

U.S. Department of Labor

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



May 26, 2010

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (the Department) on January 29, 2008, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), 29 U.S.C. §§ 481-484, occurred in connection with the rerun election of vice-chairman conducted by Brotherhood of Maintenance of Way Employees (BMWE), Pacific Federation on October 1, 2007.

You alleged that ineligible members were allowed to vote in the rerun election for vice-chairman. The Department of Labor investigation confirmed that four members who were ineligible to vote participated in the election in violation of section 401(e) of the LMRDA, 29 U.S.C. § 481(e). As the vice-chairman's race was won by four votes, the participation of the ineligible voters may have affected the outcome of this election. (The margin of victory reflects an investigative finding that three ballots contained markings which could have been used to identify the voter. Those ballots should have been voided.) A violation of the LMRDA affecting the outcome of an election would normally provide the basis for litigation by the Secretary of Labor (Secretary). However, litigation by the Secretary to remedy the violation is not warranted in the circumstances presented here.

The Department of Labor investigation revealed that six weeks following the election, and prior to a second union-ordered rerun, the Pacific Federation's Joint Protective Board (Board) voted to eliminate the office of vice-chairman. The Department of Labor investigation further revealed that in eliminating this office the Board complied with established procedures in the union's constitution and bylaws. Additionally, the decision to eliminate the vice-chairman position was appealed to the BMWE National Division Appeal Board. The decision was also appealed to the International Brotherhood of Teamsters' (IBT) General Executive Board as the BMWE and IBT have entered into a merger agreement. The BMWE National Division Appeal Board affirmed the Board's decision to eliminate the position. The IBT General President declared the

decision to be an administrative decision and that under the IBT and BMW merger agreement, the IBT lacked authority to review a BMW administrative decision. The Department of Labor investigation did not reveal evidence that the position was eliminated to circumvent the requirements of the LMRDA. The union followed established procedures in eliminating the position of vice-chair. As the position of vice-chair was properly eliminated, litigation by the Department to remedy the violation of the Act with respect to the election for this office is moot. The statutory remedy for a violation of the Act is a rerun election, under the Secretary's supervision, for the office affected by the violation. *See* 29 U.S.C. § 482 (b).

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

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: Freddie N. Simpson, National Division President
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