



July 8, 2011



Dear [REDACTED]

This Statement of Reasons is in response to your January 31, 2011 complaint, filed with the United States Department of Labor, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of the Teamsters Union, Local 71 for which ballots were tallied on October 1, 2010.

The Department conducted an investigation based on your complaint. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that no violation occurred that may have affected the outcome of the election.

First, you allege that Local 71 provided you with an incomplete list of employers. You allege that the employer list you received was missing the names of two employers and did not include the names of employers of the taxi drivers represented by the union. The LMRDA does not require unions to provide candidates with lists of employers. However, under section 401(c) of the LMRDA, the union must provide adequate safeguards to ensure a fair election. Pursuant to this provision, unions are to refrain from discriminating in favor of or against any candidate. A union discriminates among candidates with respect to an employer list if the union provides any candidate a more accurate list than it provides to other of the candidates. The union also discriminates with respect to use of employer lists if the incumbents make use of a list of employer worksites to campaign but refuse to provide the list to other candidates who request it for that same purpose.

Here, the Department's investigation disclosed that the union did not discriminate against you with respect to the list of employers. The two candidates who requested the list of employers received it. Moreover, the union provided the candidates with the same list. Candidates were equally disadvantaged by any mistakes or omissions in the list provided. Furthermore, you indicated to the Department's investigator that you knew which two employers were left off the list and that no one made use of the employer list in campaigning. For these reasons, the evidence does not support a

finding that any discrimination occurred. Therefore, there has been no violation of the LMRDA with respect to this issue.

Second, you allege that Local 71 improperly denied movie drivers the right to vote in violation of section 401(e) of the LMRDA, which provides that every union member in good standing shall have the right to vote. Specifically, you allege that Local 71 changed the designation of movie drivers' payments to the union from "dues" to "service fees" shortly before the election. As only dues-paying members of the union may vote, the change in designation resulted in movie drivers being ineligible to participate in the election. You suggest that this change was improper and that its timing was suspicious.

The Department's investigation did not substantiate your allegation. Movie drivers only work when a movie is being filmed in the area. When they have work, they pay two and a half times their hourly rate to the union each month as dues. When they are unemployed, they can pay a fee of \$30 a month to remain on a union seniority list. Local 71 sent a letter to all movie drivers on August 14, 2007, indicating that the International union had determined during an audit that those \$30 payments paid by movie drivers to remain on the seniority list must be considered service fees rather than dues. The union updated its records in June 2010, to reflect this distinction. At the time of the October 2010 election, movie drivers were not, as a class, dues-paying members of the local and entitled to vote. The investigation revealed no evidence that any movie driver paying full dues as opposed to service fees was prohibited from voting in the election. Furthermore, the union's June 2010 update of its records simply gave effect, albeit belatedly, to a determination it had made years earlier. There was no violation of the LMRDA.

Third, you allege that Local 71 improperly permitted taxi drivers to vote in the 2010 election in violation of section 401(e) of the LMRDA which conditions the right to vote on membership in good standing. Specifically, you allege that taxi drivers pay service fees, not dues, and do not have a contract, so they cannot be members in good standing of Local 71. The Department's investigation revealed that taxi drivers work regularly, pay dues, and are represented by Local 71; therefore, they are members in good standing. Taxi drivers do not have a collective bargaining agreement because they are independent contractors, but having a contract is not a prerequisite of membership. Other Local 71 members, such as bus drivers and janitors who work for the public school district, similarly do not have contracts. Accordingly, Local 71 did not violate section 401(e) of the LMRDA by permitting taxi drivers to vote.

Fourth, you allege that Local 71 did not set aside the ballots of taxi drivers when you challenged the eligibility of taxi drivers to vote during the ballot tally. This failure to set aside challenged ballots could violate section 401(c) of the LMRDA which guarantees that "[a]dequate safeguards to ensure a fair election shall be provided." You are correct that generally challenged ballots should be set aside until disputes about their validity are resolved. Failure to do so could result in the invalidation of tally results if the

challenge proves to be meritorious. As explained above, however, the Department's investigation resulted in the conclusion that taxi drivers were eligible to vote in the 2010 election. Therefore, even had the ballots been set aside, they would ultimately have been counted. There was no violation affecting the outcome of the election.

Finally, you allege that not all of the votes cast for one of the candidates for Independent Trustee were counted. Although you made this allegation in your initial complaint to the Secretary Treasurer of Teamsters Joint Council 9 and in your complaint to the Department, you did not include it in your letter appealing the Secretary Treasurer's decision to Teamsters Joint Council 9. By choosing not to include the issue in your appeal, you failed to exhaust, as to this issue, the remedies available under Article XXII, section 5 of your union constitution. Such exhaustion is required by section 402(a)(1) of the LMRDA. Furthermore, you acknowledged during the Department's investigation that the votes you allege were not counted could not have changed the results of the election. Therefore, even if this allegation had properly exhausted within the union, it would not have constituted a violation that may have affected the election outcome.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,



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Chief, Division of Enforcement

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