U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343

September 14, 2016

[redacted]

[redacted]

[redacted]

Dear [redacted], and [redacted]:

This Statement of Reasons is in response to your May 15, 2015, complaint filed with 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 officer election conducted by the Amalgamated Transit Union (ATU) Local 241 on January 27, 2015, with the subsequent run-off election held on February 10, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that, with respect to your allegations, no violation of the LMRDA occurred. The Department did find violations based on complaints made by other Local 241 members, which led to an agreement with the union for a new election supervised by the Department. The following letter explains these conclusions.

The three of you jointly alleged that Local 241 violated the LMRDA by improperly denying the three of you the right to run for office based on a November 25, 2014 decision by the ATU General Executive Board (GEB), which barred you from holding office for five years. The GEB found that the three of you engaged in financial misconduct as ATU Local 241 executive board members. As a result, the GEB fined the three of you and barred you "from running for, or holding, any position with Local 241, or any other local union affiliated with the ATU, for a period of 5 years." You argued that you were not afforded adequate due process rights prior to being disciplined. You

also asserted that the union did not uniformly impose the candidate qualifications because it allowed members accused of the same misconduct as you to run for office.

Section 401(e) of the LMRDA provides that every member of a union is eligible to run for union office, subject to "reasonable qualifications uniformly imposed." Further, unions are permitted to take disciplinary action against members guilty of misconduct, including barring them from office for a particular time, so long as the action is conducted in accordance with Section 101(a)(5) of the LMRDA. 29 C.F.R. § 452.50. Section 101(a)(5) provides that a member may not be disciplined unless the member has been served with written specific charges; given reasonable time to prepare his defense; and afforded a full and fair hearing. The Department of Labor investigation revealed that you were afforded due process as required by Section 101(a)(5).

With respect to the discipline imposed, you first contended that the ATU did not allow you enough time to prepare your defense after receiving the documents that the international planned to use in your hearing. Under Section 101(a)(5), if a union's notice provides less than one week for the accused member to prepare a defense, it is considered *per se* unreasonable. Here, however, the union notified you of the charges over a month before the hearing and sent you its exhibits over three weeks before the hearing—a reasonable time in which to prepare your defense. Further, you presented, and the investigation disclosed, no reason why this was not a sufficient time to present your defense. As such, you were provided reasonable time to prepare a defense to the charges against you.

You next alleged that you did not receive a full and fair hearing on the charges that were levied against you because the hearing was not held promptly after charges were filed; you were not allowed to have an attorney present at the hearing, and the hearing officer was not impartial. The Department's investigation established that you were in fact given a full and fair hearing. Specifically, the international union first advised the three of you by letter dated July 26, 2012 that you had possibly engaged in financial misconduct; you were given an opportunity to respond and reimburse the local for the money the international asserted was due. The letter contained a detailed account of the financial improprieties alleged by the international union. A second letter was sent to the three of you at different times—namely on June 18, 2014 and July 3, 2014—advising you that failure to make arrangements to reimburse Local 241 within a month could result in charges being filed. Then, in letters dated July 25, 2014 and August 1, 2014, respectively, ATU notified you that formal charges had been filed against you. The international president appointed International Representative Anthony Garland as the hearing officer. Garland had no connection to Local 241 and did not report to the trustee who was overseeing Local 241 at the time. Garland conducted a hearing on the charges on September 8, 2014, which was held in accordance with Section 12.5 of the ATU Constitution and General Laws (CGL).

The Department's investigation also did not substantiate your claim that you were improperly denied representation at the hearing. Although the ATU denied your

request to postpone the hearing for you to retain counsel to review the documents provided as potential evidence against you, this decision was not unreasonable given you made the request four business days before the hearing began. The LMRDA, moreover, does not establish a right to counsel in union disciplinary proceedings.

Further, the Department's investigation did not find evidence of bias. To prove a violation of 101(a)(5)(c), there must be specific factual allegations from which bias can be inferred. *Frye v. United Steelworkers of Am.*, 767 F.2d 1216, 1225 (7th Cir. 1985). There was no evidence that bias, if it existed, led to any deprivation of your full and fair hearing rights. Thus, there was no violation.

In a related allegation, you asserted that ATU Local 241 disqualified candidates in a discriminatory fashion because several candidates who ran in the election were found guilty of the same misconduct. The Department's investigation found that the candidates who were involved in financial misconduct and were allowed to run for office had settled the international's charges against them, or had agreed to pay back Local 241, and thus were not sanctioned with a bar from office. None of the members barred by the GEB from running for office were permitted to run. There was no violation.

Next, you alleged that Local 241 allowed members who did not meet the union's two-year continuous good-standing requirement to run for office. ATU CGL Section 14.2 states that members are eligible to run for local union office when they have been members in continuous good standing of their local for two years. A member may be automatically suspended for owing dues, fines, or assessments to their local for two months. CGL § 21.10. A member may seek reinstatement if the arrearage is under a year old and the member pays it along with a one dollar a month reinstatement fee. CGL § 21.11.

The Department's investigation found that the National ATU, which was running the election for Local 241, determined that, at the time of the election, Local 241 did not maintain records sufficient to verify and enforce the continuous good-standing requirement. The National ATU decided to waive the requirement since it was impossible to administer, a decision that was within its discretion. Further, this policy allowed more members to run for office. As the U.S. Supreme Court has recognized, "the pervading premise" of Title IV of the LMRDA "is that there should be full and active participation by the rank and file in the affairs of the union." *American Federation of Musicians v. Wittstein*, 379 U.S. 171, 182–83 (1964). In the absence of any evidence that the continuous good-standing policy was applied in a discriminatory fashion, the decision to waive this requirement furthered the purposes of Title IV.

You also alleged that the combined nomination/election notice violated the Constitution because it did not indicate that members disciplined by the GEB would be disqualified to run for office. Nothing in the LMRDA or the ATU CGL contains a requirement that this information be included. Thus, there was no violation.

For the reasons set forth above, with respect to your allegations, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Sharon Hanley, Chief
Division of Enforcement
Office of Labor-Management Standards

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