



March 28, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on September 4, 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 100 of the Sheet Metal Workers (SMWIA), completed on June 28, 2013.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations, that no violation of the LMRDA occurred that affected the outcome of the election.

You alleged that the Local allowed 30-40 members to vote who were ineligible because they were employed by Stromberg Metals and participated in an employee stock ownership plan (ESOP). The SMWIA Constitution, prohibits any "owner ... or any other person who is directly or indirectly financially interested in or who is an officer of or otherwise involved in the management of a sheet metal shop, business, or job" from being members of the union. Article 16, Section 1(c). However, it specifically exempts from the definition of "financial interest" stock ownership in a signatory employer pursuant to an ESOP negotiated with the member's Local. Article 16, Section 1(d), provides that "[a]n owner ... or anyone who otherwise participates as management in the sheet metal industry shall be eligible to retain or apply for membership ... as an owner-member with the same rights and duties as other members except ... [a]n owner-member shall not be entitled to attend any meetings or be permitted to vote for election of local union officers." Section 401(e) of LMRDA requires unions to hold covered elections in accordance with their validly adopted constitution and bylaws. *See* 29 C.F.R. § 452.2.

The Department's investigation found that 30-36 members participate in the Stromberg Metals ESOP. Individually they own less than one percent each of the shares of Stromberg Metals. SMWIA has interpreted Article 16 to mean that if a member owns

less than twenty percent of a company, he is not an owner member prohibited from voting by Article 16, Section 1(d) of the SMWIA constitution. The Department accepts "the interpretation consistently placed on a union's constitution by the responsible union official or governing body [...] unless the interpretation is clearly unreasonable." 29 C.F.R. § 452.3. Here, SMWIA's interpretation is not clearly unreasonable as ESOP participation is specifically excluded from the definition of "financial interest" in Article 16, Section 1(c), and does not equate to participation in management under Section 1(d). Allowing members who participate in the ESOP to vote did not violate the SMWIA constitution or the LMRDA.

The investigation also found that the Local allowed [REDACTED] [REDACTED], to vote in the election. Robinson meets the definition of owner-member under the Article 16, Section 1(d) and was ineligible to vote in the election. However, under section 402(c) of the LMRDA, in order for a challenged election to be declared void and a new election ordered, a preponderance of the evidence must show "that the violation ... may have affected the outcome of an election." In this case, Robinson's single ineligible vote could not have affected the outcome of any race in the election. Thus, there was no violation of the LMRDA that affected the outcome of the election.

You also alleged that the Local organizers and apprentices campaigned on union time on election day. Section 401(g) of the LMRDA prohibits the use of employer and union funds to promote the candidacy of any person in an election covered by the LMRDA.

The Department's investigation did not reveal that any apprentices were paid by the Local or campaigned on election day. The investigation did find that Local organizer [REDACTED] campaigned at the Baltimore polling site and that organizer [REDACTED] may have also campaigned. The investigation also found that one week before the election [REDACTED] and [REDACTED] asked the Local if they could campaign on election day, with the understanding that they would not be paid for the day. Although [REDACTED] and [REDACTED] did not work on election day, the investigation found that they were paid for the day in a paycheck covering that week. However, the investigation also found that the Local deducted eight hours pay from the two organizers' subsequent paycheck. Even if the Local's initial inclusion of payment for election day in the organizers paychecks is considered a violation of section 401(g), the Local promptly remedied it and, thus, it is not a basis for the Secretary to seek to overturn the election. Section 402 of the LMRDA states: "the Secretary shall investigate such complaint and, if he finds ... that a violation ... occurred *and has not been remedied*, he shall ....bring a civil action..." (emphasis added).

In addition to the allegations discussed above, you also raised an allegation which, even if true, would not violate requirements of Title IV of the LMRDA. Specifically, you alleged that an ineligible person ran for the office of Business Agent. Business Agent is not an officer position as defined by the LMRDA. Therefore, this allegation was not subject to the Department's investigation.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred, and we have closed the file in this matter.

Sincerely,

Patricia Fox, Chief  
Division of Enforcement

cc: Joseph J. Nigro, General President  
Sheet Metal Workers International Association  
1750 New York Avenue, NW - 6th floor  
Washington, DC 20006

John Shields, President  
Sheet Metal Workers Local 100  
4725 Silver Hill Road  
Suitland, MD 20746

Christopher B. Wilkinson, Associate Solicitor for Civil Rights and Labor-  
Management