



January 23, 2015

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the U.S. Department of Labor on August 25, 2014, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers conducted by the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) at its convention held June 30–July 2, 2014.

The Department of Labor conducted an investigation of your allegation. As a result of its investigation, the Department has concluded that there was no violation of the LMRDA. The following is an explanation of this conclusion.

You asserted that article 21B, section 7(d) of the SMART Constitution and Ritual requires members to have exercisable seniority rights in transportation service to be eligible for election to Transportation Division office. You alleged that [REDACTED] had executed an injury settlement agreement resigning his seniority and therefore did not have exercisable seniority rights in transportation service, and that the union nevertheless allowed him to run for office.

Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed, and that the election shall be conducted in accordance with the constitution and bylaws of the union insofar as they are not inconsistent with the provisions of the LMRDA. Article 21B, section 7 of the SMART Constitution and Ritual provides as follows:

[A]ny member paying full dues shall be eligible for election to any office in the Transportation Division, except a member who: . . .

(d) Does not hold seniority rights in transportation service, other fields of employment trades and industries, whether in public or

private employment where the Transportation Division holds the contract, except this does not apply when a member is dismissed from service and his case is being appealed

The Department's investigation determined that in June 1999, while serving as a union officer, ██████ signed an agreement not to return to work with Union Pacific. The agreement resulted in ██████ remaining on the seniority roster without the right to return to active service. If, as you assert, article 21B, section 7(d) requires that the member's seniority rights be "exercisable" in order to run for office, it appears that ██████ is not eligible to hold office.

However, the investigation disclosed that the Transportation Division does not currently interpret this provision as requiring that candidates for office have "exercisable" seniority rights. During the investigation, Transportation Division President John Previsich explained that the text of article 21B, section 7(d) does not include the word "exercisable" and that any prior attempts to insert that concept into the language of the constitution were therefore erroneous. Courts have held that a union's interpretation of its constitution will be respected to the extent that it is fair and reasonable. Similarly, the Department's interpretive regulations provide that the interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted by the Department unless the interpretation is clearly unreasonable. 29 C.F.R. § 452.3.

The investigation further determined, however, that the union has not consistently interpreted the language in question. In 2011, the former United Transportation Union (UTU) merged with the Sheet Metal Workers International Association to create SMART. Article 7(d) of the UTU Constitution contained language that was identical to the language that now appears in article 21B, section 7(d) of the SMART Constitution and Ritual (except that the UTU's provision referred to "United Transportation Union" instead of "Transportation Division").

The Department's investigation disclosed that, over the course of about two decades, UTU officials were inconsistent in whether they interpreted article 7(d) as requiring officers and candidates for office to have "exercisable" seniority rights.

In March 1987, UTU International ██████ ruled that ██████ was eligible to run for office because his name appeared on a seniority roster for Consolidated Rail Corporation, even though he had, as part of a settlement, executed an agreement not to return to work.

Then, in December 1988, ██████ issued a policy letter addressing whether an officer "can accept the severance payment which requires the resignation from his/her carrier and relinquishment of all seniority rights and remain in his/her office for the remainder of the elected term of office." ██████ stated that such a person would relinquish his or

her seniority and therefore could not remain in office, even if the employer allowed his or her name to remain on the seniority roster.

In June 1989, ██████ applied the December 1988 policy letter to ██████, who had signed a letter of agreement that included the term "I will not present myself for employment or reemployment at any time in the future by the Consolidated Rail Corporation." ██████ notified ██████ that this agreement rendered him ineligible to hold office. However, ██████ decision was appealed to the UTU Board of Directors. In October 1989, the Board sustained the appeal, ruling that ██████ was eligible to hold office.

Because no records were kept, the basis on which the Board sustained the appeal in ██████ case is not clear. In a February 1990 letter to ██████ regarding the case, ██████ stated that "[t]here were extenuating circumstances that prompted the Board to render its decision" and that he would apply the December 1988 policy letter in the future if he found it necessary.

