engaged in bullet voting. If the union constitution and bylaws clearly prohibit bullet voting, then discounting the vote of a member in good standing for bullet voting does not violate section 401(e) of the Act, 29 U.S.C. § 481(e), which requires that members in good standing be allowed to vote for the candidate of their choice. Article III, Section 13 of the International Constitution reads in part, "[w]henever 2 or more [candidates] are to be elected to the same office . . . , a failure to vote for the required number of candidates shall invalidate the vote for that office. . . ."

The investigation disclosed that the voting instructions did not expressly indicate that a failure to vote for the required number of candidates would result in the vote for the office being invalidated. However, the International Constitution expressly requires a member to vote for the prescribed number of candidates and provides that the failure to do so will result in the vote for that office being voided. Neither the International Constitution nor the Act was violated.

You alleged that, prior to the December 2009 election, the union did not give all candidates instructions or campaign guidelines. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires the union to provide adequate safeguards to ensure a fair election. The investigation disclosed that the union did not distribute instructions or guidelines to any candidate during or prior to the December 2009 election. The Act was not violated.

You alleged that, on the day of the election, candidates were not allowed to campaign inside the Local Lodge 2339-H office as they had done in previous elections and that this gave incumbents an advantage since they were inside the local's office attending a meeting. The investigation disclosed that the union office and the polling place were located in the same privately owned building. The building manager did not want people campaigning on the building property. Thus, the union imposed a rule restricting campaigning to outside the polling site. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires unions to provide adequate safeguards to ensure a fair election. Thus, there must not be any campaigning within the polling place and a union may forbid any campaigning within a specified distance of a polling place. See 29 C.F.R. § 452.111. The rule was applied equally to all candidates, including the incumbents. Further,

none of the incumbent candidates campaigned inside the polling place or inside the union office. Therefore, no candidate gained a political advantage over another candidate. The Act was not violated.

You alleged that the incumbents had an unfair advantage during the election as they could network with other union officials and obtain information concerning the time and location of the local lodge elections, but the union did not provide this information to you. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation disclosed that, in response to your request, the union provided you with the mailing addresses and the nomination and election dates of the local lodges. You also requested and the union provided you with copies of the absentee ballot request forms used by four local lodges, which listed the location of the local lodge elections and the addresses to which absentee ballot request forms had to be returned. The Act was not violated.

You alleged that the August 2009 rerun election was rescheduled for December 2009, during the holiday when members were unavailable to vote. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The investigation showed that 6,909 votes were cast during the December 2009 election and that only 4,590 votes were cast in the regularly scheduled election held in June 2008. Thus, 2,319 more votes were cast in the December 2009 election than in the regularly scheduled election conducted in June 2008. The Act was not violated.

You alleged that the union failed to provide a reasonable opportunity for flight attendants to vote in that the union did not automatically mail them absentee ballots, and did not provide them sufficient time to vote, and mail back their ballots. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct its election of officers in accordance with its constitution. Also, this section requires that members be afforded a reasonable opportunity to vote. The union's bylaws, the International's constitution and the local lodge guidelines require members eligible to vote by absentee ballot to request one from their respective local lodge. The absentee ballot request form was located at the bottom half of the election notice for the December 2009 election, which was mailed to each member. The investigation did not disclose the name of any member who did not vote because such member did not have sufficient time to request, receive, and vote an absentee ballot. The Act was not violated.

You alleged that the local lodges were required to hold an election for the General Chairperson positions in December 2009 but that some lodges did not submit voted ballots to the District Lodge. The investigation disclosed that, members of eight local lodges did not cast any ballots in the December 2009 election for General Chairperson positions. Thus, the lodges did not forward any voted ballots to District Lodge 142, and

the tally sheets that the lodges submitted to the union correctly reflected that zero votes had been cast in the election. The Act was not violated.

You alleged that two local lodges may have used the ballots from the postponed August 2009 election. The investigation disclosed that the ballot for the postponed August 2009 election and the one for the December 2009 election had the date of the election printed on the respective ballot. Also, the ballot for each election differed in color. Thus, the August 2009 ballot was distinguishable in appearance from the December 2009 ballot. The investigation disclosed that Local Lodge 804 provided the wrong ballot, the August 2009 ballot, to the twelve Local Lodge 804 members who voted in the December 2009 election. As a result, the union did not include these ballots in the vote tally. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that every eligible member has the right to vote for or otherwise support the candidates of his or her choice. Inasmuch as the ballots were not included in the vote tally but totally voided, the union could be viewed as denying these twelve eligible members the right to vote. However, the outcome remained unchanged. Therefore, any violation of the Act would not have affected the election outcome.

