



February 27, 2017

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 2, 2016 complaint filed with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. §§ 481 - 484, occurred in connection with the election of officers of the United Food and Commercial Workers (UFCW), Local 770 (Local 770 or "the union"), completed on February 6, 2015.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your specific allegations, that no violation occurred which may have affected the outcome of the election.

You made numerous allegations related to Local 770's processing of your requests to send campaign mailings. You first alleged that the union did not process your campaign mailings in a timely manner. The Department's investigation revealed that you made 141 requests for membership lists for campaign mailing distributions. Ultimately, you made three campaign mailings. You specifically alleged that the union failed to process your first campaign mailing in a timely manner. Section 401(c) of the LMRDA requires that a union comply with all reasonable requests to distribute candidate campaign literature. The investigation revealed that you emailed the union on August 24, 2014, requesting specific membership lists of bakers and members working at Kaiser. The Department's investigation established that the union's Election Committee Chairperson, [REDACTED] responded to your request the following day - August 25, 2014 - and notified you that she was occupied with strike preparations but would process your request. On August 27, 2014, [REDACTED] emailed you that she was on vacation, but that if the request was urgent, you should contact the union's Executive Office for assistance. You did not contact the Executive Office. [REDACTED] complied with your request and sent you the requested membership mailing list when she returned to the office on September 2, 2014. Records show that your mailing was ultimately processed on September 12, 2014, which was approximately four months prior to the election period. The union complied with your requests for campaign literature distribution in a timely manner.

In a related allegation, you stated that the union used inaccurate membership mailing information when it processed your campaign mailings, thus failing to comply with your reasonable request to distribute campaign literature. Specifically, you claimed that a Business Representative, Patti Green, mistakenly received your campaign literature. The Department investigated your allegation and found that Ms. Green was not included on any of your three campaign mailing lists. In fact, the Department interviewed Business Representatives Patti Green, Jeanne Dugger, Ronnie Maxwell, Tracey Richardson, Holly Davenport, Cindie McGinnis, Jackie Gitmed, Armando Espinoza, and Kevin Hom, and found that none of the union's Business Representatives received your campaign literature. Regarding the overall accuracy of the union's membership mailing lists, the Department of Labor investigation revealed that the union provided an extremely accurate mailing list with less than 10 envelopes returned as undeliverable per campaign mailing. Based on the Department's investigation, there is no violation of the LMRDA. The union properly processed your requests to send campaign literature using an accurate and up-to-date membership mailing list.

You also alleged that the UFCW denied you access to its international membership mailing list. On September 30, 2014, you made a request to the UFCW for access to its international membership mailing list for purposes of informing the membership that you planned to run for the position of UFCW International Vice President in the 2018 UFCW international officer election. The LMRDA provides members of certain unions the right to inspect the membership list once within 30 days of the election. It does not otherwise grant members access to the membership list. To the extent your allegation relates to access to the list, there was no violation of the LMRDA. To the extent your allegation relates to the UFCW's failure to comply with a reasonable request to distribute campaign literature in furtherance of your candidacy in the 2018 UFCW election you must first exhaust internal union remedies with the UFCW before protesting to the Department or file your complaint in United States District Court. Because your request to the UFCW only addressed the UFCW's 2018 international officer election, it is outside the scope of this election protest, which is properly limited to Local 770's officer election.

You made several allegations that the union unlawfully used union resources to support incumbent President Icaza's campaign. You first alleged that the publicity for President Icaza's foundation's (The UFCW Local 770 Icaza Foundation) Annual 5-K Run/Walk event constituted union promotion of the Icaza slate. LMRDA section 401(g) prohibits the use of union resources to promote the candidacy of any person in a union officer election. The investigation revealed that the Icaza Foundation is a registered 501(c) charitable organization that raises money to support leukemia research. The foundation does not receive any funds from Local 770, and any union staff members who serve on the foundation do so on their own time as volunteers. The Department's investigation found that the emails sent to members concerning the event did not

constitute campaigning. The Local 770 name and logo were used in emails to the membership promoting this event. However, none of the emails reference the union's election, any candidate, or any matter remotely related to the Local 770 election. There was no use of union funds and no promotion of the Icaza slate. There was no violation of the Act.

