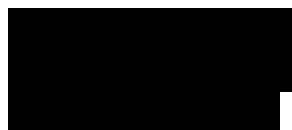




June 23, 2016



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint received by the Department of Labor on April 30, 2015, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of Local 175 (Local 175 or local), International Association of Machinists (International), conducted on December 21, 2014.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged that Local 175 improperly voided all votes for trustee where voters did not vote for the full complement of three trustee candidates. Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing is entitled to vote. Article III, section 13 of the International Constitution provides that whenever two or more officers are to be elected to the same office, failure to vote for the required number of candidates shall invalidate the vote for that office. Eight candidates ran for three trustee positions. The ballot mandated the member "must vote for 3" trustees. You were the incumbent secretary treasurer at the time of the election. Contrary to the Constitution, you instructed Elections USA, the company the local hired to conduct its election, *not* to void any vote for trustee where the voter failed to vote for three trustees. The Department reviewed Elections USA's election voting machine tapes which showed that each under-vote was recorded. That is, if a member voted for one instead of three trustees, his one vote was included in the tally. This indicated that members who did not vote for all three trustees nevertheless had their vote included in the tally. There was no denial of the right to vote, as you alleged.

However, section 401(e) provides that union elections must be conducted in accordance with a union's constitution and bylaws. Your directive not to void under-votes, with which the election company complied, violated the express terms of Article III, section

13 of the International Constitution. Further, the investigation disclosed that the local's voting instructions on the absentee ballot and on the voting machines did not inform voters that their failure to vote for less than three candidates for trustee would render their vote for trustee void. However, even if the union's failure to follow the Constitution was a violation, there would be no effect on the outcome of the election. The investigation disclosed that 40 members voted for fewer than three trustees; the lowest margin of victory for trustee was 49 votes. Consequently, even if those members' votes for trustee had been voided, there could have been no effect on the outcome of the election for trustees.

You next alleged that a candidate for president was treated more favorably than other candidates, [REDACTED]. You stated that this occurred at a membership meeting where one member lauded the achievements of presidential candidate Brian Zarilla, who ultimately won that office. Section 401(c) of the LMRDA provides, in relevant part, that unions shall provide adequate safeguards to ensure a fair election. Adequate safeguards include the equal treatment of candidates. 29 C.F.R. §§ 452.66 and 452.67. The investigation disclosed that in accordance with its past practice, the local permitted any member to address the membership at its membership meetings. One member stood and thanked Brian Zarilla for successfully handling his grievance. All other members, [REDACTED], a seasoned officer, had the opportunity to address the membership, but declined to do so. There was no unequal treatment of candidates. There was no violation.

You also alleged that the son of one of the candidates may have been discouraged from voting because one of the tellers made a remark regarding that member's father. Section 401(e) provides that every member in good standing shall be permitted to vote for the candidate of his choice. The investigation disclosed that the member in question voted, and his vote was included in the tally. There was no violation.

You next alleged that the local improperly permitted retirees and exempt members to vote for president, vice president and chief shop steward, in violation of the International's Official Circular 815. The investigation determined that the local permitted retired and exempt members to vote for president, but not for chief shop steward. There was no election for vice president as that office was uncontested.

The Department's regulations provide that the right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the union. 29 C.F.R. § 452.93. The union's "exempt" members, those who are not required to pay dues, are those with more than 30 years of membership, entitled to a death benefit and who are no longer working because of disability. The relevant Department regulation provides that members who do not pay dues *may* be denied the right to vote. See 29 C.F.R. § 452.86. The International's Official Circular 815, section A, provides that retired and exempt members may vote in local elections for constitutional offices, among other positions, but may not vote for any position that has a direct impact on the collective bargaining agreement, such as stewards or committee persons. The Official Circular is a

supplement issued by the International to interpret its constitution. As such, the Official Circular has the effect of a governing document to which compliance is required. *See* 29 C.F.R. § 452.53. Consistent with the governing documents, retirees and exempt members were allowed to vote for president. Moreover, contrary to your allegation, the union did not allow retirees and exempt members to vote for chief shop steward. As the local bylaws do not list chief shop steward as a constitutional officer and restricts their voting for stewards, the union acted consistent with the bylaws in not permitting retirees and exempts from participating in the chief steward election. The International's action with respect to voting allowed by retirees and exempt members was consistent with its governing documents and Department of Labor regulations. There was no violation.

You further alleged that some regular members received ballots that did not contain the position of chief shop steward. The investigation revealed that these were ballots meant for retiree members voting by absentee ballot. Retirees do not vote for chief shop steward. The Department's investigation disclosed that two regular members were sent a retiree ballot that did not contain the position of chief shop steward. However, since the margin of victory for chief shop steward was 49 votes, this violation could not have affected the outcome of the election for chief shop steward.

You also alleged that absentee ballots were returned by hand to the chief shop steward, instead of by mail. None of your witnesses corroborated your allegation, nor did the Department's investigation find any such evidence that this occurred. There was no violation.

You finally alleged that the local permitted members to run for more than one office, in violation of the International Constitution. Article B, section 4 of the International Constitution provides that a member may only be nominated and run for one office. Several candidates ran for two positions, a constitutional office and auditor. The International interprets "office" to mean the "constitutional officers" listed in Article B, Section 1 of its Constitution. The International's interpretation is not unreasonable and is therefore accepted. 29 C.F.R. § 452.3. The position of auditor is not listed among the constitutional officers in Article B, section 1 of the International Constitution. Consequently, the local properly permitted candidates to run for one constitutional office and any other non-constitutional office. There was no violation.

For the reasons set forth above, your administrative complaint to the Department is dismissed, and I have closed the file in this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

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