



January 2, 2013



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on April 4, 2012, to initiate a proceeding under Title IV, Section 401(h), Subpart A, of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484. You alleged that the NetJets Association of Shared Aircraft Pilots' (NJASAP) Executive Board is not complying with the recall provisions contained in Section 5.6 of the NJASAP's Constitution and Bylaws.

The Department enforces provisions of the LMRDA, 29 U.S.C. §§ 401-484, including section 401(h), 29 U.S.C. § 481(h), which governs the adequacy of union constitutions and bylaws relating to the removal of local labor organization officers guilty of serious misconduct. To initiate proceedings under section 401(h) of the LMRDA to determine the adequacy of the constitution and bylaws for removal of such officers, a member who believes that an elected officer of the union has been guilty of serious misconduct and that the constitution and bylaws of the organization do not provide an adequate procedure for the removal of the officer must file a written application with the Department's Office of Labor-Management Standards (OLMS). *See* 29 C.F.R. § 417.3(a). The application shall set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer is guilty of serious misconduct. *See* 29 C.F.R. § 417.3(b). Further, upon receipt of the application, OLMS shall conduct an investigation of the allegations. *See* 29 C.F.R. § 417.4.

You alleged that the current NJASAP Bylaws are inadequate because the NJASAP Executive Board is not complying with the recall provisions contained in Section 5.6 of the NJASAP Bylaws. You further alleged that a recall procedure was initiated against the President of NJASAP, [REDACTED] because he acted without authority by announcing a picketing event against Berkshire-Hathaway. The Department's investigation has determined that your letter does not contain an allegation that the NJASAP Constitution and Bylaws do not "provide an adequate procedure for removal" of an officer who you believe has been guilty of serious misconduct" as required by section 401(h) of the LMRDA and the regulations. As such, your letter does not constitute a sufficient application filed under section 401(h) of the LMRDA to determine

the adequacy of NJASAP's Constitution and Bylaws for the removal of an officer. In fact, the investigation determined that you believe that the NJASAP Bylaws, Section 5.6, Elected Officer Recall Procedures are adequate, but that they are not being properly followed by the Executive Board. The section 401(h) procedure is not available to resolve this type of dispute.

For the reasons set forth above, the Department has concluded that no enforcement action will be initiated. I am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: NJASAP
Sonya Cook, General Counsel
630 Morrison Road, Suite 110
Gahanna, OH 43230

Christopher Wilkinson, Associate Solicitor
Civil Rights and Labor-Management



January 2, 2013



Dear [REDACTED]

This Statement of Reasons is in response to your application filed with the Department of Labor on April 5, 2012 to initiate a proceeding under Title IV, Section 401(h), Subpart A, of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484 regarding the removal of local labor organization officers.

The Department enforces provisions of the LMRDA, 29 U.S.C. §§ 401-484, including section 401(h), 29 U.S.C. § 481(h), which governs the adequacy of union constitutions and bylaws relating to the removal of local labor organization officers guilty of serious misconduct. To initiate proceedings under section 401(h) of the LMRDA to determine the adequacy of the constitution and bylaws for removal of such officers, a member who believes that an elected officer of the union has been guilty of serious misconduct and that the constitution and bylaws of the organization do not provide an adequate procedure for the removal of the officer must file a written application with the Department's Office of Labor-Management Standards (OLMS). *See* 29 C.F.R. § 417.3(a). The application must set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer is guilty of serious misconduct. *See* 29 C.F.R. § 417.3(b). Further, upon receipt of the application, OLMS shall conduct an investigation of the allegations. *See* 29 C.F.R. § 417.4.

The adequacy of a union's removal procedure will be examined and ruled upon by the Department only "where there is an appropriate context of acts or omissions that may constitute serious misconduct." *Director, Office of Elections, Trusteeships and International Union Audits v. Local 212, International Brotherhood of Electrical Workers*, slip op. at 10 (Assistant Secretary Decision (Dep't of Labor April 27, 1990)). In this regard, it is sufficient that there is a factual basis to support the charge that certain acts were committed or omitted and that these commissions or omissions may constitute serious

misconduct. There is no need for the Department to find that there is probable cause that the officer is actually guilty of serious misconduct.

The Department considers the following factors in determining whether the acts at issue may constitute serious misconduct. Those factors are that the act is:

1. Unlawful or otherwise improper, especially in connection with one's official duties (i.e. in violation of law or established rules or procedures, not actions that are merely unwise or in poor judgment, or done in the absence of guidelines);
2. Grave and concerns a matter that is important (i.e. , not trivial);
3. Undertaken knowingly (i.e. not accidentally or through carelessness or inadvertence).

Local 212, IBEW, slip op. at 8.

