



January 21, 2011



Dear Mr. Cunningham:

This Statement of Reasons is in response to your February 12, 2010 complaint filed with the United States Department of Labor alleging a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), occurred in connection with the election of officers of the International Association of Machinists and Aerospace Workers (IAM), Local Lodge 2339N conducted on December 8, 2009, to bring Local 2339N out of trusteeship.

The Department conducted an investigation of your allegations. The investigation disclosed a violation of section 401(e) of the Act which requires that every member in good standing shall be eligible to be a candidate and to hold office subject to section 504 and to reasonable qualifications uniformly imposed. Local 2339N violated section 401(e) by disqualifying you as a candidate for Recording Secretary. Local 2339N disqualified you based on a determination that you had misappropriated union funds and were permanently barred from holding office under provisions of the IAM constitution.

Department of Labor regulations at 29 C.F.R. § 452.50 provide that a union may bar a member guilty of misconduct from holding office without violating section 401(e), so long as the member has been afforded the rights guaranteed under section 101(a)(5) of the LMRDA. Section 101(a)(5) provides that a member may not be disciplined unless he has been served with written specific charges and afforded a full and fair hearing. *Id.* The Department's investigation revealed that the union permanently disqualified you from holding any office or representing members of the IAM in any capacity without providing the notice and opportunity for hearing required by section 101(a)(5).

Therefore, the Department determined that you were improperly disqualified from candidacy for union office. Accordingly, the Department informed the union of its conclusion that a violation of the Act affecting the outcome of the election had occurred.

The IAM did not enter into a voluntary compliance agreement to remedy the violation. Thus, on April 13, 2010, the Department filed suit against Local 2339N in the United States District Court of New Jersey.

Following the filing of this complaint, the IAM immediately contacted the Department, explaining that it would agree to provide you with a full and fair disciplinary hearing, pursuant to section 101(a)(5), complete with internal appeal rights. On May 5, 2010, the IAM sent you written charges of misappropriating union funds, along with supporting documents and the opportunity to request a hearing to defend yourself against this charge. You requested a hearing; however, on the date of the hearing, you were hospitalized and did not attend. The union did not hold the hearing, and instead gave you a second opportunity to request a later date for the hearing during the month of July 2010, as you stated that you would not be scheduled to work during the month of July.

On July 7, 2010, the IAM sent you a letter confirming that a disciplinary hearing would be held on July 19, 2010, unless you notified the union that this date would not work. The IAM gave you two other alternative dates (July 21 and July 27), in case the July 19, 2010 date did not work for your schedule. The IAM clearly stated that if you were not available on July 19, 2010, then you had the responsibility to contact the union to reschedule. Since you did not respond to the July 7, 2010 letter, the union moved forward with the July 19, 2010 hearing date; however, on July 19, 2010, due to your hospitalization, you did not attend the hearing. Rather than conducting a hearing without you present, the union once again cancelled the hearing and attempted to reschedule.

In a third attempt to provide you the opportunity to represent yourself at a hearing, on August 11, 2010, the union sent you a letter, setting a hearing date for August 26, 2010. You were advised that this hearing would be held regardless of your ability to attend, but that you were permitted to send a union representative in your place. You failed to attend the August 26, 2010 hearing and also failed to send a representative, but the union did hold a hearing, in which evidence of your misappropriation of union funds was presented and a decision was reached.

Following this hearing, the union sent you a letter dated September 28, 2010, advising you that based on the evidence presented at the August 26, 2010 hearing, the IAM General Secretary Treasurer had concluded that you misappropriated union funds and should be permanently disqualified from holding union office. The September 28, 2010 letter was sent certified mail, and you signed for this letter on October 8, 2010. This letter advised that you had ten (10) days from receipt, until October 18, 2010, to request an appeal of the General Secretary Treasurer's decision. On November 1, 2010, after waiting 14 days beyond the October 18, 2010 deadline, the union notified the

Department that you had failed to initiate appeal proceedings, and thus, considered your disciplinary matter concluded.

After reviewing the union's disciplinary proceedings, the Department found that you had been provided with a full and fair hearing, complete with written notice of charges, adequate time to review the union's supporting documents, as well as the opportunity to attend or send a representative to the hearing. Since the union satisfied the requirements of section 101(a)(5) and determined that you are permanently disqualified from holding union office, the violation alleged in the Department's complaint was rendered moot. On November 4, 2010, the Department voluntarily dismissed its enforcement action against Local 2339N.

Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: R. Thomas Buffenbarger, International President
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