

NATIONAL LABOR RELATIONS BOARD

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WASHINGTON, D.C. 20570-0001



Richard F. Griffin, Jr.
Board Member
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August 6, 2012

The Honorable Orrin G. Hatch
U.S. Senate
104 Hart Senate Office Building
Washington, DC 20510-4402

Dear Senator Hatch:

I write in response to your letter of July 18, 2012, a copy of which is attached. I appreciate the opportunity to respond to the issues you raise concerning my background and qualifications for a position as a Member of the National Labor Relations Board (NLRB). This letter supplements my earlier responses to the Senate Health, Education, Labor and Pensions (HELP) Committee Questionnaire.

To start, I wholeheartedly agree with the premise that union members are entitled to honesty, transparency and fair representation from union officials. For the 17 years that I served as General Counsel of the International Union of Operating Engineers (IUOE), I worked to the best of my ability to ensure that was the case for the IUOE's 400,000 members. In those rare instances where malfeasance was discovered in the operation of Local Unions, I worked closely with top officials of the IUOE to take decisive action to remove the offending officials and put in place practices and procedures to guard against any recurrence of the wrongdoing.

On a broader level, during 2007 I worked with James Zazzali, the retired Chief Justice of the New Jersey Supreme Court, to draft a comprehensive Code of Ethics to embody the IUOE's commitment to the highest ethical standards and to guide the conduct of union officers, representatives, and employees. Justice Zazzali, who had also served as the Attorney General of New Jersey and as the Chairman of the New Jersey State Commission of Investigation, had been appointed the IUOE's Ethics Officer, and he brought impeccable credentials and an unimpeachable reputation for integrity to the position. The delegates at the IUOE's 37th General Convention unanimously adopted the Code in April 2008. Subsequently, I worked with Justice Zazzali to draft the Operating Rules and Procedures for Implementation and Enforcement of the Code, participated in training sessions to educate union leaders concerning the Code's requirements, and actively consulted with Justice Zazzali concerning cases brought under the Code as they arose.

Additionally, in 2009 I helped forge a partnership with the Department of Labor's Office of Labor-Management Standards (OLMS) to assure that all IUOE Local officers and staff were properly bonded, as required by the IUOE Constitution and the Labor-Management Reporting and Disclosure Act, 29 USC §502(a). I provided the initial draft of the partnership agreement for DOL review, assisted in finalizing the agreement, and served as a liaison between the OLMS Director's office and the IUOE General Secretary-Treasurer's office in the implementation of the agreement. Together, the parties reviewed coverage, identified inadequacies, and worked to assure the maintenance of appropriate bonding coverage.¹

On several occasions during my tenure as General Counsel, I was called upon to provide counsel to the International Union's officers regarding criminal allegations concerning officers or members. The IUOE essentially has three mechanisms available to address the consequences for its members and the organization of alleged criminal conduct within Local Unions: 1) discharge or removal from employment if the individual is a union employee; 2) internal disciplinary proceedings to fine, suspend or expel individuals from membership; or 3) imposition of trusteeship or monitorship by the International Union to remove individuals from Local Union office and ameliorate any adverse effects on the Local Union's ability to function and represent its members. Trusteeship—called "International Supervision" under the IUOE Constitution—involves the suspension of Local Union autonomy and the complete takeover of the Local by the International to address problems the Local has demonstrated itself incapable or unwilling to address; Monitorship is a lesser form of International Union intervention designed to provide International Union resources and guidance to assist the Local in addressing problems without suspending the Local's autonomy. The International has made use of each of these mechanisms—by itself or in combination—as appropriate to respond to the facts and needs of particular situations. In each instance when such allegations were raised, I worked to advise the International's leadership on the course that was in the membership's best interests, promoted a culture and practice of the highest ethical standards, and strengthened the internal mechanisms for dealing with criminal conduct.

In your letter, you refer to "recent news reports" about incidents of criminal activity by a small number of IUOE Local officials. My office has only been able to find one such report, which appeared on FoxNews.com on June 22. (A follow up piece in the same outlet described your letter to me.) The incidents described concern four isolated matters which occurred over the course of a decade or more. And, as your letter correctly notes, at no time did I serve as counsel to any charged individual in these or any other criminal cases.

I will address each of the four matters you raise here, describing the steps taken by the International in response.

¹ In addition to working on bonding issues, the IUOE and OLMS work together under the partnership agreement to assure that IUOE Locals timely file their annual financial reports and regularly provide updated copies of their by-laws to OLMS.