You alleged that the names of some members were not on the eligibility list when they came to the Local Lodge 2339-H polling site to vote. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides that every eligible member has the right to vote. The investigation disclosed that the names of approximately six eligible members were not on the voter eligibility list when they came to the polling site to vote. However, the members were permitted to vote after the Secretary Treasurer reviewed their dues payment records and confirmed that they were eligible voters. The Act was not violated.

You alleged that the voting booths at the Local Lodge 2339-H polling site did not provide privacy for voters as they marked their ballots. Secrecy may be assured by the use of voting booths or partitions or other physical arrangements permitting privacy for voters while they mark their ballots. *See* 29 C.F.R. § 452.97(a). The investigation disclosed that, during the challenged election, members were required to and did vote in booths. Such booths were surrounded by partitions on three sides to ensure privacy while the voter marked the ballot. Although you are concerned that no curtains or other apparatus covered the entrance to the booths, the investigation showed that voters were not permitted to linger in the voting area after they cast their ballots. Nor was anyone permitted to stand behind a voter while the voter was in a booth marking his or her ballot. The Act was not violated.

You alleged that an election official's delay in starting the second day of the vote tally prevented you from having an observer present at that tally. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to permit a candidate to have an observer at the polls and at the counting of the ballots. *See* 29 C.F.R. § 452.107. The investigation

disclosed that the vote tally was conducted on January 5 and 6, 2010. At the end of first day of the tally, an election official announced that the start of the second day of the tally would be delayed by approximately two hours. Your observer was present at the January 5th tally when the election official made that announcement; thus, she was aware that the start of the tally on the following day would be delayed. The investigation showed that, on January 6th, your observer arrived at the tally room but left before the tallying started. The investigation revealed that the union did not prevent you or any other candidate from having an observer at the tally. The Act was not violated.

You alleged that election officials who recorded and tabulated the votes were required to record the votes on a blank tally sheet and then tabulate the votes on that sheet, but some officials failed to follow this procedure. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct its election of officers in accordance with its constitution. The investigation disclosed that the union's constitution and bylaws are silent regarding the particular tally procedures to be used in recording and tabulating the votes. The Act does not require any such procedures. In any event, the Department's comparison of its recount of the votes with the votes the election officials recorded and tabulated on the tally sheets showed only minor discrepancies. Such discrepancies did not change the outcome of the election. The Act was not violated.

You alleged that the number of voided ballots during the December 2009 election was higher than in past elections. Section 401(c) of the Act, 29 U.S.C. § 481(c), requires a union to provide adequate safeguards to ensure a fair election. The union did not retain any records showing the number of voided ballots in previous elections. However, the investigation disclosed that ballots were partially voided or voided in their entirety for various reasons, including the union's inability to verify the identity of the voter, the voter's inclusion of identifying information on the secret ballot envelope containing the voted ballot, and the member's failure to vote for the prescribed number of candidates for a particular office. Ballots that did not contain any votes also were voided. The ballots were voided for reasons permissible under the union's constitution and bylaws and under the Act. The Act was not violated.

You alleged that the union failed to follow the International's constitution during the challenged election. Section 401(e) of the Act, 29 U.S.C. § 481(e), requires a union to conduct its election of officers in accordance with its constitution. The investigation did not disclose any instance where the union failed to follow its bylaws, the International's Constitution, or other election rules. The Act was not violated.

You alleged that a candidate for the General Chairperson Continental position accepted a nomination to that office, even though the candidate did not intend to hold office if elected, so that she could attract votes away from the other candidates. Section 401(e)

of the Act, 29 U.S.C. § 481(e), provides that members must be provided a reasonable opportunity for the nomination of candidates and a reasonable opportunity to vote for and otherwise support the candidate or candidates of their choice. The investigation disclosed that the candidate was nominated to and eligible for the office of General Chairperson Continental and, thus, she had a right to run for office. Similarly, members had a right to vote for and otherwise support her candidacy. Further, the candidate stated during the investigation that she would have served had she been elected. The Act was not violated.

Finally, the remaining allegations you raised in your complaint to the Department were not raised with the union within the time constraints prescribed in the union's constitution, were not related to the challenged election or were not protested internally to the union. Thus, these allegations are dismissed, respectively, for these reasons.

For the reasons set forth above, it is concluded that there was no violation of the Act that may have affected the outcome of the election, and I have closed the file on this matter.

Sincerely,

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