You also alleged that union funds were used to promote Icaza's candidacy when [REDACTED], an attorney from the union's law firm, was featured in an interview in the Local 770 magazine's March 2014 issue. In the article, [REDACTED] provides a historical account of the union's founding through the current state of the union. As part of his historic account of the union, he praises the efforts of past and current union leaders, including current President Icaza. A union may not, through its publications, show preference by criticizing or praising any candidate. *See* 29 C.F.R. § 452.75. To determine whether a particular union-funded publication constitutes unlawful promotion of candidate, the Department considers three factors: (1) the timing, (2) the tone, and (3) the content of the communication. Regarding the content, this article praises both past and current union leaders but contains no reference to the 2015 officer election. Regarding timing, the interview appeared in the union's magazine nearly one year before the February 2015 nominations for the challenged election. Accordingly, the timing of the publication does not support a finding that it constitutes unlawful promotion of a candidate. Finally, the article's tone is matter-of-fact and does not overly embellish Icaza's achievements nor does it disparage his opponent or any candidates for union office. The content, timing, and tone of the April 2014 interview do not support a finding that the publication constitutes campaign material. No violation of the Act occurred.

Next, you alleged that union funds were used to support Icaza's candidacy when certain high-profile public figures spoke positively about the union and Icaza's leadership during the union's annual shop steward training seminar that was held in October 2014. The Department's investigation revealed that this was an annual training event that occurs regularly. There is no evidence that any of the speakers referred to the upcoming election. Instead, the evidence supports the finding that each speaker made generic, positive references to the union and the union's leadership. There is no evidence that campaigning occurred. There was no violation of the Act.

You also alleged that union officers, representatives, and organizers used fuel that was purchased on the union's credit cards for purposes of campaigning and gathering petition signatures for the Icaza slate. During the course of its investigation, the Department found that in January 2015, Local 770 issued a memorandum to all officers specifically instructing that officers were prohibited from using any union resource while campaigning. The union provided fifty-four individual receipts showing that union officers who collected signatures for the Icaza nomination petition paid for gas

using their personal funds. The investigation found no evidence supporting your allegation. There was no violation.

You alleged that Local 770 Vice President and Field Director Paul Edwards' computer contained folders, which included a [REDACTED] folder and a "2015 Officer Election" folder. Solely based on the fact that VP Edwards' computer contained these folders, you alleged that [REDACTED] [REDACTED] was involved in her father's campaign and "may have used union funds" to support his candidacy and that VP Edwards unlawfully used union funds to work on election matters. Regarding [REDACTED], you provided no evidence that she used union funds to promote her father's candidacy. [REDACTED] is member of Local 770, but is not an officer and does not have access to union funds. The Department's investigation revealed that the [REDACTED] folder on Edwards' computer contained emails and her resume - none of which related to the officer election. Regarding the "2015 Officer Election" folder on VP Edwards' computer, he explained that as VP and Field Director he was responsible for planning the polling sites and staffing the election process. He was one of the local officials responsible for organizing the election, and the LMRDA does not prohibit the use of union resources to carry out duties that are necessary for holding the election. *See* 29 C.F.R. § 452.73. There was no violation of the Act.

You made a blanket allegation regarding "any and all" use of local union or international union resources that you claim may have been used to promote Icaza's candidacy. You provided no specific incidents or evidence to support these general allegations. The international union investigated this allegation as part of its response to your internal union protest, and the Department investigated these allegations as well. Neither investigation revealed any evidence that Local 770 or international union funds were used to promote President Icaza's candidacy. There was no violation.

You also alleged that union officials who worked on Icaza's campaign by collecting nomination petition signatures may have turned in their signed petitions to the union while on union time. During the Department's investigation, union representatives including [REDACTED] [REDACTED] were interviewed. These union representatives could not recall the exact dates and times that they submitted their petitions; they each averred that the petitions were not submitted during union time. You did not provide and the investigation did not reveal any evidence to the contrary. There was no evidence supporting your allegations that union officials collected signatures while on union time or submitted their signed petitions while on union time. Accordingly, no violation of the Act occurred.

