



November 2, 2016

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your June 7, 2015 complaint to 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 Local 78 (local or Local 78), Laborers' International Union of North America (International), that was held on June 20, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged that you were improperly disqualified based on the local's determination that you were a supervisor on a permanent basis. Specifically, you asserted that you acted as a supervisor only when someone was on vacation or when there was a weekend job, and that you had no authority to hire, discharge, or discipline employees. Section 401(e) provides, in relevant part, that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications. The local's eligibility requirements are contained in the International's Uniform Local Union Constitution (ULUC), including the "working at the calling" provision. "Working at the calling" includes employment for which the union serves as the exclusive collective bargaining representative of employees. The International does not consider supervisors on a permanent basis to be "working at the calling" because a supervisor is expected to be an advocate for the employer's interests while an elected officer is expected to be a zealous proponent of the union's interests. *See* Local Union Officer Elections: A Guide for Local Union Judges of Election (Election Guide), Chapter 4, p. 18.

The International determines whether a member is a supervisor based on whether a member's duties, pay, and role in management of the company indicate a conflict of interest between his obligations to the employer and his obligations to the local. *See* Election Guide, Chapter 4, p. 22. This standard is supplemented by decisions of the International Hearing Officer (IHO), who relied on the Election Guide and other

resources in formulating the criteria for determining supervisory status.¹ A review of some of those IHO decisions shows that the criteria for determining supervisory status is based on a member's authority to recommend to the employer various employment actions, including hiring, discharging, suspending, laying off, and promoting workers, among other employment actions. The Department of Labor employs a similar test in determining supervisory status.

The investigation disclosed that at the time of the election, you held a supervisory license and had served in that capacity for 12 months with Abatech, a covered employer. You had the capacity to hire, suspend, and lay off workers, based on your safety concerns, for any job you supervised. Because you were acting as a supervisor, the local determined that you were did not meet its definition of working and had not worked at the calling for one year prior to nominations. Accordingly, the local properly disqualified your candidacy. There was no violation.

You next alleged that one of the election judges was a relative of one of the incumbent candidates. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election. Unions have a wide range of discretion regarding the conduct of their elections, circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110. Although the ULUC is silent on any prohibition against the appointment of an election judge who is related to a candidate, the Election Guide states "[t]here is no rule prohibiting a Judge of election from being related to a candidate. In evaluating the conduct of the Judges of Election, it is ultimately the decisions of the Judges, not their relationships that must be evaluated." *See* Election Guide, Chapter 1, page 4.

The investigation disclosed that [REDACTED], one of the three election judges appointed by the local executive board, is a distant cousin of [REDACTED], the incumbent business manager. The investigation revealed nothing in the decisions of the election judges, including [REDACTED] that indicated any bias in favor of incumbents, or against challengers. You have not provided evidence of any bias. There was no violation.

You also alleged that local president Kazimierz Prosniewski exerted his influence with your supervisor and foreman to terminate your employment. This allegation was not included in your protest to either the local or the International; therefore, the Secretary could not take action on this issue even if he found it to be a violation that may have affected the outcome of the election. *See* 29 C.F.R. § 452.136(b-1).

¹ Pursuant to a settlement agreement reached in February 1995 between the Department of Justice and the International, a federal district court appointed an International Hearing Officer to investigate and resolve protests regarding the elections of the International and its subordinates. The International regularly relies on the decisions of the IHO in determining the "working at the calling" status of its members.

For the reasons set forth above, your complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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