



June 13, 2019

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the pre-election complaint you filed with the Department of Labor on August 10, 2018, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) had occurred in connection with the election of union officers that was scheduled to be conducted by the United Government Security Officers of America (UGSOA) Local 129 on August 22, 2018. This election was conducted as scheduled.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that there was no violation of the LMRDA that may have affected the outcome of the election. Following is an explanation of this conclusion.

You alleged that Local 129 improperly applied a candidate eligibility requirement by permitting an individual who had been terminated from employment and was no longer a member of the union to run for office. This allegation was not substantiated by the investigation. The investigation disclosed that, despite the member's termination from employment, the individual was a "member in good standing" of Local 129 at the time of the 2018 election and, therefore, was eligible to be a candidate and to hold office.

Specifically, section 401(e) of the LMRDA provides, "every member in good standing . . . shall have the right to be a candidate and to hold office. . . ." 29 U.S.C. § 481(e). Section 3(o) of the LMRDA defines "member" or "member in good standing" as follows:

"Member" or "member in good standing," when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after

appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. § 402(o).

The investigation disclosed that at the time of the 2018 election, the individual in question met Local 129's membership requirements and had neither voluntarily withdrawn from membership nor been expelled or suspended from membership after appropriate proceedings. Therefore, under section 3(o) of the LMRDA, he was a "member" of Local 129 at the time of the election.

You asserted that the individual was not a member of the local at the time of the election because he was terminated from employment. Your position was based on Article VI, section 1 of the Local 129 bylaws, which provides that membership is open to all civilian court security officers who work at the U.S. District Courthouse (Courthouse) located in Scranton, Pennsylvania and are in good standing. You asserted that the individual's termination prevented him from fulfilling the membership requirements, as prescribed in the Local 129 bylaws, because he was no longer a civilian court security officer working at the Courthouse.

The investigation disclosed that, at the relevant time, the member was actively contesting his termination from employment before the Federal Mediation and Conciliation Service (FMCS). According to UGSOA International, Article VI, Section 8 of the UGSOA International Constitution permits a member who is actively contesting termination from employment to retain membership in the union until the grievance or appeal has been fully resolved. UGSOA International's position is consistent with well-established case law that holds that a member who is actively contesting termination from covered employment remains a member of the union until the question of the propriety of such discharge has been fully resolved or has been abandoned.

Relevant here, the investigation revealed that the individual was terminated from employment on January 30, 2018. He filed a grievance with the FMCS on March 19, 2018, contesting such termination. On April 18, 2018, the FMCS appointed an arbitrator to arbitrate the grievance. The arbitrator scheduled a hearing on the grievance for September 5, 2018. The day before the hearing was to take place, the arbitrator postponed the hearing at the request of the employer and, at that time, the hearing had not been rescheduled. Thus, the individual's grievance was pending before the FMCS and had not been fully resolved or abandoned at the time of the August 22, 2018 election. Therefore, he was a "member" of Local 129 at the time of the election.

The investigation further disclosed that the individual was otherwise in "good standing" at the time of the election and, therefore, was eligible to be a candidate.

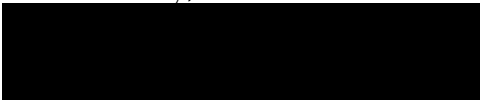
Specifically, the investigation revealed that the local bylaws require a member to have been in continuous good standing for one year immediately prior to an election to qualify for candidacy. During the qualifying period, the member did not pay any dues in 2018 because he had been terminated from employment. UGSOA International's position is that the dues payment requirement in Article VI, Section 8 of the UGSOA International Constitution is not applicable to a member whose employment and dues payments have been adversely affected as a result of termination from employment, and the member is actively grieving or appealing such termination. In fact, UGSOA International considered the member to have been a "member in good standing" at the time of the election because his dues payments had been adversely affected as a result of his termination from employment and his grievance was still pending before the FMCS. Therefore, the member in question was a "member in good standing" of the union at the relevant time and, thus, he was eligible to be a candidate and hold office. The LMRDA was not violated.

In connection with your allegation that the union improperly permitted this member to run for office, you alleged that the union also permitted him to vote in the election. Section 401(e) of the LMRDA provides that every "member in good standing" has the right to vote for or otherwise support the candidate or candidates of his choice. 29 U.S.C. § 481(e); 29 C.F.R. § 452.84. As previously discussed, at the time of the election the member was actively contesting his termination from employment. Therefore, he was a member in good standing of Local 129 and was entitled to vote in the election.

Despite the member's eligibility to vote, the investigation disclosed that you challenged his ballot and the union decided not to count it. Thus, the member was denied the right to vote for or otherwise support the candidate or candidates of his choice in violation of section 401(e) of the LMRDA. However, the smallest vote margin for any race was two votes and, therefore, this one ballot did not affect the outcome of the election. Under these circumstances, there was no violation of the LMRDA that may have affected 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 may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,



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