



June1, 2012

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Dear Sirs and Madam:

This Statement of Reasons is in response to the complaint that you filed with the U.S Department of Labor on April 18, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by International Longshoreman’s Association (ILA) Local 1526 on December 12, 2010.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violation of the LMRDA occurred during the conduct of the election that may have affected the outcome of the election, and thus the Department will not take action to set aside the election results. A discussion of each of your allegations follows below.

You first alleged that eligible new members inducted into membership in January 2010 were improperly disqualified from voting. Specifically, you asserted that the new

member ballots were segregated and counted upon the conclusion of the election, but that following a protest, the ILA South Atlantic and Gulf Coast District retroactively disqualified 98 new members' votes for nonpayment of dues. You further asserted that it had been Local 1526's past practice to count new members' initiation fees as payment of dues for the first year and that this practice should have been maintained in the December 12, 2010 election, and that, past practice notwithstanding, the new members ruled ineligible by the District had never received notice that they were not in good standing, and thus should have been allowed to vote.

Section 401(e) of the LMRDA requires that the union officer election "shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with [Title IV of the LMRDA]." The Local 1526 Bylaws state that "[a]ny member whose dues are in arrears for 30 days... shall forfeit all rights and privileges of good standing as a member.... No member of this Association shall be entitled to a quarterly card if there is any outstanding fine, dues, assessments, or other obligations unfulfilled." Local 1526 Bylaws, Article XIII, §§ 1, 6. The ILA Constitution also states that "[a]ny member who is 30 days or more in arrears in payment of dues shall be automatically, and without notice, suspended from all rights and privileges of membership." Article XIV, § 5.

The investigation found that a Local 1526 candidate for office filed a pre-election protest contesting the eligibility of members initiated into the union in January 2010. These members paid a substantial "initiation fee" in order to join the union, but no part of this fee was labeled, or otherwise set aside as, a payment of annual dues. In response to this challenge, the two election supervisors decided to segregate and count separately the new members' ballots until the District had an opportunity to rule on the challenge. The election supervisors segregated a total of 98 new member ballots during the conduct of the election. Following the tally, the District held a hearing on the pre-election protest and decided that the new members were ineligible to vote because they had not paid annual dues. The District determined that the initiation fee was a separate financial obligation from a payment of annual dues. Accordingly, the District found that Local 1526's practice of deeming annual dues paid if the initiation fee was paid contravened the ILA Constitution, and determined that the 98 new member votes should not be counted.

The LMRDA regulations require that the interpretation of a constitutional provision by a responsible union official or governing body, such as the District, will be accepted by the Department unless the interpretation is clearly unreasonable. 29 CFR § 452.3. There is no evidence suggesting that the District's constitutional interpretation that "initiation fees" are separate and apart from dues, and thus do not constitute dues payments, is unreasonable. Indeed, while Local 1526 clearly could have earmarked a portion of the initiation fee as a dues payment, it did not do so, and the Department found no evidence that Local 1526 paid a per capita portion of the initiation fee to the District, as is the custom for payments of member dues. As the District's interpretation was not

clearly unreasonable, there is no basis to overrule its determination that the votes of new members who did not pay membership dues should be discounted.

As to the assertion that these new members should not be disqualified because they were not given notice that their dues were in arrears, the ILA Constitution states that any member more than 30 days in arrears “shall be automatically, *and without notice*, suspended from all rights and privileges of membership.” (emphasis added) Article XIV, § 5. While the Local 1526 Bylaws require notice, this clearly conflicts with the International Constitution and thus the International Constitution provision controls. In sum, the decision of the District to refuse to count the new member votes was proper, and thus does not constitute a violation of the LMRDA.

Related to your first allegation, you also asserted that several ineligible members had their votes improperly counted in the election. The investigation found evidence supporting this allegation. A records review found that 31 regular members were in arrears in their dues payments but were nevertheless allowed to cast ballots in the election. Further, the Department’s records review found that five new members cast ballots that were not segregated with the other new member ballots and instead were counted with the regular members. In total, 36 ineligible individuals cast ballots in the election, which constitutes a violation of the LMRDA. However, the LMRDA provides that only violations that may have affected the outcome of the election require a new election. 29 U.S.C. § 402(c). Here the smallest margin of victory was 43 votes (in the Treasurer race), so the effect of the violation was not enough to change the outcome of any of the election results.

You alleged that new members were subjected to discrimination, intimidation, and disenfranchisement when they attempted to vote in the election, and that these actions dissuaded some of these individuals from casting a ballot. Specifically, you stated that observer [REDACTED] unlawfully interacted with voters at the polls and loudly singled out new members as they came to vote, supporters of Incumbent President Gus Wilkerson told members that if they did not vote for Wilkerson they would lose their union membership cards, and that the presence of election observer [REDACTED] was intimidating for voters.

