



June 1, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on November 25, 2009, alleging that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the New York City District Council of Carpenters ("NYCDCC" or "Union") election held on December 12-13, 2008.

You alleged that NYCDCC President Peter Thomassen, Vice President Denis Sheil, and Executive Secretary-Treasurer Michael Forde were ineligible to run for office because they were retired and receiving pensions. Under Section 402(a) of the LMRDA, a member of a local organization who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body may file an election complaint with the Secretary of Labor within one calendar month. 29 U.S.C. § 482(a). Article 53A of the United Brotherhood of Carpenters' (UBC) Constitution provides that decisions of the local denying protests of the conduct of nominations, elections, or election procedures may be appealed to the General President within thirty (30) days from the date of the election. In addition to the right of appeal to the General President, the NYCDCC pursuant to the "Final Rules for the 2008 Election of the Executive Committee and the Delegate Body of the NYCDCC" (Final Rules) appointed an election monitor to settle election disputes and to perform other tasks. The Final Rules further provided that the Election Monitor's decision could be appealed to the General President.

The Department's investigation established that on November 3, 2008, you filed a pre-election protest of the December 2008 election with the local. On November 14, 2008, the local denied your protest and advised you that you could appeal that decision to the election monitor within five days after receipt of the letter denying your protest. The election monitor issued his decision denying your protest on December 29, 2008. You, by letter dated January 9, 2009, appealed the decision to UBC President Douglas J. McCarron. By letter dated March 3, 2009, President McCarron denied your appeal.

You, however, contend that you did not know that McCarron had issued a decision on your appeal until one of the District Council officers told you that he had received a copy of the decision. You declined to identify this officer. The investigation established that by letter dated October 20, 2009, you wrote to President McCarron and told him that you were "unable to locate his response" to your appeal and requested that he send you "another copy." You received a copy of the March 3, 2009 letter with an October 26, 2009 cover sheet. You then filed a complaint with the Secretary of Labor on November 25, 2009.

President McCarron's March 3, 2009 letter was his final decision. The investigation did not reveal evidence establishing that your receipt of the final decision should date from October 26, 2009. You have not represented that you did not receive McCarron's March 3, 2009 letter contemporaneous with a March 2009 mailing, and the tenor of your October 20, 2009 letter makes it appear that you may have received the letter but inadvertently misplaced it. The investigation also revealed that two of your former slate members, [REDACTED] and [REDACTED], filed election appeals with President McCarron. Both of them received timely responses on February 23, 2009, and filed separate complaints with the Secretary of Labor on March 8, 2009 and March 23, 2009. Under these circumstances, it is reasonable to conclude that more likely than not President McCarron's letter dated March 3, 2009 was mailed and should have been received by you in a timely manner.

As stated herein, a member of a local organization who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body may file an election complaint with the Secretary of Labor within one calendar month. 29 U.S.C. § 482(a). Your complaint to the Secretary of Labor appealing President McCarron's final decision was not filed with the Department until November 25, 2009, more than eight months after his decision. Inasmuch as your complaint was not filed within one month of President McCarron's final decision, the Secretary lacks jurisdiction to consider the merits of your complaint.

Even if the Department were to consider your complaint timely, the investigation did not substantiate your allegation that President Peter Thomassen, Secretary-Treasurer Michael Forde, and Vice President Dennis Sheil were ineligible to run for office because they were retired and receiving pensions. Article II, Section A of the Final Rules and Section 31(D) of the UBC Constitution provide that a member cannot hold office or the position of Delegate or a Committee position, or be nominated for office, Delegate or a Committee position, if receiving a pension under the "UBC Pension Plan." The Department's investigation revealed that the Secretary-Treasurer, Michael Forde, has never collected any pension. The investigation further revealed that while both President Peter Thomassen and Vice President Dennis Sheil were receiving a "tools" pension, administered by the NYCDCC, they were not receiving a UBC pension. A "tools pension" is not listed as a disqualifying pension in Article II, Section A of the Final Rules or Section 31(D) of the UBC Constitution. Thus, permitting these three

candidates to run for office did not violate the constitution. There was no violation of the Act.

For the reasons set forth above, I have closed the file regarding this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Douglas J. McCarron, General President
United Brotherhood of Carpenters
101 Constitution Avenue, NW
Washington, DC 20001

Peter Thomassen, President
NYCDCC
395 Hudson Street, 9th Floor
New York, NY 10014

Katherine Bissell, Associate Solicitor for Civil Rights and Labor-Management