



April 10, 2013

Cliff Smith
Business Manager
Roofers Local 36
5380 Poplar Blvd.
Los Angeles, CA 90032-1724

Dear Mr. Smith:

The Department is issuing this Statement of Reasons to you at your request. As you know [REDACTED] filed a complaint with the U.S. Department of Labor on January 2, 2013, 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 for Local 36 of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO (Roofers), completed on December 4, 2012. After filing the complaint, Mr. Padron passed away.

The Department conducted an investigation of [REDACTED] allegations. As a result of the investigation, the Department concluded that no violations occurred that affected the outcome of the election.

[REDACTED] alleged that the report of election results for the tally showed that 231 ballots had been counted during the tally, but only 229 votes had been cast for the office of business manager. The investigation confirmed this fact.

Section 401(e) of the LMRDA requires, among other things, that votes cast by members shall be counted and the results published. The Department conducted a recount of the ballots for the business manager position and found two ballots where the voter did not vote for the position of business manager, explaining the difference between the total number of ballots counted and the total number of votes cast for that office. There was no violation of the LMRDA.

[REDACTED] also alleged that two candidates, [REDACTED] and [REDACTED] were ineligible to run for office because they failed to meet the two-year continuous good standing requirement and were not in good standing.

The investigation partially confirmed this allegation. Article II, Section 8 of the Roofers' Constitution and Bylaws states that a member shall not be eligible to be a local union

officer unless he has been a member in continuous good standing of the local union and paying full dues and per capita tax for a minimum of two years prior to nominations. In this case, the two year period was from November 6, 2010 to November 6, 2012, the date of the nominations meeting. Article IV, Section 2 provides that to be a member in good standing, all dues and other obligations must be paid on or before the last day of the third month after the due date. Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws.

The investigation found that members pay two types of dues: *regular* and *working dues*. Members must pay *regular dues* directly to the local, except for members who are employed by public sector employers who have their *regular dues* forwarded to the local union directly from the Los Angeles Building Trades Council. But, members employed by public sector employers must pay their *working dues* directly to the local and are on the "honor system" when reporting the number of hours they work each month. The local does not require a specific form for reporting hours for *working dues*.

The investigation found that [REDACTED] a candidate for Business Manager, who works for a public sector employer, timely paid his *regular dues* for the two years preceding nomination. The investigation also found that [REDACTED] set up an automatic payment of \$150 per month to the local in mid-2010 to pay his *working dues*. As of July 2012, [REDACTED] had a credit totaling over \$400 with the local. The local did not apply this credit to [REDACTED] *working dues* for that May, June, July, and August 2012 until September 17, 2012 because it claimed [REDACTED] had not reported the number of hours he worked. When the local finally received [REDACTED] hours and deposited his two automatic checks for June and July 2012, the bank processed them as "stop payments" because 90 days had elapsed since their issuance. Thus, [REDACTED] had paid sufficient *working dues* without interruption for the applicable two year period. The local does not have a requirement that hours be reported in a particular fashion and its failure to apply the credit [REDACTED] had accumulated and the timely payments he submitted do not defeat his good standing. There was no violation of the LMRDA.

With regard to [REDACTED], candidate for Vice President, the investigation found that in April, May, and June 2012, Rico worked 88, 176, and 171 hours respectively for a public sector employer, the County of Los Angeles Building Services. However, [REDACTED] failed to pay his working dues for those hours. As of February 7, 2013 Rico had only paid his April 2012 *working dues* and still owed May and June 2012.

Therefore, the Local violated section 401(e) of the LMRDA by allowing [REDACTED] to be a candidate for office when he did not meet the candidate eligibility requirements set for in the Roofers' bylaws. However, in order for a challenged election to be declared void and for a new election to be ordered, a preponderance of the evidence must show "that the violation ... may have affected the outcome of an election." 29 U.S.C. § 482(c). In

this case, [REDACTED] did not win his race. Thus, the violation had no effect on the outcome of the election. Further, the local did not permit [REDACTED] to vote in the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Kinsey M. Robinson, International President
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Christopher Wilkinson, Associate Solicitor
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