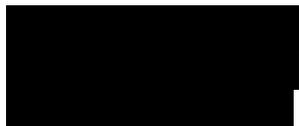


U.S. Department of Labor

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



June 18, 2012



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on January 17, 2012, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by the American Federation of Musicians Local 325, on December 6, 2011.

The Department of Labor conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that the incumbent secretary-treasurer censored your campaign ad that was published in the 2011 special election edition of the Sound Post. The campaign literature distribution provision of section 401(c) of the LMRDA requires a union to comply with all reasonable requests by a candidate for distribution by mail of campaign literature at the candidate's expense. A union may not censor campaign mailings in any way, even though the statement may include derogatory remarks about other candidates. 29 C.F.R. § 452.70. However, in a union newsletter or other publication mailed at the union's expense, a union may impose limits on the length, format and content of campaign statements as long as all candidates have an equal opportunity to present their views or opinions. *See, e.g.,* 29 C.F.R. §§ 452.73, 452.74.

The investigation disclosed that, during the election, nine of the fourteen candidates, including you, submitted campaign advertisements to the local for publication in its 2011 special election edition of the Sound Post, the local's newspaper. The candidates were charged a fee to cover the cost of publication. The 2011 Sound Post was mailed to members at the union's expense. Prior to the mailing of the newspaper, the secretary-treasurer, the editor of the newspaper, sought advice from the International regarding statements in your 2011 campaign ad relating to disciplinary action taken by the local

against a local union official. The disciplinary action, which had ordered that a reprimand letter be published in the Sound Post, was overturned on appeal to the International, with the International ordering that the reprimand *not* be published in the local's newspaper.

The portion of your campaign ad at issue was, as follows:

One of the provisions [of the discipline] called for publishing the decision in the Soundpost. Per Art. II (f) the secretary-treasurer is responsible to publish in the best interest of the members. (This was not done).

In response to the secretary-treasurer's request for advice, the International's General Counsel advised that it would be a violation of the terms of the appeal of the discipline to refer to the discipline in the Sound Post and, thus, publication of the above sentence was impermissible. As a result, the local's secretary-treasurer deleted the sentence from the advertisement.

The facts disclosed by the investigation do not fit squarely into either of the two situations addressed by the well-established Departmental positions described above - the prohibition on the censorship of campaign material paid for by candidates or the allowance of neutral rules in union publications. Nevertheless, the circumstances surrounding this deletion from the advertisement indicate that it was permissible. The material was in a union publication, not in campaign literature mailed at the candidate's expense. The local union was following an order of the International union that was based on an International decision that predated the election, indicating neutrality. The modification was minimal and did not affect other negative statements contained in the advertisement concerning the incumbent officers, minimizing the extent to which the modification might have advantaged particular candidates.

Specifically, the investigation disclosed that you were not prevented from mounting a campaign against the secretary-treasurer in the 2011 Sound Post, despite the edit made to your campaign ad. In the ad, as published, you expressed general dissatisfaction with the incumbent officers and offered specific criticism of the secretary treasurer's alleged failure to collect dues for non-union work. Therefore, you were able to present your view of the secretary-treasurer in the union's publication, despite the edits to your ad. Further, none of the other campaign ads published in the 2011 Sound Post contained campaign rhetoric directed at other candidates in the 2011 election. The other ads followed the format of ads that had been passed out as guidance, from the 2003 election edition of the Sound Post, which were limited to biographical information on candidates and did not contain campaign rhetoric. The secretary-treasurer's campaign ad that was published in the 2011 Sound Post contained only biographical information

regarding his professional and educational background and his experience in the union and in the music business; there is no reference to you or any other candidate in the ad. In sum, you were permitted to publish a campaign ad that attacked the incumbent officers, while all other candidates limited themselves to neutral statements of biographical information.

Further, the local informed you that it would distribute your entire campaign ad by mail, including the portion edited from the ad, in a direct campaign mailing to the membership at your expense. The union also informed you that candidates were permitted to send a campaign email blast to members using the union's website directory of members' email addresses. You did not take advantage of either of these opportunities. In addition, although each candidate was required to pay a fee to have a campaign ad published in the 2011 Sound Post, you admitted during the investigation that you never paid and have no intention of paying the fee, despite the union's repeated attempts to collect the fee from you. Thus, you obtained a free publication of your ad for the 2011 election to the detriment of the other candidates. Under these circumstances, there is not an adequate basis for concluding that the union failed to give you an equal opportunity to campaign.

Finally, in connection with your allegation that the secretary-treasurer censored your campaign ad, you alleged that the sentence in your campaign ad concerning the secretary-treasurer's failure to publish the reprimand letter in the newspaper should not have been censored because the bylaws required him to publish the letter. Section 401(e) of the LMRDA requires that an election of union officers be conducted in accordance with the union's constitution and bylaws. *See* 29 C.F.R. §§ 452.2, 452.109. Article III, section 4(f) of the union bylaws prescribes the duties and responsibilities of the editor of the newspaper. Such provision provides that in the best interest of the Association the editor will review all articles and correspondence for inclusion in the newspaper. This provision does not require the editor to publish letters of reprimand in the newspaper. Neither the LMRDA nor the bylaws were violated.