You also alleged that the union's Facebook, Flickr, Twitter, and YouTube accounts were used to promote Icaza's candidacy. More specifically, you alleged that photographs

and other statements presented President Icaza and the union in a positive light, such that these posts constituted endorsements. During the investigation, the Department interviewed Election Chair and Communications Manager [REDACTED] to discuss these allegations. Election Chair [REDACTED] stated that she manages all of these social media accounts and continuously monitors them for inappropriate posts. During the election period, [REDACTED] did not find it necessary to remove any of the posts on the union's social media accounts because they did not constitute unlawful endorsements or electioneering. The Department reviewed posts to the union's social media accounts for one year leading up to and including the 2015 election period. The Department found that references to the union and to Icaza were consistent throughout the year and were non-partisan. The Department did not find any evidence of unlawful endorsement by the union on its social media accounts. There is no violation of the Act.

You alleged that you and your supporters received unequal and disparate treatment compared to incumbent President Icaza and his supporters. Specifically, you alleged that you and your supporters were not provided equal access to employer facilities for purposes of obtaining signatures for your nomination petition. LMRDA Section 401(c)'s requirement that unions provide adequate safeguards to ensure a fair election includes a prohibition against disparate treatment among candidates for union office. *See* 29 C.F.R. § 452.110. Pursuant to Local 770's Constitution and Bylaws, nominations for officer positions required that candidates obtain signatures from at least two percent (2%) of the average active monthly membership. *See* UFCW Local 770 Bylaws, Article XI, Section 2. In this election, members seeking nomination for the office of president were required to collect at least 610 signatures of active Local 770 members. Based on the documents you provided during the course of the Department's investigation, you collected 121 signatures (although these signatures have not been verified as all belonging to active Local 770 members).

You alleged that your supporters, [REDACTED] were not permitted to enter Ralph's store #271, Albertson's store #6345 and #6372, and one Rite Aid location. The Department's investigation revealed that, even though the [REDACTED] are not UFCW Local 770 members, they conducted campaign activity on your behalf on January 17-18, 2015, attempting to collect nomination petition signatures from workers at individual stores. The Department's investigation revealed that the [REDACTED] visited more than 20 stores to collect nomination petition signatures, but were at least partially denied access to three stores. There is no evidence that Icaza's supporters were denied entry to any stores.

The [REDACTED] stated that they were permitted to enter Ralph's store #271 (and collected 14 signatures for your nomination petition), but were not permitted later to re-enter the store to continue their efforts. The [REDACTED] stated that when they visited Albertson's stores #6345 and #6372, the store managers told them that they could not campaign

inside the stores, but were permitted to collect petition signatures in the parking lots outside of each Albertson store. The [REDACTED] were unable to provide the names of any of the store managers who allegedly denied them access. In any event, to the extent that the store managers' denying the [REDACTED] access to store employees may have been a form of disparate candidate treatment, the impact of any violation was limited and could not have affected your ability to obtain the requisite number of nomination signatures. As mentioned above, to be included on the ballot for president of Local 770, a candidate was required to present a nomination petition with at least 610 Local 770 member signatures. Your nomination petition contained 121 signatures, which is 489 signatures short. You were provided an alternative means of collecting signatures at Albertson's #6345 and #6372. There are only 70 members who work at Ralph's. As such, any violation occurring at these 3 of the more than 20 stores that you visited could not have affected the outcome of this election.

In a related allegation, you stated that Icaza Slate supporters were granted access to employees who were working on employer time for purposes of collecting nomination petition signatures. Section 401(g) of the LMRDA prohibits the use of employer funds to support any candidate during an officer election. *See* 29 U.S.C. § 481(g). During the Department's investigation, Icaza supporters [REDACTED] [REDACTED] revealed that the vast majority of signatures that they collected were obtained while employees were working on employer time. These three union representatives collected a total of 1,523 signatures and conceded that only 10% [REDACTED], 15% [REDACTED]), and 5% [REDACTED]), respectively, of the signatures each collected were obtained from members who were *not* working. Accordingly, the Department found that 1,360 signatures were obtained in violation of Section 401(g) and 163 signatures were properly obtained.

Union representatives [REDACTED] [REDACTED] also supported the Icaza Slate and collected nomination petition signatures. During the Department's investigation, all four of these representatives adamantly stated that they only collected signatures from employees who were on break or from employees before/after official work hours. These four union representatives collected a total of 1,334 signatures for the Icaza nomination petition. Accordingly, these 1,334 signatures were not obtained in violation of the Act.

