



August 16, 2011

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on October 8, 2010 with the Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the Machinists District Lodge 141 (District Lodge), beginning on June 1, 2010 and ending on June 29, 2010.

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

You alleged that Local 1287 members were denied the right to vote in the District Lodge election, because the polling site did not open at 8:00 a.m. as scheduled. Under the provisions of section 401(e) of the LMRDA, every member in good standing is entitled to vote. *See* 29 C.F.R. § 452.84. The investigation revealed that the polling hours were from 8:00 a.m. to 3:00 p.m. The polls, however, did not open until 8:30 a.m. The investigation established that one member arrived at the union hall at 8:15 a.m. to vote prior to his 8:45 a.m. work shift. This member, however, was unable to do so. Consequently, at least one member was unable to vote when the polls did not open at 8:00 a.m. The investigation did not reveal any evidence that any other member was denied the opportunity to vote because of the delayed opening of the polling site. Inasmuch as one eligible member was denied the right to vote, section 401(e) of the LMRDA was violated. This violation, however, could not have affected the outcome of any race because the smallest vote margin was 690 votes for the office of Assistant General Chairman (AGC).

You alleged that Local 1287, AGC Shawn Humphreys, a full time union officer, campaigned on union time when he transported New Direction slate supporters to the Local 1287 polling site. Section 401(g) of the LMRDA prohibits the use of union funds

to promote the candidacy of any person in an election subject to the provisions of Title IV. Pursuant to section 401(g), union officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. *See* 29 C.F.R. § 452.76.

Humphreys acknowledged that he transported members to the polls and that he campaigned to the members transported. He stated that after transporting members for a few hours, he resumed work as a full-time officer. The investigation did not reveal any conclusive evidence that Humphreys used personal time while transporting members to the polls because he is not required to request personal time or to report his use of personal time. However, even if Humphreys could be considered to have been on union time while campaigning, a violation of section 401(g) of the LMRDA, there was no effect on the outcome of the election. The investigation revealed that of 76 members eligible to vote, only 30 voted in the Local 1287 election. The votes of 30 members could not have affected the outcome of any race since the closest race was decided by 690 votes. There was no violation of the LMRDA affecting the outcome of the election.

You alleged that the District Lodge violated its constitution and bylaws by not properly processing and distributing the absentee ballots for Local 1487. Section 401(e) of the LMRDA provides that “any election required by this section shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV.” Article XXII, Section 7 of the International Association of Machinists Aerospace Workers (IAM) Constitution, provides that absentee ballots shall be issued and voted in accordance with the provisions set forth in Article II, Section 3 of the District Lodge Constitution. Article II, Section 3 states that the District Lodge fulfills absentee ballot requests only in those instances where the local lodge membership records are kept and maintained by the District Lodge with which such local lodge is affiliated. The District Lodge does not maintain the membership records for Local Lodge 1487. Local Lodge 1487 maintains its own records and is responsible for processing and distributing its own absentee ballot requests. There was no violation of the District Lodge Constitution or the LMRDA.

You stated that the New Directions slate used different colored absentee ballot request post cards in providing the cards to Local 1487 members. You allege that the slate may have used the different colored cards to differentiate between those members whose requests would be mailed to the union for processing and those whose requests would not be forwarded to the union. The investigation revealed that candidates were allowed to distribute absentee ballot request cards to members. Candidate ██████████, who was Local 1487's president prior to the 2010 election, color coded the absentee ballot request cards that he distributed to members. ██████████ explained that he placed a green mark on absentee ballot request post cards for the June 2010 District Lodge 141

election, and placed an orange mark on similar cards for Local Lodge 1487's November 2010 general election of officers. ██████ stated that he thought it would be easier to collect cards at one time for both elections than to collect cards on two separate occasions. ██████ also stated that after he received the cards from his supporters, he mailed the green cards to Local 1487 for processing for the 2010 District Lodge election. After the District Lodge election in June 2010, ██████ mailed the remaining orange marked cards to Local 1487 for the November 2010 local election. The cards were not used in the manner alleged. There was no violation.

You alleged that Local 1487 did not mail absentee ballots to members. To support this allegation, you provided a list of 251 members' names for whom you claim to have submitted absentee ballot requests. The investigation revealed that absentee ballots were sent to all but 30 of the members on your list. Investigation disclosed that most of the 30 members were not eligible to vote; the union had no record of receiving a request for the remaining members. If these members were denied the right to vote when they were not sent absentee ballots, their votes could not have affected the outcome of any race since the closest race was decided by 690 votes. You specifically identified ██████ as a member for whom you submitted an absentee ballot request but who did not receive a ballot. The investigation revealed that Local 1487 received ██████ absentee ballot request card, mailed her a ballot, and that she voted. There was no violation that may have affected the outcome of the election.