- 1) In 1999, officials of Local 66 in Pittsburgh discovered that John Dorrier, a business agent, had embezzled monies intended to reimburse members for picket duty, turned the matter over to the Department of Labor for criminal investigation, and filed a bonding claim to recover the money Dorrier had taken. Dorrier was charged, plead guilty, and was sentenced in 2003. My involvement in the case was limited to assisting the Local and its counsel in filing and resolving the bonding claim. Ultimately, in 2004, the Local was paid \$100,000 by the bonding company.
- 2) In 2003, officers and members of Locals 14 and 15 in New York City were indicted on a number of charges, including alleged involvement with members of organized crime. Immediately upon learning of the news, the International Union placed the Local Unions under International Monitorship, installed the International's second highest official (the General Secretary-Treasurer) as the Monitor, and removed from office or union employment anyone mentioned in the indictments. I advised the International's officers concerning each of these steps. I subsequently worked with Local Union counsel and lawyers in the U.S. Attorney's Office for the Eastern District of New York to fashion a consent decree, which put in place a court-appointed Ethical Practices Attorney (EPA) to eliminate any vestiges of corruption within Local 14. While I was still employed by the IUOE, I consulted regularly with the EPA and the lawyers in his office on matters involving interpretations of the IUOE Constitution, best practices within IUOE locals, and broader labor law issues. Disciplinary charges filed by the EPA resulted in, *inter alia*, the permanent expulsion of Louis Moscatiello and Morris Diminno; charges seeking the permanent expulsion of James Roemer are pending.
- 3) In 2008, a Business Manager for Local 825 in New Jersey was indicted. Within eight days of the indictment, the International placed the Local under International Supervision and the Business Manager—Ken Campbell—was placed on unpaid leave. Campbell was subsequently brought up on internal disciplinary charges, tried before the IUOE's General Executive Board, found guilty, and expelled from the union. The International Supervision resulted in significant reforms, including new bylaws and a transparent, computerized hiring hall system.
- 4) In 2008, when officers and members of Local 17 in Buffalo, New York were indicted, within a week of learning of the indictment the International Union placed the Local under International Supervision. Those indicted individuals who were employed by the Local were placed on unpaid administrative leave pending the resolution of the criminal case. The Local 17 International Supervision is ongoing, in large part because the criminal case has moved very slowly. At one point, the federal magistrate in the case recommended the dismissal of the entire indictment, but the district court judge rejected that recommendation.

To summarize my involvement with each of the matters itemized in your letter: 1) in no matter did I serve as counsel for any individual named; 2) with respect to the

situations in Local 825, Local 17, Local 14 and Local 15, the International Union responded by placing the Local Union under either International Supervision or Monitorship; 3) in those instances, I was involved in counseling the relevant officials, drafting the relevant documents implementing the Supervision or Monitorship, and assisting with filing the necessary reports with the DOL to describe the International's actions; and 4) with respect to the first item you mention, the wrongdoing was uncovered by the Local Union itself and turned over to DOL for criminal investigation, and I assisted the Local Union with the bonding claim.

I trust this review of these particular cases will put to rest any concerns you may have. The steps taken by the International Union in the cases of International Supervision are detailed in the LM-15 reports filed with the Department of Labor, which are publically available.

Turning to your question concerning my writings and speeches, my response to the Senate HELP Committee Questionnaire lists my published writings. Most of the speeches I gave while working for the IUOE were short talks to regional IUOE conferences summarizing recent legal developments. Many provided information to assist in compliance with DOL regulatory initiatives on financial reporting requirements for unions and their officers, in particular the expanded requirements under the Forms LM-2 and LM-30. (I also spoke at training sessions designed to assist IUOE Locals' compliance with these regulatory initiatives.) I also reported on the Pension Protection Act of 2006 and its implications for single employer and multi-employer pension funds. Finally, I typically reviewed case developments at the NLRB, particularly those involving the construction industry or bargaining units of interest to IUOE Local Unions, such as the skilled maintenance unit in the health care industry.

In closing, when I began my legal career more than 30 years ago by working as an NLRB staff counsel—first to Board Member John Fanning and then to Chairman Donald Dotson—I never dreamed that I would be nominated to serve as a Board Member myself. I can think of no higher honor, or more humbling responsibility, for a labor lawyer. I trust my answers here will aid in your consideration of my nomination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard F. Griffin, Jr.", with a stylized flourish at the end.

Richard F. Griffin, Jr.

Attachment

cc: The Honorable Tom Harkin, Chairman
Senate Committee on Health, Education, Labor & Pensions

The Honorable Michael B. Enzi, Ranking Member
Senate Committee on Health, Education, Labor & Pensions

ORRIN G. HATCH
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United States Senate

WASHINGTON, DC 20510-4402

July 18, 2012

COMMITTEES:

FINANCE
RANKING REPUBLICAN MEMBER

JUDICIARY

HEALTH, EDUCATION,
LABOR, AND PENSIONS

AGING

JOINT COMMITTEE
ON TAXATION

Richard Griffin
Former General Counsel
International Union of Operating Engineers
1125 17th Street, NW
Washington, DC 20036

Dear Mr. Griffin,

In light of recent news reports, I am writing to inquire about your history with the International Union of Operating Engineers (IUOE). Because I, along with many of my colleagues, do not believe your appointment to the National Labor Relations Board (NLRB) was legitimate, I am sending this letter to your last known place of employment.

