



January 7, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your September 23, 2008 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the international convention delegate election of the United Union of Roofers, Waterproofers and Allied Workers (Roofers), Local 36 (Local or Local 36) completed on August 5, 2008.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegation that no violation occurred that may have affected the outcome of the Roofers' International Convention.

You alleged that Local 36 violated Section 401(e) of the Act, 29 U.S.C. § 481(e), because members paying a lesser dues rate were improperly allowed to vote in the delegate election. The Roofers' Constitution, Article 3, Section (e), requires that only members in good standing be allowed voting privileges. The Department's investigation revealed that public sector members of Local 36 pay a lesser dues rate than other members working for companies in the private sector. However, Local 36 considers these members to be in good standing as long as they pay the amount required by the collective bargaining agreement signed with their employer. The Department's investigation confirmed that only members in good standing were allowed to vote in the delegate election. There is no violation.

You also alleged that Local 36 violated Section 401(e) of the Act, 29 U.S.C. § 481(e), by granting new members, who had not yet taken the oath of union membership, the right to vote in the delegate election. The Roofers' Constitution includes a pledge for new members. However, the constitution is silent with regard to whether saying the pledge is a requirement for members to be in good standing and eligible to vote in a delegate election. As part of its investigation, the Department contacted the International Union for guidance on this issue of the membership oath. The International stated that

members are not required to take an oath of membership to be considered in good standing. The oath is considered a ceremonial practice and not a membership requirement. The International confirmed that members who do not take the oath of membership are eligible to participate in all union elections as long as they are in good standing and are current in their dues payment. Accordingly, there was no violation.

Finally, you alleged that Local 36 violated Section 401(c) of the Act, 29 U.S.C. § 481(c), by failing to accurately count the ballots. The Department's investigation included a recount of the ballots, which established that Local 36 failed to properly count the ballots in violation of section 401(c). The Department's recount revealed a three-way tie for the seventh, and final, delegate position, which changed the outcome of the delegate election. According to Local 36's tally, Joe Payares was the seventh delegate, winning by one vote. However, the Department's recount showed that you and [REDACTED] had tied Payares for this final delegate position. This error in counting the ballots violated the Act.

In circumstances where there is a challenge to a delegate election that is resolved by the Department after the convention at issue has taken place, the Department determines whether the improper delegate election may have affected the outcome of the convention. The Roofers' International Convention took place the week of October 27, 2008. Payares attended the convention. The Department's investigation of the results of the International Convention revealed that no nominations were made for anyone, other than the incumbent President, Secretary-Treasurer, and ten Regional Vice-Presidents. All incumbent officers were subsequently elected by acclamation. The Department's investigation revealed that none of the Local 36 delegates that attended the International Convention nominated anyone and that both you and [REDACTED] stated to Department investigators that you had no plans to nominate anyone at the International Convention. Given the results of the International Convention and the fact that neither you nor [REDACTED] planned to make any nominations, the improper tally of Local 36's delegate election did not affect the outcome of the International Convention.

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

Sincerely,

Cynthia M. Downing
Division of Enforcement
Office of Labor-Management Standards

cc: Kinsey M. Robinson, International President
United Union of Roofers, Waterproofers and Allied Workers
1660 L Street, NW, Suite 800
Washington, DC 20036-5646

Raul Melendez, Business Manager
United Union of Roofers, Waterproofers and Allied Workers, Local 36
5380 Poplar Avenue
Los Angeles, California 90032