The Department reviewed the union's election records and found that in total the Icaza Slate obtained 9,155 petition signatures from members in good standing. Pursuant to the union's Bylaws, the Icaza Slate was only required to obtain 610 signatures of active Local 770 members. Even subtracting those signatures admittedly collected from employees on employer time, in violation of Section 401(g), Icaza nonetheless had far more than the 610 required to run as a candidate for president of Local 770. Accordingly, there is no violation that could have affected the outcome of this election.

You also alleged that as part of the election process, the union should have sent you the "election procedures" and a list of employer addresses. You alleged that the union's failure to send you a list of employer addresses constituted disparate candidate treatment. During the Department's investigation, you stated that you never requested documents clarifying the union's "election procedures," nor did you ever request a list of employer addresses. Further, the Department's investigation revealed that the Icaza Slate supporters did not request and were not provided with a list of employer addresses. Thus, no disparate candidate treatment occurred. There was no violation.

You alleged that Local 770 failed to follow its constitution and bylaws on multiple occasions during the course of the election. Section 401(e) of the LMRDA requires that unions conduct their elections in accordance with the constitution and bylaws of such organization. 29 U.S.C. § 481(e). First, you alleged that the Icaza Slate violated the UFCW Constitution by presenting a nomination petition to members that did not contain the names of the slate members on the front page of the petition. The Department found that Article 35(C), Section 13.c of the UFCW Constitution states that the name of members being nominated and the specific office for which they are being nominated must be at the top of each page of the nomination petition. A review of the Icaza Slate petition revealed that the names of all slate members and the offices for which they were being nominated appeared on the back of the first page of the slate's petition, rather than on the front of the petition. While this is a technical violation of the UFCW Constitution, the first page of the Icaza Slate's petition contained a clear statement that the names of all slate members appeared on the back of the page. When interviewed, the Icaza Slate members stated that they were not aware of the constitutional requirement and listed the slate names/offices on the back of the page simply because they did not all fit on the front of the page. The Department's investigation did not reveal any evidence that members were confused by the Icaza Slate petition or were not aware of the purpose of the petition. As such, the violation had no effect on the outcome of the election.

You also alleged that Local 770 failed to follow the Local 770 Bylaws by mailing out the notice of nominations late. Article XII, Section 2 of the Local 770 Bylaws states that the nomination notice must be mailed to all members at their home address "30 days prior to the deadline for the receipt of nominating petitions." The Local 770 nominations notice was sent in the union's December 2014 issue of its newsletter (the *Voice*). During the Department's investigation, the Election Chair [REDACTED] provided a postal receipt for the mailing of the December 2014 newsletter dated January 5, 2015. The deadline for receipt of nomination petitions was February 6, 2015. Accordingly, the union complied with the Bylaws and mailed the notice of nominations 30 days prior to the deadline for receipt of nominating petitions. There was no violation.

Finally, you alleged that you received two sets of Bylaws from Local 770 containing different dates for officer installation, and the union should have followed the dates found in the first set of Bylaws that you received in October 2012. The Department's investigation found that you received one set of Local 770 Bylaws in October 2012 and a revised set of Bylaws in December 2014. The Bylaws you received in 2012 stated that the officers were to be installed on January 1 and the Bylaws you received in 2014 stated that officers were to be installed on July 1. The union's Director of Collective Bargaining, Kathy Finn, explained that the Local 770 Bylaws were revised in 2009 when it merged with UFCW Local 1036. The revised Bylaws contained the new date for officer installation (July 1). These post-merger Bylaws were approved by the international union in 2011. The first set of Bylaws that you received in October 2012 were the result of an administrative error. The union corrected this error by sending you the revised and controlling Bylaws in December 2014. There is no evidence that you were harmed by the union's administrative error in October 2012. Further, the union appropriately followed the revised and controlling Bylaws, installing newly-elected officers on July 1, 2015.

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,

A large black rectangular redaction box covers the signature area of the letter.

Chief, Division of Enforcement

cc: Mr. Anthony Perrone, International President
United Food & Commercial Workers International Union
1775 K Street, NW
Washington, DC 20006-1598

Mr. Rick Icaza, President
UFCW Local 770
630 Shatto Place
Los Angeles, CA 90005

Beverly Dankowitz, Associate Solicitor
Civil Rights and Labor-Management Division