



May 13, 2014

[REDACTED]

Dear [REDACTED],

This Statement of Reasons is in response to your December 11, 2013, complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers held by the International Union of Operating Engineers (IUOE), Local 701 on August 1, 2013.

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

First, you alleged that Local 701 issued a letter to its contractors in order to promote the candidacy of the incumbent candidate for business manager/financial secretary, Nelda Wilson, and to deny access to contractor worksites to members of your election slate. Section 401(g) of the LMRDA prohibits a union from using its funds to promote the candidacy of any person in an election subject to Title IV. *See* 29 C.F.R. § 452.73.

The investigation disclosed that Local 701 sent a letter to its contractors on February 18, 2013, notifying them that you, [REDACTED] were no longer employees of Local 701. According to Local 701, it had received several calls from contractors complaining that the three of you were gathering nomination signatures at jobsites. The letter stated that the contractors should not grant these individuals special access to job sites permitted of employees of the union. This letter did not result in the loss of any access that you were due as a candidate in the election. Your allegation that this letter kept you from finding work at the job site is outside the coverage of Title IV. There was not a violation of the LMRDA.

Second, you alleged that incumbent business manager/financial secretary Wilson accessed job sites without the contractor's permission and posted campaign literature. Section 401(c) of the LMRDA requires that there be adequate safeguards to ensure a fair election, which imposes a general obligation of fairness on elections. 29 C.F.R. §

452.110. Specifically, you referred to information received from [REDACTED] that Wilson posted campaign material at the Knife River job site.

The investigation disclosed that Wilson did post campaign literature at the Knife River job site, but did so with the contractor's permission on a bulletin board reserved for union materials. Further, it was a public job site to which other candidates had access. Accordingly, there was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I am closing our file regarding this matter.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

cc: James T. Callahan, General President
International Union of Operating Engineers
1125 Seventeenth Street, N.W.
Washington, DC 20036-47404

Robin Wicklander, President
Operating Engineers Local 701
555 East First Street
Gladstone, Oregon

Christopher Wilkinson, Associate Solicitor
for Civil Rights and Labor-Management



May 13, 2014

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your December 11, 2013, complaint filed with the U.S. Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers held by the International Union of Operating Engineers (IUOE), Local 701 on August 1, 2013.

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

You alleged that the union violated the LMRDA when Local 701's incumbent Business Manager/Financial Secretary, Nelda Wilson, used an attorney hired by Local 701 to serve as an election expert, which helped her own campaign. Section 401(g) of the LMRDA prohibits a union from using its funds to promote the candidacy of any person in an election subject to Title IV. *See* 29 C.F.R. § 452.73. Specifically, you alleged that the attorney's July 5, 2013, letter to candidates waiving the deadline for submitting campaign requests benefitted Wilson's campaign and harmed your slate because your slate had planned its campaign mailings according to the deadline in the local union bylaws.

The investigation determined that attorney Cathy Highet was hired by Wilson with the approval of the executive board to provide advice about the election process. She reported to Wilson, but her client was Local 701. Upon reviewing Local 701's bylaws, she noticed that Article XVI, Section 4(j) of the bylaws only permitted candidates to request distribution of campaign literature through the designated mailing company until the first Friday of July. Highet determined that this was a possible violation of the LMRDA. She composed a letter to candidates informing them that this date would be waived, discussed it with the Executive Board, and sent it to candidates on July 5, 2013.

The investigation further revealed that Wilson's campaign sent its last mailing on July 5, 2013, the first Friday of July, consistent with the bylaw. The [REDACTED] slate commissioned its last mailing on July 11, 2013, showing pictures of the [REDACTED] slate,

including you, along with a narrative. Accordingly, the only slate that took advantage of the extended deadline for submitting campaign literature was your own slate, and the extended deadline did not promote Wilson's candidacy. In any event, the waiving of a bylaw that may be contrary to the LMRDA, where all interested parties are given equal notice, would not violate the statute. There was no violation of the LMRDA.

You also alleged that the attorney's investigation on behalf of Local 701 of an allegation that you were improperly campaigning at Good Samaritan Hospital was also undertaken to promote Wilson's election campaign in violation of the LMRDA.

The investigation disclosed that during the election cycle, you were the lead negotiator in negotiations over a contract at Good Samaritan Hospital. In response to concerns that you were engaged in campaigning while on union time, Wilson asked Hight to investigate this matter, during which time you were taken off the negotiating team. While the results of the investigation were never formally communicated to you, you were reinstated to the negotiating team. The investigation neither disclosed any impropriety in conducting this investigation, nor found that the investigation was undertaken to promote Wilson's candidacy. Accordingly, there was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I am closing our file regarding this matter.

Sincerely,

Patricia Fox, Chief
Division of Enforcement

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