You alleged that the union president, [REDACTED] is guilty of serious misconduct and that the NetJets Association of Shared Aircraft Pilots' (NJASAP) Constitution and Bylaws do not provide an adequate procedure for the removal of an elected officer. The investigation established that the alleged serious misconduct concerns the January 10, 2012 executive board meeting during which an amended motion was passed to "approve the planning and feasibility for an informational picket" on May 12, 2012 at the Berkshire Hathaway Annual Shareholders Meeting in Omaha, Nebraska. On January 13, 2012, President [REDACTED] in his weekly communication to the members, wrote that "NJASAP will host a picketing event in Omaha in concert with the Berkshire Hathaway annual shareholder meeting. You can expect to receive more information about this important event in the weeks to come."

The Department's investigation revealed that you were on the executive board and objected to the message because the executive board did not approve the original motion, i.e., to approve informational picketing and only approved the amended motion to approve the planning and feasibility of an informational picket. As you are aware, the informational picket was never held. The serious misconduct being alleged is that President [REDACTED] announced the picketing event as an action that would occur as opposed to an action being studied. You contend that this conduct allegedly violated Section 2.3 of the NJASAP's Bylaws which provide that "I will faithfully adhere to the policies, directives and resolutions of the Executive Board."

With regard to the first *Local 212, IBEW* factor, President [REDACTED] statement was neither unlawful nor otherwise improper because the executive board voted to approve the

planning and feasibility of an informational picket. It would appear that [REDACTED] announcement may have been premature because the planning and feasibility for an informational picket had not occurred. However, [REDACTED] mere notice of the potential event with an explanation that "more information" would be forwarded later took no action inconsistent with the Board's resolution that the matter be studied.

In examining the second factor, any discrepancy between [REDACTED] announcement and the Board resolution was not a "grave" or "important matter," because there is nothing to indicate that [REDACTED] was implying that picketing would be conducted if the action was contrary to a Board order. The announcement lacked sufficient details for the members to act upon it and the announcement had no effect because the picketing did not occur. With respect to the third factor, [REDACTED] explained during the investigation that he believed the announcement properly reflected the majority view of the Board. Therefore, even if it could be considered misconduct, it would not be considered knowing misconduct.

Having examined the *Local 212, IBEW* factors, I conclude that the misconduct you alleged does not rise to the level of serious misconduct necessary to trigger an examination of the adequacy of NJASAP's officer removal procedures. Consequently, the Department is not required to make a determination regarding the adequacy of those procedures.

For the reasons set forth above, the Department has concluded that there is no basis for it to take enforcement action under Section 401(h), Subpart A, of Title IV of the LMRDA. I am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: NJASAP
Sonya Cook, General Counsel
630 Morrison Road, Suite 110
Gahanna, OH 43230

Christopher Wilkinson, Associate Solicitor
Civil Rights and Labor-Management

U.S. Department of Labor

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



January 2, 2013

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the Department of Labor on April 10, 2012, to initiate a proceeding under Title IV, Section 401(h), Subpart A, of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484. You alleged that the NetJets Association of Shared Aircraft Pilots' (NJASAP) Executive Board is not complying with the recall provisions in the NJASAP Constitution and Bylaws.

The Department enforces provisions of the LMRDA, 29 U.S.C. §§ 401-484, including section 401(h), 29 U.S.C. § 481(h), which governs the adequacy of union constitutions and bylaws relating to the removal of local labor organization officers guilty of serious misconduct. To initiate proceedings under section 401(h) of the LMRDA to determine the adequacy of the constitution and bylaws for removal of such officers, a member who believes that an elected officer of the union has been guilty of serious misconduct and that the constitution and bylaws of the organization do not provide an adequate procedure for the removal of the officer must file a written application with the Department's Office of Labor-Management Standards (OLMS). *See* 29 C.F.R. § 417.3(a). The application must set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer is guilty of serious misconduct. *See* 29 C.F.R. § 417.3(b). Further, upon receipt of the application, OLMS conducts an investigation of the allegations. *See* 29 C.F.R. § 417.4.

You alleged that a recall procedure was initiated against the President of NJASAP, [REDACTED] and that 670 recall petitions were submitted in support of the recall effort. You further alleged that [REDACTED] and the NJASAP Executive Board have failed to provide these petitions to the Elections Committee for signature verification and scheduling of a recall election. The Department's investigation has determined that your letter does not

contain an allegation that “the NJASAP Constitution and Bylaws do not provide an adequate procedure for removal of an officer who you believe has been guilty of serious misconduct” as required by section 401(h) of the LMRDA and the regulations. As such, your letter does not constitute a sufficient application filed under section 401(h) of the LMRDA to determine the adequacy of the NJASAP Constitution and Bylaws for the removal of an officer. In fact, the investigation determined that you believe that the NJASAP Bylaws, Section 5.6, Elected Officer Recall Procedures, are adequate, but that they are not being properly followed by the Executive Board. The section 401(h) procedure is not available to resolve this type of dispute.

For the reasons set forth above, the Department has concluded that no enforcement action will be initiated. I am closing our file regarding this matter.

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