You alleged that the secretary-treasurer managed the entire election process, but that an impartial union body should have been appointed to oversee that process. The investigation disclosed that, in accordance with Article VIII, Sections 4(a)-(c) of the local's bylaws, the secretary-treasurer and the board of directors appointed an election board and a counting board. The bylaws limit the duties of these boards to managing the polls on the day of the election. The bylaws are silent concerning the individual responsible for handling other aspects of the election. However, the investigation disclosed that the local has a 22-year practice of the secretary-treasurer overseeing the logistics of the election process. Neither the LMRDA nor the bylaws were violated.

You alleged that Article 19, Section 12 of the International bylaws requires local union candidates to draw lots to determine their position on the ballot, but that candidates' names appeared on the ballot in alphabetical order. Article 19, Section 12 of the International bylaws requires candidates for International office to draw lots to determine the position of their names on the ballot. The International confirmed during the investigation that the International bylaws do not contain any such requirement for the elections of local union officers. Further, the investigation disclosed that the local's bylaws are silent concerning the placement of names on the ballot and that the union has a long standing practice of placing candidates' names on the ballot in alphabetical order. Neither the LMRDA nor the International bylaws were violated.

You alleged that the union failed to comply with Article VIII, Section 4(1) of the bylaws by not identifying the names of the three election judges and their duties. Article VIII, Section 4 of the bylaws requires the Board of Directors to appoint one judge and two tellers, which constitute the Election Board, and to appoint two tellers and two judges, which constitute the Counting Board. The local bylaws do not require that the names of the members of these boards be published. In any event, you acknowledged during the investigation that the secretary-treasurer provided you with the names of the boards' members by email dated November 22, 2011, including the names of the three judges. Neither the LMRDA nor the bylaws were violated.

You alleged that the local implemented unfair and unreasonable voting procedures when it voided ballots that contained votes that were marked outside the box printed next to each candidate's name. Section 401(c) of the LMRDA requires a union to provide adequate safeguards to insure a fair election. A labor organization's conduct of its election of union officer is thus circumscribed by a general rule of fairness. *See* 29 C.F.R. § 452.110. The investigation substantiated that the box printed next to the candidates' names on the ballot was too small to accommodate the "X" imprinted on the rubber stamps that the union provided to voters to mark their ballots during on-site voting. As a result, the "X" that was stamped on the ballot indicating the voter's choice of candidate was outside the box printed next to the candidate's names. The voter instructions printed on the ballots stated that such votes would be invalidated. In the interest of a fair election, once the union required ballots to be marked with rubber stamps issued by the union, the union had an affirmative duty to ensure that the use of such stamps would allow voters to properly mark their ballots. Thus, the LMRDA's adequate safeguards provision was violated when the rubber stamps that the union provided to voters to mark their ballots prevented voters from properly marking their ballots. However, the LMRDA provides that a new election is only required where a violation may have affected the outcome of the election. 29 U.S.C. § 402(c) (2). Here, the Department's review of the election records disclosed that no ballots were voided

for containing an "X" outside the box next to a candidate's name. Thus, no violation occurred that may have affected the outcome of the election.

You alleged that the secretary-treasurer discriminated in favor of himself and against you with respect to the use of lists of members when he used such lists to mail the 2011 Sound Post to members. Section 401(g) of the LMRDA prohibits the use of a union publication for unlawful campaigning. In turn, the use of membership lists for the distribution of such union publication would violate the mandate in Section 401(c) of the LMRDA that a union refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. The investigation disclosed that the 2011 Sound Post did not constitute unlawful campaign material and, thus, there was no discriminatory use of lists of members in the distribution of the publication. There was no violation.

You alleged that you were politically disadvantaged in that members voted for the incumbent secretary-treasurer because his name was listed first on the sample ballot for the office of secretary-treasurer, the sample ballot was posted on the union hall bulletin board, and it was mailed to members. The position of candidates' names on the sample ballot and the dissemination of such ballots are not prescribed by the LMRDA or the local bylaws. No violation occurred.

You alleged that a local official's appeal to the International Executive Board (IEB) regarding disciplinary action taken by the local against him was procedurally defective. The LMRDA does not prescribe the internal union procedures a member must comply with before exercising a right of appeal. No violation occurred.

Finally, you alleged violations of the Bill of Rights provisions of Title I of the LMRDA and violations of the fiduciary responsibility provisions of Title V of the LMRDA. These provisions are not enforced by the Department. Generally, they may be enforced by a union member in a private lawsuit against a union or its officials. Therefore, the Department is precluded from taking any action concerning these alleged violations. Thus, they are dismissed.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that may have affected the outcome of the election and I have closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

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