



November 2, 2016

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your June 8, 2015 complaint to 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 of Local 78 (local or Local 78), Laborers' International Union of North America (International), that was held on June 20, 2015.

The 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 the local improperly disqualified you from running for office when it determined you were not "working at the calling." You stated that you held no permanent job as supervisor and never recommended adverse employment actions. You also told the Department that for two covered employers, you served as a "competent person." The definition of "competent person" includes one having the authority to take prompt corrective actions.

Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing shall be eligible to be a candidate, subject to reasonable qualifications. The local's eligibility requirements are contained in the International's Uniform Local Union Constitution (ULUC) including the "working at the calling" provision. "Working at the calling" includes employment for which the union serves as the exclusive collective bargaining representative of employees. The International does not consider supervisors on a permanent basis to be "working at the calling" because a supervisor is expected to be an advocate for the employer's interests while an elected officer is expected to be a zealous proponent of the union's interests. *See* Local Union Officer Elections: A Guide for Local Union Judges of Election (Election Guide), Chapter 4, p. 18.

The International determines whether a member is a supervisor based on whether a member's duties, pay, and role in management of the company indicate a conflict of interest between his obligations to the employer and his obligations to the local. *See* Election Guide, Chapter 4, p. 22. This standard is supplemented by decisions of the International Hearing Officer (IHO), who relied on the Election Guide and other resources in formulating the criteria for determining supervisory status.¹ A review of some of those IHO decisions shows that the criteria for determining supervisory status is based on a member's authority to recommend to the employer various employment actions, including hiring, discharging, suspending, laying off, and promoting workers, among other employment actions. The Department of Labor employs a similar standard in determining supervisory status.

To be eligible to run for local union office, members had to have worked at the calling for the entire one year immediately prior to the May 5-6, 2015 nominations meetings. The investigation disclosed that at the time of the election, you held asbestos licenses from the State of New York and New York City and had worked for Abatech Industries and Pinnacle Environmental Corporation until December 2014. In your candidate questionnaire and your interview with the election judges, you acknowledged you served as a supervisor for these two companies and had the authority to hire, suspend, and discharge employees. The investigation also disclosed that members at times called you to obtain work. In addition, two members submitted statements in which they attested that you had the authority to hire and fire workers during the one-year period under examination. Abatech and Pinnacle also provided documentary evidence showing that you served in a supervisory capacity with the authority to hire and discharge workers. All of this evidence is consistent with your statement that as a "competent person," you had the authority to take prompt corrective action, which seemingly would include the authority to recommend hiring, discharging, and suspending workers, regardless of whether you exercised that option. Because of your supervisory status, you cannot be said to have been working at the calling for the requisite time frame, and the local properly disqualified your candidacy. There was no violation.

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

¹ Pursuant to a settlement agreement reached in February 1995 between the Department of Justice and the International, a federal district court appointed an International Hearing Officer to investigate and resolve protests regarding the elections of the International and its subordinates. The International regularly relies on the decisions of the IHO in determining the "working at the calling" status of its members.

Sincerely,

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