



December 23, 2010

Dear |||||:

This Statement of Reasons is in response to your complaint filed with the U.S. Department of Labor (“Department”) on August 31, 2010. Your complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (“LMRDA” or “Act”), 29 U.S.C. §§ 481-483, occurred during the officer election for Laborers International Union of North America (“LIUNA”), Local 633.

The Department conducted an investigation regarding your allegations and concluded that no LMRDA violation occurred which was not remedied.

You alleged that Local 633 did not apply its candidacy qualification requirements uniformly. Under LIUNA’s Guide for Local Union Judges of Election, Officers and Members, a candidate is disqualified if “he or she is a supervisor on a permanent basis for his or her employer.” You allege that the supervisory disqualification was not uniformly applied. You complain that the union found you to be a supervisor and ineligible to run for office; however, it overlooked the supervisory job duties of other nominees, thus prejudicially applying supervisory status to you alone. The Act provides that all members of a labor organization who are in good standing are eligible to run for office¹ subject to reasonable qualifications uniformly imposed. 29 U.S.C. § 481(e), *see also* 29 C.F.R. §§ 452.35-452.41.

The Department of Labor investigation which included statements from former employees and your current employer, R.J. Ortleib, revealed evidence indicating that you have authority to “lay off [employees] . . . or effectively recommend such action.” This authority classifies you as a supervisor under the LMRDA. 29 C.F.R. §452.46. As set forth in § 452.46, “supervisors include individuals having authority, in the interest of

¹ Subject to 29 U.S.C. § 504 which bars persons convicted of certain crimes. 29 C.F.R. § 452.34.

the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action . . .” The ruling that you were ineligible to run for office was proper.

After bringing your complaint, the LIUNA Special Elections Officer (“SEO”), Joseph Guerrieri, agreed with your allegation and found that the Union had improperly allowed ||| and ||| to run for a position on the board, despite their supervisory job duties. The SEO found that |||, |||, and yourself were “supervisors” under the LMRDA and thus ineligible to run for office. The SEO ordered new nominations and an election for the positions for which ||| and ||| were ineligible candidates. “[T]he Secretary as a matter of policy will not file suit to enforce the election provisions unless the violations are such that the outcome may have been affected.” 29 C.F.R. § 452.5.

You also allege that ineligible candidates were allowed to run in the election, specifically you refer to supervisors ||| and ||| and to ||| and |||, two retirees. You protested the eligibility of these candidates to SEO Joseph Guerrieri. Guerrieri upheld your protest with respect to the ineligibility of ||| and ||| as detailed above. The SEO also found that ||| had been receiving a pension since 2007 and not working at the trade since 2008 and was therefore ineligible to run for office. The Department of Labor investigation revealed that the SEO correctly concluded that ||| was eligible to run for office. ||| had begun receiving a pension but had continued to work at the trade. Consequently, ||| was eligible to run for union office. There was no violation of the LMRDA with respect to ||| running for office.

You allege that two candidates, ||| and |||, were found eligible to run for office although they did not appear before the Election Judges, as required under Article VI, Section 2 of the LIUNA constitution, and thus should have been ineligible. According to the records of the election judges, ||| and ||| appeared before them. In addition, the chairman of the judges reported that all candidates appeared before them. There was no violation of the LMRDA

In your complaint, you also allege that the Executive Board decided on the date and time of the election in violation of the constitution. Article VI, Section 2(j) of LIUNA’s constitution states that “the membership shall determine and fix the date . . .” The record shows that during the April executive board meeting the board merely suggested that elections be held on June 2, 2010. At the May meeting you proposed an amendment to that date and offered an alternative date. After a vote by the membership, your alternative proposed date was rejected 37 to 10 and a motion made

to approve the April Executive Board Minutes which included the June 2 date of the election. The LIUNA constitution does not explicitly limit the Executive Board from proposing the election date, but only requires that the membership decide the date. In this case, the membership decided the election date when it voted against your alternative proposal. Furthermore, there is no indication that a date suggested by the board rather than by the members had an impact on the outcome of the election. There was no violation of the LMRDA.

The Department has concluded, from the analysis set forth above, that the investigation failed to disclose any violation of the LMRDA which may have affected the outcome of the election and upon which the Secretary of Labor may bring an action under Section 402 of the Act, 29 U.S.C. § 482. Accordingly, we are closing our file on this matter.

Sincerely,

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Chief, Division of Enforcement

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