



September 27, 2016



Dear [REDACTED]:

You filed two complaints with the Department of Labor. This Statement of Reasons is in response to your July 1, 2015 complaint. In your complaint, you allege that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in the election of district officers conducted by the International Association of Machinists (IAM) District Lodge (DL) 837 on March 28, 2015.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that, with respect to your allegations, no violation of the LMRDA occurred that affected the outcome of the election. The following letter explains these conclusions.

In your protest, you allege that IAM DL 837 violated the LMRDA when it allowed retiree members to vote by absentee ballot by claiming they were on vacation. You state that the incumbent slate sent absentee ballot request cards to all the DL's retiree members with "on vacation" circled. You also note that the delegates at the 2012 Grand Lodge Convention rejected a proposal to allow all retiree members to vote by absentee ballot for the reason of being on vacation.

Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Section 401(e) of the LMRDA further stipulates that union officer elections shall be conducted in accordance with the constitution and bylaws of the labor organization. The IAM constitution and the DL 837 bylaws do not address the issue of retirees requesting absentee ballots due to vacation or candidates providing pre-circled absentee ballot request cards.

During its investigation, the Department interviewed a number of IAM International and DL 837 officials. DL 837 asserted that its past practice has been to allow retiree members to indicate that they are "on vacation" in order to request an absentee ballot. DL 837 argued that it based this policy on its interpretation of a letter received from the Department in 1999, which set out the rules for a supervised election held that year. It

has also been the District Lodge's practice to permit pre-circling of cards if the reason circled is legitimate.

The IAM International stated that its general policy is that retiree members cannot vote absentee ballots for reason of being on vacation. The International asserted that it made an exception for DL 837 in the March 28, 2015 election and prior DL elections because of the Department's 1999 letter. In this regard, the Department notes that the rules set out in its 1999 letter, including one which stated that eligibility for absentee ballots "which cannot practically be verified (i.e., vacation and illness by retirees or laid off members) will be presumed as valid," were based on the practicalities of supervising that election. The letter did not require the union to maintain any particular policy regarding retiree absentee voting going forward.

During its investigation, the Department found that the Local did permit retired members to vote absentee by claiming they were on vacation. The Department determined, however, that this policy does not violate the IAM constitution, the District Lodge bylaws, or the Local 837A bylaws, which are silent on the subject, and that it is consistent with the policy of the LMRDA to facilitate voting by all members. Thus, the Department found no violation.

You allege that DL 837 violated the LMRDA by using its March 2015 newsletter, District 837 Speed Facts, to promote the candidacies of the incumbent officers by highlighting an arbitration victory. You state that you believed the DL timed its release of the March 2015 newsletter announcing its arbitration victory to influence the election. You also allege that the DL used its Aero Facts 837 newsletter to promote the incumbent candidates. Section 401(g) of the LMRDA prohibits a union from using its funds or resources to promote or disparage a candidate for union office.

The Department found no evidence that either of DL 837's publications were used to promote or disparage a candidate. The investigation did not find that the timing of the March 2015 Speed Facts newsletter was suspect. The arbitration ruling was February 2, 2015; however, DL 837 officers and the employer negotiated a number of details before finalizing a settlement in March. Furthermore, the contents of the March 2015 issues of Speed Facts and Aero Facts did not promote any candidate. Thus, the Department found no violation.

You allege that Secretary-Treasurer DeWitt Darity used DL 837's March 12, 2015 retiree club meeting to campaign by responding to your campaign literature at the podium. Section 401(c) of the LMRDA requires that unions provide adequate safeguards to ensure a fair election. Thus, unions may not engage in disparate candidate treatment. Section 401(g) of the LMRDA prohibits campaigning on union time. *See* 29 C.F.R. § 452.76.

The Department's investigation found that your slate handed out campaign literature outside the event stating retiree members could not request absentee ballots by claiming to be on vacation. The investigation disclosed that although Darity did speak about your campaign literature at the retiree meeting, what he said did not constitute campaigning. The Department found that it is a common practice for DL 837 officers to attend and briefly speak about lodge matters at retiree club meetings. At the March 12, 2015 retiree club meeting, Darity clarified the rules in the upcoming election regarding retiree requests for absentee ballots. He did not speak negatively of your candidacy nor did he promote his own. The Department did not find a violation.

