



December 18, 2012

Dear [REDACTED]

This Statement of Reasons is in response to your August 9, 2012 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers of the NetJets Association of Shared Aircraft Pilots (NJASAP) conducted between May 4 and June 15, 2012.

The Department conducted an investigation of your allegation that NJASAP's Appeals Board unlawfully decided to rerun the election for Vice President of Representation. As a result of the investigation, the Department has concluded that there was no violation of the LMRDA.

Section 402(a) of the LMRDA requires that union members exhaust internal union remedies prior to filing a complaint with the Department. Congress included the exhaustion requirement in order to give unions "great latitude in resolving their own internal controversies" regarding the validity of officer elections. *Calhoon v. Harvey*, 379 U.S. 134, 140 (1964). In order to carry out this policy, the Secretary grants a degree of deference to decisions on internal union election protests. Even if the evidence is arguably insufficient to justify a decision by the Secretary to sue to overturn an election, the Secretary will not sue to overturn the union's remedial decision unless there is evidence that the decision was motivated by a desire to give the losing faction another opportunity to win the election, or unless the union's decision was based upon the application of an election or eligibility rule which violates the LMRDA.

The Department's investigation determined that, on May 16, 2012, you notified NJASAP that you were withdrawing your candidacy in the election. On May 17, you emailed NJASAP requesting that the union withhold your request to resign. The next day, the union emailed the membership a message that indicated that it was sent from the entire

NJASAP Executive Board. This email stated, in part, "[REDACTED] has withdrawn as candidate in the current election." Later in the message, in a bulleted list entitled "Terms of Executive Board Settlement" bullet #4 stated that [REDACTED] withdraws his candidacy for Vice President of Representation."

On May 25, 2012, the union emailed members another email message, signed only by President [REDACTED], with the subject line: "The President's Perspective." A paragraph entitled "Executive Board Agreement Update" stated that you failed to execute your end of the agreement with the NJASAP Executive Board and thus would "remain in the race for Vice President of Representation."

In response to multiple election protests filed between June 20 and June 29, 2012, the NJASAP Appeal Board determined that the union failed to provide adequate safeguards to insure a fair election, creating voter confusion over whether you were still a candidate. The "NJASAP Appeal Board Case Report" explained that "The President's Perspective" email did not sufficiently put the membership on notice that the May 18, 2012 email from the entire Executive Board had been superseded and that you were back in the election, because the email was sent only by one officer and did not have any headers indicating that the message concerned the election. Thus, the Appeal Board found that the race for Vice President of Representation should be re-run because confusion over whether the race was still contested deprived members of a meaningful right to vote.

The investigation showed that NJASAP acted in good faith and that there is evidence to support the decision of the Appeals Board to order a new election. Therefore, it is concluded that no violation of the LMRDA occurred.

You also alleged that the election protests to the Appeals Board were not timely filed. Even if true, this allegation is not a Title IV violation. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: NJASAP
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