As you likely know, recent news reports have indicated that, during your lengthy tenure at the IUOE, many union members and officials faced criminal charges ranging from racketeering and embezzlement to workplace sabotage and crimes of violence. One such report indicates that, in the last ten years alone, more than 60 IUOE members have been arrested, indicted, or imprisoned on such charges.

Some of the more noteworthy cases involved members of prominent organized crime families using their influence with IUOE locals to commit acts of fraud and extortion. Others were instances where local union officials were either convicted or pled guilty to embezzling union funds, taking bribes from contractors, or fraudulently collecting union payments.

While it appears that you did not directly represent any accused members or officials of IUOE locals in these proceedings, these reports raise questions regarding your tenure at the union. Under normal circumstances, such matters would properly be explored during Senate confirmation hearings. However, because of President Obama's decision to bypass the Senate with respect to your nomination, the Senate has not had an opportunity to fully examine either your record or your qualifications.

Given your still-pending nomination to the Board, I respectfully request that you provide detailed answers to the following questions:

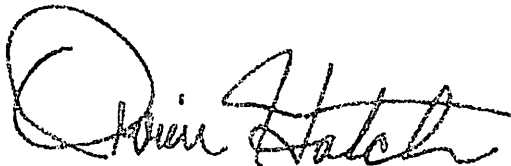
1. In your various positions at the IUOE, what responsibilities did you have in addressing criminal charges and allegations against members or officials of the IUOE or its locals?
2. What policies and procedures were in place at the IUOE's national offices during your time at the union to deal with criminal allegations involving members or officials of IUOE locals?
3. What role, if any, did you play in any of the following criminal cases:
 - a. John L. Dorrier, former business agent of Operating Engineers Local 66, who was sentenced to 12 months imprisonment in 2003 after pleading guilty to charges of embezzlement, forgery, and interfering with the administration of Internal Revenue Laws.
 - b. James Roemer, former treasurer of the Operating Engineers Local 14, who was sentenced to 41 months imprisonment in 2003 and ordered to pay nearly \$3 million in restitution and tax penalties after pleading guilty to several charges, including fraud, making and receiving unlawful union payments, tax evasion, and obstruction of justice.
 - c. Morris Diminno, former union representative of the Operating Engineers Local 14 who was sentenced to 70 months imprisonment in 2004 after pleading guilty to charges of fraud, unlawful labor payment, unlawful monetary transaction, and obstruction of justice.
 - d. Louis Moscatiello, organized crime associate who was sentenced to more than six years imprisonment in 2005 after pleading guilty to charges of racketeering, extortion, and conspiracy to commit union embezzlement. Moscatiello admitted to using his influence over Operating Engineers Locals 14 and 15 to obtain preferential and no-show jobs for other organized crime associates.
 - e. Kenneth Campbell, former business manager of Operating Engineers Local 825 who was sentenced to 46 months imprisonment in 2009 after pleading guilty to embezzlement and taking bribes from contractors.
 - f. Andrew Merola, organized crime associated who was sentenced to 11 years in prison for numerous charges, including a charge of wire fraud involving a no-show job he had as a member of the Operating Engineers Local 825.
 - g. Leaders and members of the Operating Engineers Local 17 – 10 individuals in all – currently indicted on counts of racketeering and extortion involving vandalism and damage to machinery at non-union work sites.

In addition, please provide the following documents:

1. A detailed list of all matters on which you worked involving allegations of fraud, embezzlement, or other financial misconduct on the part of officers or members of the IUOE or its locals.
2. A detailed list of all matters on which you worked involving allegations of extortion, violence, or sabotage on the part of members or officials of the IUOE or its locals.
3. Any writings, articles, or statements wherein you expressed your views, or the views of the IUOE, regarding actual, proposed, or suggested changes to labor law or policy to the NLRB or to Congress.

Over the last few years, the NLRB has been at the center of many high-profile controversies. While there are stark differences of opinion regarding the Board's agenda and even the legitimacy of its membership, I believe we can all agree that the Senate should take seriously its responsibility to provide advice and consent regarding presidential appointments. Toward that end, I appreciate your cooperation in addressing these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Orrin Hatch", with a large circular flourish at the beginning.

Orrin G. Hatch
United States Senator

cc: Chairman Mark Pearce, National Labor Relations Board