U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143

October 20, 2022

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on September 30, 2021. Your complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the December 15, 2020 election of officers for International Longshoremen's Association (ILA) Local 1970.

The Department of Labor conducted an investigation of your allegations. You alleged that you were improperly disqualified as a candidate for the office of President. The evidence obtained during the investigation indicated that Local 1970 violated Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), when it applied a candidate qualification rule without proper notice and in such a way that it denied members a reasonable opportunity to run, or be nominated, for office that may have affected the outcome of Local 1970's election. The qualification at issue is the requirement in Article VII, Section 3 of Local 1970's Bylaws that a candidate be a member in good standing for at least one year preceding the date of nomination (the "one-year rule"). While the one-year rule is reasonable on its face, it could nevertheless be an improper qualification if applied in an unreasonable manner. 29 C.F.R. § 452.53. "An essential element of reasonableness [of the candidacy qualification] is adequate advance notice to the membership of the precise terms of the requirement." *Id.*

Section 401(e) of the LMRDA requires that a union conduct its election in accordance with the provisions of its constitution and bylaws. 29 U.S.C. § 481(e). Further, it is a well-settled legal standard that if a particular provision or requirement is contained in the union's governing documents, members are generally presumed to be on notice of such provisions or requirements. *See Donovan v. Local 1235, Int'l Longshoremen's Ass'n, AFL-CIO*, 715 F.2d 70, 75 (3d Cir. 1983); *Cleveland Orchestra Comm. v. Cleveland Fed'n of Musicians Local No. 4*, 303 F.2d 229, 230 (6th Cir. 1962). That said, there is a narrow exception where the union has demonstrated a longstanding, uninterrupted past practice that is contrary to the constitutional provision. When a union has a long practice of waiving a candidate qualification in its constitution or bylaws, courts have recognized the need for the union to inform its membership that it will commence

enforcing the provision, and that the notice must be given with sufficient time to enable members to come into compliance before the election. *See Scalia v. Local 1694, Int'l Longshoremen's Ass'n*, No. 19-CV-02235-SB, 2021 WL 1929205 (D. Del. May 13, 2021); *Herman v. Sindicato de Equipo Pesado*, 34 F. Supp. 2d 91, 96 (D.P.R. 1998). When a union fails to provide this notice of the change in candidate qualifications, the union's application of the qualifications is unreasonable and a violation of the LMRDA.

The Department's investigation showed that Local 1970 had a longstanding practice of waiving the one-year rule so long as members paid any delinquent amounts owed to the union on or before the night of nominations. The union's records supported witness accounts that during the 2011, 2014, and 2017 election cycles, Local 1970 found candidates to be eligible to run for office despite having been delinquent at some point during the year prior to their nomination. During the 2020 election, however, Local 1970 applied the one-year rule to disqualify you from running for President because you had belatedly paid inactive quarterly fees.[1] Since Local 1970 provided no advance notice of its intent to abandon its apparent longstanding practice of not enforcing the one-year rule, the Department concluded that Local 1970 failed to provide adequate notice of candidate qualifications and so unreasonably applied its one-year rule in violation of 29 U.S.C. § 481(e).

The Department informed Local 1970 of its conclusion that a violation of the LMRDA affecting the outcome of the election had occurred. Local 1970 declined to enter into a voluntary compliance agreement to remedy the violation. On February 7, 2022, the Department filed suit against Local 1970 in the United States District Court for the Eastern District of Virginia.

During the litigation of the case, however, newly discovered union records established that the union strictly enforced its one-year rule in 2011. Meeting minutes from 2011 revealed that the President of Local 1970 raised concerns about the union's non-enforcement of the inactive quarterly fees requirement because other ILA locals were

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[1] Article IV, Section 5(a) of Local 1970's Bylaws provides that "[a]ny member who has not worked within a three (3) month period shall pay a fee of $35.00 per quarter not worked." Local 1970 interprets the above provision as requiring payment of the $35.00 inactive fee by the last day of each quarter not worked. Local 1970 interprets its Bylaws as providing a 30-day grace period for payment of the inactive fee before a member is no longer in good standing. As such, Local 1970 interprets its Bylaws to mean that a member would fall out of good standing if they paid the inactive fee more than 30 days after the last day of each quarter not worked. *See also* Local 1970 Bylaws, Article IV, Section 5(b) ("Any member who is thirty (30) days or more in arrears in the payment of dues or fails to pay the fee shall be automatically, and without notice, suspended from all rights and privileges of membership."). The union's interpretation is not clearly unreasonable, and so the Department defers to it. *See* 29 C.F.R. § 452.3. You were out of work and owed Local 1970 the $35 inactive fee for the first three quarters of 2020. You paid your fees for all three quarters shortly after returning to work in October 2020. You were therefore late in paying fees and fell out of good standing for a time.

facing challenges to their elections on that ground. The issue was debated during multiple Local 1970 meetings prior to the 2011 election. Local 1970 officials reviewed records and notified members of any outstanding inactive quarterly fees owed.

At the nominations meeting on November 22, 2011, you were appointed to serve on the election committee. The newly discovered documents showed that, after obtaining advice from counsel, the election committee decided that arrearages more than six year old would not disqualify a nominee.[2] Some nominees had owed fees from six or more years before and were found eligible to run for office. But, consistent with the one-year rule, the election committee disqualified one nominee who owed outstanding fees that had accrued in the one-year period immediately before the 2011 nominations meeting and therefore was not in good standing.

Because the Department's lawsuit was fundamentally based on the evidence that prior to the 2020 election, Local 1970 had a long-standing, uninterrupted past practice of waiving the one-year rule, the new evidence showing strict enforcement of the one-year rule in 2011 undermined this basis, and as such, the Department of Labor and Department of Justice determined that there were insufficient grounds to maintain the lawsuit. It is undisputed that the one-year rule is an unambiguous constitutional provision. Further, as a member of the election committee in 2011, you had reason to know of Local 1970's past enforcement of the one-year rule and the possibility that a nominee may be disqualified for owing delinquent fees from the past year. Additionally, the Department had an insufficient basis to conclude that other members of Local 1970 were dissuaded from seeking nomination because of uncertainty about the applicability of the one-year rule. Accordingly, the Department concluded that it no longer had probable cause to believe that a candidate qualification rule was applied with insufficient notice and in such a way that it denied members a reasonable opportunity to run, or be nominated, for office in violation of 29 U.S.C. § 481(e). On August 10, 2022, the Department filed a stipulation with Local 1970 voluntarily dismissing the enforcement action against Local 1970.

In your complaint to the Department, you also alleged that the President of Local 1970 appointed the members of the election committee in violation of Local 1970's Bylaws. You alleged that the Bylaws require that the membership elect the election committee. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that the election shall be conducted in accordance with the union's constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV. The LMRDA does not otherwise mandate a process for the selection of election committee members.

[2] That time frame corresponded to the Virginia statute of limitations plus the one-year period before the election during which the nominee must maintain good standing to be eligible.

Article VII, Section 3 of Local 1970's Bylaws state that "[t]he Local shall appoint an Election Committee of three (3) members," but include no further directions about the process for appointment or who has authority to appoint the members. The appointment of the committee members by the President was not clearly unreasonable or contrary to prior practices. *See* 29 C.F.R. § 452.3. As such, the Department's investigation did not find a violation of Local 1970's Bylaws occurred in connection with the selection of the election committee.

For the reasons set forth above, the Department of Labor concludes that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

[redacted]

Tracy L. Shanker
Chief, Division of Enforcement

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