You also allege that DL 837 improperly allowed the McDerman/Darity slate to put "M/D" after every McDerman/Darity candidate's name, and that other candidates were not given this option. Section 401(c) of the LMRDA requires that unions provide adequate safeguards ensuring a fair election. "A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness. For example, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege." 29 C.F.R. § 452.110.

The Department found that candidates affiliated with the incumbent slate had a "M/D" next to their names on the official ballot. Department of Labor regulations provide that candidates may be listed according to their slate affiliation, so long as candidates are treated equally in this regard. . The IAM constitution and the DL 837 bylaws do not prohibit the use of slate names or initials on the ballot. The Department's investigation disclosed that other candidates have used slate initials in past DL 837 elections. Furthermore, the election judge asked every candidate how they wanted their name to appear on the ballot, and no other candidates requested a similar entry by their names. The Department found no evidence that any candidate received different treatment in this regard. The IAM International took the position that this practice should cease in future elections, but it did not affect the outcome of the election. There was no violation.

You allege that DL 837 improperly allowed some retirees to vote for plant chairmen and lodge negotiators, and allowed at least one non-member to vote based on an inaccurate membership list. Section 401(e) of the LMRDA provides that every member of a union in good standing has the right to vote in local elections. Under the Department's regulations, a union may qualify this right to vote with reasonable rules, such as requiring payment of dues, so long as the union applies them in a nondiscriminatory fashion. *See* 29 C.F.R. §§ 452.85-86.

After reviewing the membership and voting lists, the Department's investigation confirmed that two recently-retired members were allowed to vote active member ballots because of a delay in processing their retirement paperwork. Their votes,

however, did not affect any LMRDA-covered race. The Department also identified one former member who had been terminated by Boeing in 2013 but was allowed to vote. Her name was still on the membership list as an active member even though she had not paid dues since her termination. The Department identified one other former member who was allowed to vote. The number of votes affected by the violations was insufficient to have affected the outcome of any LMRDA-covered race.

You allege that DL 837 denied certain members the right to vote. In particular, you state that the DL improperly prohibited a retired member from voting because he did not present photo identification at the polls. You also assert that the DL refused absentee ballot requests from a disproportionate number of your slate's supporters. Finally, you state that one member, who was refused an absentee ballot, attempted to vote at the polls but was told he was not on the eligibility list. As discussed above, the LMRDA and the Department's regulations state that every member in good standing has a right to vote and that a union may qualify this right to vote with reasonable rules, so long as they are applied in an even-handed fashion.

Although IAM rules require members to present photo identification to vote, the Department's investigation disclosed no evidence that DL 837 improperly or inconsistently applied this rule. The Department also found that the DL handled absentee ballot requests systematically and fairly. The DL's office secretary collected and date stamped the absentee ballot requests. DL General Secretary [REDACTED] recorded those requests in a spreadsheet. Election Judge [REDACTED] reviewed the rejected requests and signed the rejection letter mailed to the requesting member. There was no evidence of any discriminatory practices in this process. The Department's investigation did confirm that one member, who was refused an absentee ballot, was not permitted to vote at the polls because he was not on the eligibility list. The investigation disclosed that that member was actually listed with his first and last name in reverse order. Thus, this member was improperly denied a vote. This violation did not affect the outcome of the election.

Lastly, you allege that some ballots were missing the DL 837 seal as required by the bylaws, although you also note that you are not accusing the Local of engaging in fraud. You also assert that one member received an absentee ballot without having requested it. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to ensure a fair election. Section 401(e) of the LMRDA further stipulates that union officer elections shall be conducted in accordance with the constitution and bylaws of the labor organization. The DL 837 bylaws, Article V, Section 3, require that all ballots "bear the seal of Aerospace District Lodge No. 837." Election Judge [REDACTED] admitted that he forgot to stamp the ballots used at the polls. There was no evidence of ballot fraud. Although the Department substantiated your allegation, it found that this violation did not affect the outcome of the election.

The Department confirmed that one member received an absentee ballot without having requested it. The member did not both vote at the polls and cast an absentee ballot. Moreover, the Department found no evidence of a widespread problem with members receiving unrequested absentee ballots. Thus, there was no effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that affected the outcome of the election. Accordingly, the Department has closed the file on this matter.

Sincerely,

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