



February 24, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint dated August 12, 2008, filed with the United States Department of Labor ("Department of Labor" or "Department"), alleging that the International Longshoremen's Association ("ILA"), violated Title IV of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 481- 484, in ordering a rerun of the 2008 election of officers of United Marine Division, Local 333 ("Local 333"), that was conducted on March 31, 2008.

The Department of Labor conducted an investigation of your allegation. As a result of the investigation, the Department has concluded that no basis exists for setting aside the ILA's decision to rerun the March 31, 2008 election.

In the March 31, 2008 election, William Harrigan and Michael Brandon were successful opposition candidates for the positions of president and secretary-treasurer, respectively, having defeated the incumbent candidates. The chair of Local 333's election committee, [REDACTED], challenged the outcome of the election, alleging that Staten Island Ferry members were wrongfully permitted to vote without having first paid an initiation fee. The Atlantic Coast District of the ILA upheld the election protest and ordered a rerun election. On your appeal, the ILA's Executive Council upheld the District's decision and ordered a rerun election.

In your complaint, you alleged that the ILA erred in ordering a rerun of the March 31, 2008 election of local officers inasmuch as no violation of the union constitution or the Labor-Management Reporting and Disclosure Act ("LMRDA" or "the Act"), 29 U.S.C. §§ 481-483, occurred in connection with that election. However, this standard is inapplicable to the Department's determination of whether a union-ordered rerun election is improper.

The requirement set out in section 402(a) of the LMRDA, 29 U.S.C. § 482(a), that a member exhaust internal union remedies before complaining to the Secretary of a violation of Section 401 of the LMRDA, was included in the Act to give unions a chance to correct election problems and deficiencies, thereby preserving a maximum amount of independence and encouraging responsible self-government. In furtherance of this legislative objective, the Secretary accords a degree of deference to decisions on internal union election protests providing for the conduct of a new election. The Secretary will not seek to reverse a union's remedial decision to hold a new election, even if the evidence could be viewed as insufficient to support a decision by the Secretary to sue to overturn the original election, unless it is apparent that the decision was based on the application of a rule that violates the LMRDA; the decision was made in bad faith, such as to afford losing candidates a second opportunity to win; or the decision is otherwise contrary to the principles of union democracy embodied in the statute and holding a new election is unreasonable.

The Department of Labor investigation of your complaint revealed that the ILA overturned the Local 333 officer election because some Staten Island Ferry members were permitted to vote in the March 31, 2008 election without first paying initiation fees. The ILA ordered a rerun election since the ballots cast by those members could have affected the outcome of the local officer election. The ILA is permitted to order a rerun election, even if no LMRDA violations occurred, if it determines the integrity of the election process was compromised.

You also contend that the ILA's decision to order a rerun was improper because the ILA Constitution gives affiliated local unions discretion not only to set initiation fees but also to determine whether to institute initiation fees in the first instance. Therefore, you contend that the Staten Island Ferry members were properly allowed to cast votes in the March 31, 2008 election without first paying initiation fees since the local executive board had waived initiation fees for this subgroup of members. The ILA, however, disagrees that the ILA Constitution provides its affiliated local unions broad authority to waive initiation fees for members.

In dispute is Article XVI, Section 1(a) of the ILA Constitution, which states, "Each local union shall fix the dues and initiation fees of its members . . . provided, however, that such initiation fee shall not be less than fifty (\$50.00) dollars." While Article XVI, Section 1(a) does not specifically address the question of whether initiation fees can be waived, the ILA interprets the section to mean that a local must charge initiation fees for full membership rights, unless the fee is waived under the limited exception provided in Article XVI, Section 1(c) of the ILA Constitution. That provision provides for a waiver of initiation fees for newly established bargaining units. As the local was not seeking to establish a new bargaining unit when it waived the initiation fees for Staten Island Ferry members, the ILA ruled that the waiver provision does not apply in this

case. Therefore, the ILA determined that the local did not have authority to waive initiation fees for the Staten Island Ferry members. Consequently, the ILA concluded that the ballots cast by the Ferry workers should not have been counted. Because those votes could have affected the outcome of the election for all offices, the ILA upheld the challenge and ordered a rerun election.

Under the LMRDA, the interpretation consistently placed on a union's constitution by the responsible official or governing body will be accepted unless clearly unreasonable. 29 C.F.R. § 452.3. There was no evidence that the ILA has been inconsistent in the interpretation of these provisions, and the ILA's interpretation is not clearly unreasonable. Moreover, there was no evidence that the ILA acted in bad faith in upholding the challenge to the election and ordering a rerun. Nor did the investigation reveal undisputed evidence that the international was aware prior to 2008 of the local's decision to waive initiation fees for some members.

Based on the foregoing, the ILA's decision to conduct a rerun election did not violate the LMRDA. Therefore, there is no basis for bringing an enforcement action to have the decision overturned. Accordingly, I am closing our file on this matter.

Sincerely,

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Chief, Division of Enforcement

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