



August 15, 2012

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed April 26, 2012, with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the International Longshoremen's Association Local 1422 on January 20, 2012.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that none of your allegations were violations of the LMRDA.

You alleged that candidate for President, [REDACTED], and candidate for Trustee, [REDACTED] were not in good standing prior to the January 2012 election. Section 401(e) of the LMRDA requires that only members in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. You asserted that [REDACTED] and [REDACTED] were delinquent in dues payments, and therefore, were not in good standing to run as candidates in the 2012 election. In support of your allegation concerning [REDACTED], you assert that the Credentials Committee's at the 2011 Convention of the International did not allow [REDACTED] to be seated as a delegate.

According to Local 1422 bylaws, all members employed as general, longshore laborers pay 5% of their wages to the union. See Local 1422 Bylaws, Article XII, Paragraph 1(a). [REDACTED] and [REDACTED], however, are not longshore laborers. Based on past practice, Local 1422 officers who are not general longshore laborers have paid \$80 per year or \$20 per quarter in dues. The local adopted this practice of allowing non-longshore laborers who were serving as officers to pay \$80 per year because this provision was at one time contained in the International Constitution. This constitutional provision has since been removed; however, the local union continued the practice as there is no contrary constitutional provision. The investigation also determined that Local 1422 has no

bylaw or set past practice clarifying when the officers' dues must be paid, i.e., whether these officers' dues must be paid at the end of the contract year (October through September) or the calendar year. In fact, the Department found that in the past, the union has permitted officers to pay all dues owed to the union at any point prior to the election.

The investigation revealed that prior to the election ██████████ was an incumbent Trustee for Local 1422. In April 21, 2011, ██████████ was elected to go to the 2011 International Convention. Seven days later, April 28, 2011, ██████████ paid \$80 in dues. At the Convention, Local 1422 Treasurer ██████████ ██████████ alleged that ██████████ was delinquent in his dues for the year prior to his nomination as delegate and should not be seated at the Convention. Subsequently, the Convention's Credentials Committee decided not to seat Freeman.

Regarding ██████████, the Department's investigation found that he was the incumbent President of Local 1422. In October 2011, ██████████ submitted a \$240 check to Treasurer ██████████ to make sure that he had paid his dues and was in good standing for the upcoming election. This payment led the Local Executive Board to conclude that ██████████ had not paid his dues on time for the previous three years; therefore, the Board voted to suspend him. The International subsequently investigated ██████████ dues issue and concluded that Local 1422's bylaws and past-practices were unclear regarding the amount of dues that officers must pay and when dues must be paid. Based on its investigation, the International found that ██████████ had paid dues prior to the union's 2012 election and was eligible to run as a candidate for office. Local 1422's election committee then applied the International's determination to ██████████ situation and voted that he was eligible to be a candidate in the election as well. The International also instructed Local 1422 to amend its bylaws to clarify the dues issue.

The LMRDA requires that the Department defer to a union's interpretation of its constitution unless the interpretation is "clearly unreasonable." 29 C.F.R. § 452.3. *See also English v. Cunningham*, 282 F.2d 848, 850 (D.C. Cir. 1960). The Department's investigation confirmed that Local 1422's bylaws and past-practices are unclear regarding the amount of dues and the deadline for dues payments by officers who are not longshore laborers. The Department, therefore, defers to the reasonable determination of the International and Local 1422, which found that ██████████ and ██████████ paid dues in the year prior to the January 2012 election and should be deemed to be in good standing. Specifically, ██████████ paid \$80 in April 2011 and ██████████ paid \$240 (three years of \$80 dues) in October 2011. While the Department believes that Local 1422 must amend its bylaws to clarify this dues payment issue, the union's actions do not constitute a violation of the LMRDA.

You also alleged that the union engaged in disparate candidate treatment when it denied you the opportunity to campaign. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office. *See also* 29 C.F.R. § 452.110. Further, the Department's interpretive regulations at 29 C.F.R. § 452.79 require that unions grant all candidates a reasonable opportunity to campaign. You specifically alleged that union officials denied you the opportunity to use a conference room in the union hall for purposes of campaigning.

The investigation confirmed that union officials did not permit you to use the union conference room to campaign to members. However, the investigation also found that no other candidates were permitted to use the conference room. Union officials denied your request to use the conference room because they did not believe it should be permitted since it would have been difficult to give all of the candidates the same opportunity. The union's decision to deny your request to campaign in the union hall conference room, when no other candidates were permitted to engage in such campaigning, is not a violation of the LMRDA.

Similarly, you alleged that the union engaged in disparate candidate treatment in violation of section 401(c) when it denied you the opportunity to campaign by using the union hall's microphone. The investigation revealed that Delegate Marion Green and Vice President Obafemi Akinjobi denied your request to use the microphone to campaign to members in the union hall. Akinjobi likewise denied candidate [REDACTED] request to use the microphone. You have admitted, however, that Chief Delegate Duane Simmons allowed you to use the microphone to campaign on at least two occasions during the election period. You mentioned that [REDACTED] also used the microphone at least once, but without any evidence that the union was aware of his unauthorized use. The investigation also found allegations that [REDACTED] may have used the microphone system during the election period; however, it is unclear whether [REDACTED] campaigned or simply relayed official union business while using the microphone. For purposes of your allegation, you admit that at the time the union officers denied your request to use the microphone, no other candidates were allowed to use the microphone either. Because no candidates were favored or given an unfair advantage over you regarding use of the microphone, there is no violation of section 401(c) of the LMRDA.

In addition to the allegations discussed above, the Department notes that you included in your complaint four allegations which were not raised in your initial internal protest to Local 1422. These allegations were not properly exhausted pursuant to section 402 of the LMRDA. Accordingly, these four allegations were outside the scope of the investigation.

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

Sincerely,

Patricia Fox, Chief
Division of Enforcement

cc: Mr. Kenneth Riley, President
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