



July 14, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed with the United States Department of Labor on February 25, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of Local 16, International Association of Heat and Frost Insulators and Asbestos Workers (International), conducted on November 15, 2008.

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

You alleged you were not afforded the same access to membership lists as other candidates when the local provided you with a membership list that did not include abatement workers but provided your opponent with a comprehensive membership list that included abatement workers. The investigation disclosed that on or about October 29, 2008, you requested two lists, one containing members' telephone numbers and another containing mailing labels for members. Upon receiving those lists, which also included apprentice members, you contacted Business Manager Steve Steele and arranged to receive another membership list that did not contain the names of apprentices. Although you received that list on November 1, 2008, you did not inspect it until November 11, 2008, when you realized abatement workers were not included in the lists. You concluded that it was too late to make a mailing at this point and did not contact Business Manager Steele for mailing labels and telephone numbers for abatement workers.

Section 401(c) of the LMRDA prohibits unions from discriminating in favor of or against any candidate with respect to the use of lists of members. 29 C.F.R. § 452.71(b). The

investigation failed to show that the union acted in a discriminatory manner against you with respect to its membership lists, including its mailing labels and telephone list for abatement workers. You failed to contact the Business Manager after learning that the abatement workers were not included in the list provided to you. One of your opponents, [REDACTED], similarly did not receive a portion of the entire membership list and contacted Business Manager Steele on November 12, 2008, one day after you learned of your incomplete list. The local immediately emailed him a list of firestop members along with those members' contact information. You had a similar opportunity to obtain a list of abatement workers but did not pursue it. There was no discrimination against you. There was no violation.

You alleged that the local permitted eight superintendents to vote in the election even though superintendents are prohibited from voting under the International Constitution, Local 16 Bylaws, and the Master Agreement. Section 401(e) of the LMRDA provides, in relevant part, that every member in good standing is entitled to vote. The right to vote may be qualified by reasonable rules and regulations in a union's constitution and bylaws, including restrictions on voting by managers who retain membership in the union. *See* 29 C.F.R. § 452.85; 452.91 (voting by managers "is not precluded").

Local 16 permits superintendents to be members in good standing for purposes of participating in the union's pension fund, but prohibits superintendents, under Article I, section 8 of the Local 16 Constitution, from voting in an election of officers. However, the local constitution does not expressly define "superintendents" except to describe the type of work performed or prohibited by a superintendent. Article I, section 8 of the Local 16 Constitution provides, in relevant part, that a "superintendent, as an employee of the contractors, may take off, estimate or sell, but shall not use the tools of the trade." The phrase "tools of the trade" is echoed in the collective bargaining agreement (CBA) between this local and its employer association. Article III, section 73 of the CBA provides, in relevant part, that no "Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) on an Individual Employer's license . . . shall use the tools of the trade, or personally perform any of the work covered by this [CBA]."

Using these criteria, the investigation disclosed that two of the individuals you identified do not use "the tools of the trade" and should not have been permitted to vote. However, the inclusion of their votes had no effect on the outcome of the election because all offices were won by margins of 7 or more votes. There was no violation that may have affected the outcome of the election.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA affecting the outcome of the election, and I have closed the file in this matter.

Sincerely,



Patricia Fox
Acting Chief, Division of Enforcement

cc: James A. Grogan, General President
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