You alleged that union funds were used to rent the vans used to transport Local 1776 members from the Philadelphia airport to the polling site. Section 401(g) of the LMRDA prohibits the use of union funds to promote the candidacy of any person in an election subject to the provisions of Title IV. The investigation established that union funds were not used to rent the vans. The investigation revealed that the New Directions slate rented five vans from Avis Rental Car to transport members from the Philadelphia Airport to the polling site. The slate candidates, and not the union, paid for the rental of the vans. The investigation revealed that a letter from International Union President R. Thomas Buffenbarger informing you that the local rented the vans was inaccurate. The Department's review of the records and Avis receipts confirmed that the slate candidates rented the vans on June 1, 2010. There was no evidence that Local 1776 paid for or reimbursed the New Directions slate for the rental of these vans. There was no violation.

You alleged that Local 1776 improperly extended the polling hours when the polls were closed at 7:00 p.m., rather than 4:00 p.m. You stated that you were told of two members who would have voted if they had known that polls would be open until 7:00 p.m. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided. Pursuant to this provision a labor organization's wide range of discretion regarding the conduct of election is circumscribed by a general rule of

fairness. 29 U.S.C. § 452.110. The investigation determined that District Lodge 141's Winter 2009 newsletter, as well as the DL 141 website, listed Local 1776's polling hours as 7:00 a.m. to 4:00 p.m. However, a copy of the election notice posted by the local's division chairmen throughout the worksites on May 4, 2010, listed the polling hours as 7:00 a.m. to 7:00 p.m. The 7:00 a.m. to 7:00 p.m. hours were consistent with Local 1776's past practice. You identified two members who would have voted had they been aware of the extended hours. One informed the Department that he was not even aware of the election at the time, and the Department was unable to contact the other. The investigation did not reveal any evidence of any other member who would have voted had s/he been aware that the polls were open beyond 4:00 p.m. One vote is insufficient to have affected the outcome of any office. There was no violation that would provide a basis for litigation by the Secretary.

You alleged that Local 1781 President Larry Wing denied members the right to vote by unilaterally deciding who would receive an absentee ballot. You further alleged that Local 1781 President Wing knew which members supported his slate, New Directions, and may not have mailed absentee ballots to supporters of the opposing slate, Members First. The investigation established that Local 1781, in verifying absentee ballot requests, contacted the employer, United Airlines, to obtain a list of every member scheduled to be on vacation at the time of the election. The local only received the vacation schedule for ramp services employees. Local 1781 did not request a vacation schedule from United Airlines to verify the vacation status of members from other divisions. The investigation revealed that members who worked at the United Airlines ramp services division and requested an absentee ballot because they expected to be on vacation on election day were denied an absentee ballot if their names were not listed on the vacation schedule provided by United. However, members who worked at other divisions and requested an absentee ballot due to vacation were not subjected to the union's verification procedure and were not denied absentee ballots. The investigation established that members who worked at the United Airlines ramp services division at the San Francisco Airport were treated differently from members who worked in other divisions with respect to the provision of absentee ballots.

The Department reviewed Local 1781's absentee ballot request records to determine the number of ramp employees who were denied an absentee ballot because of the verification procedure. The review revealed that the union denied 11 absentee ballot requests from ramp service employees who specified vacation as the reason for the absentee ballot but were not on the ramp employee's vacation list. Of the 11 members, 10 did not vote in the election. As a consequence, 10 members were improperly denied the right to vote, in violation of section 401(e) of the LMRDA. This violation, however, did not affect the outcome of the election because the closest race was decided by 690 votes.

There were two other issues raised during this investigation that were not investigated because they were not timely invoked and exhausted in accordance with the union election protest procedures. One concerned a lack of voter secrecy and the other concerned a failure to include ballots in the master tally. The Secretary lacks the authority to consider the merits of these issues.

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 am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: R. Thomas Buffenbarger, International President
International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Richard Delaney, President
Machinists District Lodge 141
1771 Commerce Drive, Suite 301
Elk Grove Village, Illinois 60007

Beverly Dankowitz, Acting Associate Solicitor