



June 18, 2014

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor on July 2, 2013, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act occurred in connection with the election of union officers conducted by the International Brotherhood of Electrical Workers (IBEW) Local 134, on June 15, 2013.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. The following is an explanation of this conclusion:

You made several allegations concerning members you believed were employers, supervisors or managerial employees who were permitted to nominate or be candidates in the election in violation of Article XV, section 5 of the IBEW Constitution.

First, you alleged that Article XV, section 5 of the IBEW Constitution renders members who hold managerial positions ineligible for candidacy, but the union allowed [REDACTED] [REDACTED] who is employed in a management or supervisory position, to run for office.

Section 401(e) of the LMRDA requires a union to conduct its election of union officers in accordance with the organization's constitution and bylaws. 29 C.F.R. § 452. 2. Article XV, section 5 of the IBEW Constitution provides,

No L.U. shall allow any member who becomes an electrical employer, a partner in an electrical employing concern, a general manager, or other managerial position, to hold office in the L.U. or attend any of its meetings, or vote in any election of a L.U. The L.U. may allow such a member to continue his membership in the L.U., or the member may apply to the F.S. for a withdrawal card. It shall require a majority vote at a meeting to grant such card. But the L.U. has the right to require such a member to take out a withdrawal card if it so decides.

The investigation disclosed that the IBEW interprets Article XV, section 5 of the IBEW Constitution as restricting the right of an employer, a partner in an electrical business, and an employee holding a management position to participate in the election process by barring such individuals from candidacy, voting, and attending local union meetings. During the investigation, [REDACTED], IBEW Director of the Council of Industrial Relations, Bylaws and Appeals, stated that the IBEW considers an individual to be an employer or a partner in an electrical business when such individual forms an electrical contracting business, controls and operates such business, and the business employs members of the IBEW. [REDACTED] further stated that the IBEW considers any member whose primary responsibility is to formulate policy or make management decisions on behalf of an employer to be a managerial employee.

The IBEW, however, does not interpret the proscription in Article XV, section 5 of the IBEW Constitution as also preventing an individual whose primary responsibility is to supervise employees from seeking candidacy, voting or attending local union meetings. Thus, although the IBEW interprets Article XV, section 5 of the IBEW Constitution as prohibiting certain members from participating in such union activities, the IBEW does not interpret that provision as also preventing supervisory employees/members from being candidates, voting or attending such meetings. Pursuant to section 452.3 of the Department of Labor's interpretative regulations, 29 C.F.R. § 452.3, the interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3. It appears that the IBEW has been consistent in its interpretation of this provision and such interpretation is not clearly unreasonable.

With regard to your allegation that [REDACTED] is employed in a managerial or supervisory position, making him ineligible for candidacy under Article XV, section 5 of the IBEW Constitution, the Department's investigation disclosed that [REDACTED] is not employed in a managerial position. Instead, he is employed as an assistant master mechanic and his duties while serving in that capacity are those of a "supervisor." The term "supervisor" generally means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees. *See* 29 U.S.C. § 152(11). During the investigation, [REDACTED] stated that he assigns work to employees, prioritizes work assignments and that he has the authority to write up employees for excessive tardiness and for violating safety rules. [REDACTED] does not formulate policy or make management decisions on behalf of his employer.

[REDACTED], [REDACTED] immediate supervisor, corroborated [REDACTED] supervisory status. During the investigation, [REDACTED] stated that [REDACTED] primary duties are to assign work, ensure that the work is completed and to supervise

other employees. [REDACTED] further stated that [REDACTED] has the authority to reprimand workers, is responsible for directing work, and is listed as a supervisor in the data base for the department in which [REDACTED] is employed. On these facts, the investigation supports a finding that [REDACTED] is employed in a supervisory position, not in a managerial position. The IBEW does not interpret Article XV, section 5 of the IBEW Constitution as preventing supervisory employees from running for office. Thus, [REDACTED] was not prohibited under the IBEW Constitution from running for and serving in union office. Neither the LMRDA nor the IBEW Constitution was violated.

Second, you alleged that [REDACTED] is employed in a general manager or other managerial position as a field superintendent and that the local permitted him to seek reelection to the local executive board. The Department's investigation disclosed that [REDACTED] is not employed as a field superintendent. The investigation instead showed that [REDACTED] has been employed by the Prime Electric Company as a general foreman for the past six or seven years and that he was employed in that position at the time of the election. In addition, [REDACTED] [REDACTED] for the Prime Electric Company and [REDACTED] immediate supervisor, stated during the investigation that [REDACTED] is a general foreman assigned to an office building located in downtown Chicago, Illinois and that [REDACTED] reports directly to [REDACTED]. [REDACTED] also stated [REDACTED] does manual labor similar to the other electricians who work in the office building and that [REDACTED] oversees the time and labor of all electrical projects carried out in the office building. In any event, the position of general foreman is designated as a covered bargaining unit position in the principal bargaining agreement to which the union and Prime Electric Company are signatories. In that [REDACTED] is employed as a general foreman and is not employed in a general manager or other managerial position, he was not prohibited under Article XV, section 5 of the IBEW Constitution from running for and serving in union office. Neither the LMRDA nor the IBEW Constitution was violated.

You further alleged that [REDACTED] is employed in a management or supervisory position as a vice president of Aldridge Electric, Inc. and the union permitted him to nominate [REDACTED] for business manager. During the investigation, [REDACTED] stated that he is employed by Aldridge Electric, Inc. as the vice president of the company's Power/Utility Division. Even assuming that [REDACTED] is a managerial employee and he was prohibited from nominating [REDACTED] for business manager, the investigation disclosed that self-nomination was permitted and seconds were not required. Thus, [REDACTED] could have nominated himself for office and he stated during the investigation that he would have done so had you challenged his nominator's eligibility at the nominations meeting. There was no violation of the LMRDA that may have affected the outcome of the election.

Finally, you alleged that [REDACTED], an employer and owner of [REDACTED] Electrical Contractors, Inc., nominated [REDACTED] to the examining board in violation of Article XV, section 5 of the IBEW Constitution. Your allegation was substantiated by the investigation. The IBEW Constitution was violated when Local 134 permitted an employer/owner of an electrical business that employs members of Local 134 to nominate a candidate for office. However, this allegation does not constitute a violation of the LMRDA because the union office election provisions of Title IV of the LMRDA only govern the elections of union "officers." Members of the examining board are not "officers," as that term is defined in section 3(n) of the LMRDA. Specifically, such members are not identified as officers in the local's constitution or bylaws and they do not perform executive functions, sit on the local's executive board or make decisions that affect the local's policy. *See* 29 C.F.R. § 452.17-452.21. Therefore, the election for the examining board is not subject to the requirements of the LMRDA. Consequently, the Secretary of Labor does not have jurisdiction over that election and, thus, this allegation is dismissed.

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 office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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