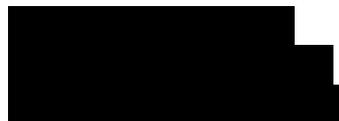




March 17, 2011



Dear [REDACTED]:

This statement of reasons is in response to the complaint that you filed with the United States Department of Labor on November 1, 2010, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of Local 39 of the International Union of Operating Engineers (IUOE) completed on July 6, 2010.

The Department of Labor conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no violation occurred that may have affected the election.

You allege that the Local improperly disqualified you from running for the office of Business Manager because you failed to meet the eligibility requirements of continuous good standing and working at the trade, and because you accepted prohibited campaign assistance from non-members. Article XI, Sections 1(b),(g), and (i) of the Local's Bylaws require that to be eligible for election to any office a member must be in continuous good standing in the Local for two years preceding nominations, including having timely paid dues. In this case, the two-year period encompassed June 1, 2008 to June 1, 2010. In addition, the bylaws prohibit candidates, prospective candidates, and candidate supporters from soliciting or accepting direct or indirect financial support from non-members. Further, the IUOE Constitution, Article 24, Subdivision 1 (b) contains a two year working at the trade requirement for local union business manager candidates.

Section 401(e) of the LMRDA provides, among other things, that every member in good standing shall be eligible to be a candidate and to hold office subject to "reasonable qualifications uniformly imposed." 29 U.S.C. § 481(e). "Continuous good standing" based on punctual payment of dues is considered a reasonable qualification if it provides a reasonable grace period during which members may make up missed

payments without the loss of eligibility for office and the period of time involved is reasonable. 29 C.F.R. § 452.34. Here, the Local provided a reasonable grace period. Dues are to be paid by the first business day of each month. However, a member is not considered delinquent in dues payment and maintains good standing if dues are paid by the last business day of the month.

The investigation disclosed that in December 2009, upon the termination of your employment with the Local effective December 1, 2009, you became delinquent in your dues payments. You did not pay dues for December 2009 until January 2010, past the December 31 grace period. As a result you were delinquent in dues payments for December 2009 and you did not meet the continuous good standing requirement to be eligible to run for office.

With respect to the issues of working at the trade and prohibited financial assistance, even if the application of these rules to you were found to be violations of the Act, your failure to meet the continuous good standing requirement rendered you ineligible to run for office. Thus, any violation would not have affected the outcome of the election.

For the reasons set forth above, it is concluded that the Department of Labor cannot bring an action under section 402 of the LMRDA, and I have closed the file in this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Vincent J. Giblin, General President  
International Union of Operating Engineers  
1125 Seventeenth Street NW  
Washington, DC 20036

Madison Bland, President  
IUOE Local 39  
337 Valencia St.  
San Francisco, CA 94103

Beverly Dankowitz, Acting Associate Solicitor,