The LMRDA ensures that union members have the right to vote without being subject to improper interference or reprisal by any member. 29 U.S.C. § 481(e); 29 CFR § 452.105. At the same time, the LMRDA protects the rights of members to freely assemble and express their views, and unions generally may not censor the statements of members, even if such statements are derogatory. *See, e.g.*, 29 U.S.C. § 411(a)(2); 29 CFR § 452.70 (prohibiting union censorship of campaign literature).

The investigation found that the District Vice Presidents Clarence Pittman and Jerry Becerra acted as supervisors at the election, and Judge [REDACTED], served as an election observer. Because a challenge had been lodged regarding the eligibility of new members to vote, the election supervisors made the decision to collect and segregate

ballots for such members until the challenge was ruled upon. In her interview with Department officials, ██████ reported that Pittman had asked her to identify new members as they walked in so they could be sure to collect and segregate their ballots properly. While ██████ normally walked to a new member voting and tapped them on the shoulder to identify them as such, on a few occasions ██████ used her whistle to indicate a new member voting. However, she was subsequently instructed to stop identifying new members in this manner and she refrained from continuing.

The primary basis for your assertion that Wilkerson supporters were at the docks threatening new members about rescinding union membership cards was that member Rodney ██████ reported this to complainant ██████. However, when interviewed by the Department, ██████ said that he did not say this to ██████, and further said that he was not even working at the dock on the day of the election and thus was not present to hear any such remarks.

Finally, with regard to your allegation regarding ██████ the investigation found that he attended the election because the District had received numerous complaints from Local 1526 prior to this election. ██████ was an elderly man, and witnesses at the polls reported that he sat quietly during the course of the election. He served only as an observer and had no role in certifying the results of the election.

Interviews and records reviews by the Department failed to find any evidence that the presence or actions of any of these individuals dissuaded anyone from voting. Of the 165 individuals working at the dock the day of the election, 99 were eligible to vote and 85 of these individuals voted. Each of the new members interviewed by Department officials stated that they voted for the individuals of their choice, and did not report any interference in doing so. Finally, there was no evidence that the votes of individuals were not kept secret, such that there would be any reason for voters to worry about reprisal of any sort for voting their conscience. Accordingly, there was no violation of the LMRDA.

You further alleged that there was discriminatory treatment and unlawful use of the membership list during the conduct of the election in violation of the LMRDA. Specifically, you asserted that candidate Wilkerson might have given out the membership list to one of his supporters prior to the election for campaign use, and that Wilkerson used the list to prepare 20 membership cards for ██████ to hand out to members who were otherwise unable to vote, in essence “buying” their vote with the promise of paid dues.

The LMRDA prohibits discrimination between candidates in the use of union lists and requires that candidates have access to the membership list once within 30 days of an election. The LMRDA does not include the right to have a copy of the list. 29 U.S.C. § 481(c); 29 CFR § 452.71.

The investigation found no evidence that Wilkerson referred to the Local 1526 membership list at all, let alone made any unauthorized use of the list. With respect to your allegation that membership cards were handed out at the polls, the investigation found that members have to carry their membership cards to enter (or work at) the port and that these cards are given to the headers or foreman, but are occasionally not returned to the workers at the end of the day. Vice President Christopher Roland said that he asked Observer [REDACTED] to return the members' cards to them when they arrived at the polls so they could vote. However, an election official took the cards from [REDACTED] and kept them at the voter check-in table, and returned them to the card's owner if and when the individual showed up at the polls to vote. This practice does not violate Local 1526 Bylaws, nor does it violate the LMRDA.

Finally, in a related allegation, candidates [REDACTED] and [REDACTED] asserted that they were denied access to the voter eligibility lists. Specifically, complainant [REDACTED] alleged that he was denied the right to inspect the list, but later stated to Department officials that he did not request the eligibility list from Wilkerson at any point. Complainant [REDACTED] asserted that she requested the eligibility list two days prior to the election, but that Wilkerson would not let her see it.

The investigation revealed no evidence that any candidates had access to a list that the others did not have. Further, because Florida is a right-to-work state, the right of candidates to inspect the membership list once within 30 days of the election does not apply. 29 U.S.C. § 401(c) (candidates may inspect list of members subject to "collective bargaining agreement requiring membership therein as a condition of employment"). In summary, no violation of the LMRDA occurred as to this allegation.

For the reasons set forth above, it is concluded that, while violations of the LMRDA occurred in the conduct of the December 12, 2010 election, there was no violation of the LMRDA that affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

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Chief, Division of Enforcement

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