



October 12, 2011



Dear [REDACTED]

This Statement of Reasons is in response to your February 18, 2011 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), occurred in connection with the November 10, 2010 election of union officers held by the Building Material, Construction, Industrial, Professional, and Technical Teamsters, Local 36, which is chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT).

The Department conducted an investigation of each of your allegations that had been properly protested to the union. As a result of the investigation, the Department has concluded that no violation of the LMRDA that could have affected the outcome of the election occurred.

You allege that you requested the names and addresses of the employers of the members of Local 36 and were provided with a list that was unsatisfactory because it provided corporate, out of state addresses for many employers. You stated that you made the requests on May 12, 2010 and October 1, 2010 and received a response from Local 36 on October 6, 2010. After Local 36's October 6<sup>th</sup> response, you received a list via certified mail. You protested this matter to Joint Council 42 on November 12, 2010. The IBT Constitution, Art. XXII, Section 5(a) requires that protests concerning events occurring prior to the election "be made in writing by [the] member within forty-eight [48] hours of his knowledge of the event complained of...to the Local Union Secretary-Treasurer...." The Joint Council 42 election protests panel found that you did not file a timely pre-election protest and thus waived your right to protest the matter. Because you failed to properly protest this matter internally, this allegation is not properly before the Department and was not investigated. *See* 29 U.S.C. §§ 482 (a); 29 C.F.R. § 452.135(a).

You also allege that on October 21, 2010, the employer of three union members intimidated them into not supporting your candidacy. You also failed to file a pre-

election protest regarding this allegation. Accordingly, the Department did not investigate this allegation.

You alleged that Local 36 violated its duty to comply with a reasonable request you made to distribute a second campaign flyer to the membership and put you at a disadvantage by requesting five days advance notice for mailings, a requirement you had not been aware of because the union did not provide you with a copy of the campaign rules until a week and a half before the election deadline. Section 401(c) of the LMRDA requires unions to treat candidates equally and comply with all reasonable requests of a candidate to distribute campaign literature to the membership. 29 C.F.R. § 452.67. However, even if a violation occurred, you failed to properly exhaust the remedies available under the constitution and bylaws because you never appealed the November 1, 2011 response from Local 36 to the General President (nor did you contact the Local 36 Executive Board or take any other action to challenge the validity of the response from [REDACTED]). See IBT Constitution, Article VI, Section 2(a) and Article XXII, Section 5(a). Consequently, the Secretary of Labor is precluded from bringing an enforcement action against the union based on these allegations. 29 C.F.R. § 452.135(a).

You also alleged that ineligible members may have been allowed to vote in the election. Section 401(e) of the LMRDA requires that elections be conducted in accordance with a union's constitution and bylaws. The union's constitution and bylaws state that to be eligible to vote members must have paid their dues through the month prior to the month in which the election is held. IBT Constitution Article XXII, Section 4(c); Local 36 Bylaws, Section 16(C)(1). Additionally, only active members are eligible to vote. IBT Constitution Article XXII, Section 6(c); Local 36 Bylaws, Section 16(E)(4). The union considers members active if they are working at the trade or have signed an out-of work list and are actually looking for work. IBT's *Guidelines for Conducting Local Union Elections*, dated August 13, 2010, are designed to assist local unions in complying with the IBT Constitution, local bylaws, and federal law when conducting elections. IBT's *Guidelines* state on pg. 13 that "a member on withdrawal who has not returned to employment at the craft may not deposit a withdrawal card merely to become eligible to vote in the election."

The Department examined the eligibility list and determined that 45 members deposited their withdrawal cards during the three months preceding the election. Additionally 2 members transferred into the union. The Department's investigation found that only 19 of these members voted (1 transferee and 18 who deposited withdrawal cards). The Department was able to verify that at least 13 of the 18 members who deposited withdrawal cards and voted were working at the trade at the time of the election. [REDACTED] is a retired, inactive member who turned in his withdrawal card and attempted to vote, but his ballot was not counted. As the

Department could not verify that the transferee or the remaining four members who deposited their withdrawal cards and voted were eligible to vote, it is possible that these members were ineligible to vote. However, the smallest margin in the election was a margin of 43 for one of the Trustee positions. Therefore, even if five ineligible members voted and there was a violation of Section 401(e) of the LMRDA, it could not have had an effect on the outcome of the election and the Department would not seek to overturn the election.

Your complaint also alleged that there were returned ballots not cancelled by the U.S. Postal Service and that the security of the post office box and ballots was inadequate. The investigation determined that the Joint Council 42 election protests panel conducted a hearing to evaluate your protests, and that you voluntarily withdrew these allegations at the hearing. Consequently, Joint Council 42 did not consider these protests in the decision it issued on February 16, 2011, which denied your other four protests. With respect to these two withdrawn issues, you failed to properly exhaust the remedies available under the union's constitution and bylaws. Therefore, they were not investigated by the Department.

For the reasons set forth above, I have concluded that no violation of the LMRDA that was properly before the Department occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

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