Nevertheless, in 2002, UTU International ██████ relied on the Board's decision in ██████ case to reject the argument that article 7(d) of the UTU Constitution required officers and candidates for office to have "exercisable" seniority rights. In April 2002, ██████ ruled that whether a disabled member "may or may not have 'exercisable' seniority rights has no bearing on his Article 7 eligibility to retain office or be a candidate for any UTU office." And in May 2002, ██████ explained that a member's eligibility for office depended on whether his or her name was "maintained on a seniority roster," not whether he or she had "exercisable" seniority rights.

Five years later, in connection with the officer elections conducted at the UTU's August 2007 convention, UTU International ██████ changed course and incorporated the "exercisable" condition into the seniority rights requirement of article 7(d). He applied that interpretation to rule ██████ and ██████ ineligible. Both cases were appealed to the Board, which reached different outcomes in the two cases: It ruled that ██████ was ineligible for office, but it reinstated ██████ to office "because the strict application of the requirements of Article 7 in this case" would be "fundamentally unfair."

In response to complaints about the UTU's August 2007 elections, the Department investigated these and other eligibility determinations. ██████ and other UTU officials represented to the Department that the union had consistently required that seniority rights be "exercisable," and they characterized prior determinations to the contrary as anomalous. With regard to the Board's reasoning in ██████ case, UTU officials told the Department that the Board sustained the appeal because ██████ relied on advice from the UTU general counsel that signing the letter of agreement would not affect his eligibility for union office.

UTU officials further told the Department that Boyd's 2002 decisions rejecting the argument that seniority rights must be "exercisable" were not official UTU policy. In addition, in a December 2007 letter to the Department, UTU's general counsel asserted that "[t]he UTU defines 'seniority rights' as exercisable rights wherein an individual may return to service if capable to perform such service." The Department found that this interpretation was not clearly unreasonable, and it concluded that the union had violated its constitution (and thus the LMRDA) by reinstating [REDACTED], who did not have "exercisable" seniority rights.

As noted above, however, during the Department's investigation of the present case, Previsich provided an interpretation of article 21B, section 7(d) of the SMART Constitution and Ritual that rejects the incorporation of "exercisable" into the provision. Previsich explained that UTU presidents' attempts to add "exercisable" to seniority rights determinations may have been politically motivated, and he noted that the Board had overturned some such decisions.

Because the union has not consistently interpreted the language in question, the Department does not owe deference to its current interpretation. However, the union's current interpretation is reasonable and fair. It is consistent with the plain language of article 21B, section 7(d), which requires only that officers and candidates for office have "seniority rights," not that those rights be "exercisable." Furthermore, the union's current interpretation renders eligible for office a greater proportion of members, and thus it is consistent with section 401(e) of the LMRDA, which provides that every member in good standing shall be eligible to be a candidate and to hold office, subject to reasonable qualifications uniformly imposed. It would not be reasonable and fair, however, for the union to switch course in the future and insert the "exercisable" requirement in this qualification, absent a change in the language of the constitution.

In sum, the Department's investigation disclosed that the union acted in accordance with the plain language of article 21B, section 7(d) when it ruled that [REDACTED] was eligible for Transportation Division office. Although the Department's investigation uncovered evidence that was not available to the union when it considered your protest, establishing that [REDACTED] had signed an agreement not to return to work with Union Pacific, there is no evidence that the agreement constituted a resignation or that it affected [REDACTED] seniority rights. Rather, the agreement resulted in [REDACTED] remaining on the seniority roster without the right to return to active service. [REDACTED] retained seniority rights in transportation service and thus was eligible for office according to the plain language of article 21B, section 7(d).

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Joseph Nigro, International President
SMART
1750 New York Avenue, N.W., Suite 600
Washington, DC 20006

John Previsich, President
SMART Transportation Division



Christopher B. Wilkinson, Associate Solicitor
Civil Rights and Labor-Management