



January 16, 2013

Dear [REDACTED]

This Statement of Reasons is in response to your September 21, 2012 complaint filed with the U.S. Department of Labor alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Alliance of Theatrical Stage Employees (IATSE), Local 311 on May 5, 2012.

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

You alleged that at the time of the election, [REDACTED] was not a member with continuous good standing and thus, ineligible to run for the office of Business Agent, in violation of section 401(e) of the LMRDA. 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.

Specifically, you alleged that [REDACTED] candidacy violated Article V, Section 1 of the Local 311 Constitution and Bylaws, which provides that a member not in good standing within three years prior to nominations may not run for office. Article XIX, Section 4 of the IATSE Constitution and Bylaws provides that continuous good standing requirements are not broken unless the member has been suspended under the local's constitution and bylaws.

The Department's investigation revealed that [REDACTED] paid 1st quarter 2012 dues and a "late fee" in March 2012, after the February 2012 deadline, which included a thirty day grace period. Despite the fact that the Local 311 Constitution states in Article IX, Section 7 that "Failure to make payment within thirty (30) days shall result in suspension without trial," the investigation revealed that this is not the local's longstanding practice with respect to dues.

The dues notice sent to members does not indicate that members who are late paying dues will be suspended. Rather, it states that delinquent members will be placed on a "hit list" and fined \$25.00. Consistent with this notice, the Financial Secretary confirmed that members are not suspended or expelled until their dues are delinquent for two quarters. At that point, the Financial Secretary sends a letter of warning that the member may be suspended or expelled, if dues are not received prior to the next regular meeting. Local 311 never sent [REDACTED] any such letter, and there is no evidence that the union suspended him or any member who paid beyond the February deadline.

Accordingly, Local 311 never suspended [REDACTED] and he thus did not lose his good standing for purposes of candidate eligibility under the International Constitution. Therefore, the evidence does not provide a basis for finding that there was a violation of the LMRDA.

The Department's investigation did reveal inconsistencies between Local 311's Constitution and Bylaws and the International's Constitution and Bylaws, including that the Local 311 Bylaws require three years of continuous good standing in order to be a candidate and the International Constitution and Bylaws require only two years of continuous good standing to be a candidate.

The three year continuous good standing requirement in the Local 311 Constitution and Bylaws violates Section 401(e) of the LMRDA. *See* 29 C.F.R. § 452.37 (membership requirement in excess of two years unreasonable). Article XIX, Section 3 of the International's Constitution and Bylaws contains a supremacy clause, which states that if a local affiliate adopts "any law without the approval hereinabove provided for or inconsistent with the provisions of this Constitution and Bylaws, such Local law shall be void and of no effect and the members of the local union shall not be bound thereby."

The Local's three year requirement appears to be invalid under the International Constitution. Nonetheless, the time period in question here was within the two year International requirement and the apparent defect in the Local constitution thus did not impact the evaluation of the alleged violation.

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

Sincerely,

Patricia Fox

Chief, Division of Enforcement

cc: [REDACTED], President

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P.O. Box 192
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Matthew Loeb, International President
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January 16, 2013

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your September 27, 2012 complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the election of officers conducted by the International Alliance of Theatrical Stage Employees (IATSE), Local 311 on May 5, 2012.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, there was no violation of the LMRDA.

You alleged that employer [REDACTED], Chairman and CEO of Production Resource Group (PRG), promoted the candidacy of your opponent, [REDACTED] in violation of section 401(g) of the LMRDA. Specifically, you alleged that the employer told [REDACTED] that he would rather close the business and relocate to New Jersey than work with you and another incumbent officer. Section 401(g) prohibits the use of union or employer funds to promote any candidate for union office.

Investigation found that [REDACTED] telephoned [REDACTED] in the evening after work to ask for a professional recommendation on behalf of a friend. [REDACTED] discussed the union election with [REDACTED] during that telephone conversation. [REDACTED] denied making any statement about relocating the business. The conversation between the two men, in and of itself, did not involve the use of employer or union resources to promote [REDACTED] candidacy. There was no violation of the LMRDA.

You also alleged that [REDACTED] proceeded to tell union members that [REDACTED] would close the business and relocate to New Jersey if you and another incumbent officer were reelected. The LMRDA does not, and unions may not, regulate or censor the campaign statements of candidates in any way, even if a statement includes derogatory remarks.

See 29 C.F.R. § 452.70. Thus, even if [REDACTED] made this statement, the statement was not a violation of the LMRDA.

You also made other allegations to the Department that you did not include in your initial protest or appeal to the union. Section 402 of the LMRDA requires that a member must have “exhausted the remedies available under the constitution and bylaws” of their union in order to file a complaint with the Secretary of Labor. In your letter dated May 28, 2012 to the Executive Board Members of Local 311, you failed to include these additional allegations. Thus, they are not properly within the scope of your complaint to the Department and were not included in the investigation. 29 C.F.R. § 452.136(b-1).

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: [REDACTED] President
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