



May 22, 2017

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on February 28, 2017. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the union-ordered rerun election of officers conducted by United Food and Commercial Workers, Local 648, on November 4, 2016.

The 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 rerun election.

Two of your allegations concerned union representatives campaigning while on time that was paid for by the union. First, you alleged that a union representative campaigned for the incumbent president at four employer sites while she was on paid union time. Second, you alleged that the same union representative, together with the incumbent president, campaigned to members at a different employer site on November 1, 2016. Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. The Department's interpretative regulations at 29 C.F.R. § 452.76 make clear that union officers and employees may not campaign on time that is paid for by the union.

To support your first allegation, you identified two members as the targets of the union representative's alleged union-paid campaigning efforts. Neither member, however, substantiated your claim. One member, who declined to be interviewed, wrote in an email to the Department's investigator that the union representative had never campaigned to him. The second member you identified stated that, although he had spoken with the union representative, their conversation occurred months prior to the

rerun election and did not include discussion about the election or campaigning. Moreover, the union representative denied campaigning, and, the investigation disclosed no evidence that she had campaigned to anyone at any employer site.

The member you identified to support the second instance of alleged campaigning on union time told the Department's investigator that he did not see either the union representative or the incumbent president campaigning. The member also stated that neither person had campaign flyers or other paraphernalia to suggest that they were there to campaign. The investigation determined that, rather than campaigning, the incumbent president and union representative were at the worksite to conduct official union business. Thus, the Department found no evidence that the union representative or incumbent president campaigned while on union-paid time at any of the employer worksites. There was no violation of the Act.

You alleged that the election committee chairperson sent you and candidate [REDACTED] [REDACTED] untimely notices for the October 21, 2016 candidates meeting. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election, which encompasses a prohibition against disparate candidate treatment. *See* 29 C.F.R. § 452.110. The Department's review of the election chair's log indicated that he telephoned all four candidates on October 17, 2016, in an effort to notify them of the candidates meeting. The election chair stated that he left a voicemail concerning the candidate's meeting. When interviewed by the Department's investigator, you stated that "maybe" you received a phone message informing you about the candidates meeting. In addition to finding that the election committee chair left you and [REDACTED] voice mail messages about the meeting, the Department's investigation found that the election chair also mailed you a notice of the candidates meeting, which the postal service attempted to deliver to you on October 19, 2016, but no one was at your home to receive the certified mail delivery. Furthermore, you acknowledged having no questions to ask at the meeting and that the rules for the rerun election were basically the same as for the original election. There was no violation of the Act.

You alleged that union funds were misused when union representative [REDACTED] union-paid cell phone number was listed on incumbent president Dan Larson's campaign flyers as the number to call for rides to the polling site. Section 401(g) of the LMRDA prohibits the use of union funds or resources to promote the candidacy of any person in an election. The investigation confirmed that the phone number listed on the flyer was [REDACTED] personal cell phone, but that she used the same phone in part to conduct union business. The Department's investigation found that all union officers and representatives used their personal cell phones for union business, for which they received a monthly stipend from the union. The reference to [REDACTED] personal cell phone number in the campaign flyer would not constitute use of a union resource, even though Local 648's monthly stipend helped to defray the cost of using her personal phone for union business. We note that the investigation found that [REDACTED] had repaid

to the local the phone stipend she received for the two months prior to the rerun election. Local 648 provided documentation showing that [REDACTED] as well as other union employees, waived or reimbursed the union for their phone stipends for October and November 2016. Thus, there was no violation of the LMRDA.

You alleged that the incumbent's campaign flyers were improperly posted at various employer sites prior to the rerun election. Section 401(g) of the LMRDA prohibits the use of employer funds to promote the candidacy of any person in an election of union officers. Section 401(c) of the Act requires unions to provide adequate safeguards to insure a fair election. The Department's investigation disclosed that your witness to the improper posting had not actually seen the flyer posted until you brought him over to show it to him. In fact, the investigation uncovered no evidence that the incumbent or any of his supporters posted campaign materials. Rather, the Department found that whenever the incumbent or his supporter [REDACTED] saw campaign materials improperly posted, they would take a picture of the posting, document when and where it was seen, and then remove it. There was no violation of the LMRDA.

You alleged that you were denied the right to have an observer at the polling site and tally because the election chair removed one of your designated observers. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and the tally. *See also* 29 C.F.R. § 452.107(a). During the investigation, the election chair confirmed barring one of your observers because of his disruptive behavior while serving as an observer during the original election. Nevertheless, you had two other observers at the polling site and tally. The investigation revealed that your opponent did not designate any observers, and thus, you were not disadvantaged by the removal of one of your observers. There was no violation of the Act.

You alleged that the incumbent candidate's supporters were permitted to speak with each other all day in the polling area. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election. A labor organization's discretion regarding the conduct of an election is circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. The investigation did not, however, substantiate your claim. The investigation found no group of the incumbent's supporters that was allowed to talk or loiter in the polling area. The investigation revealed that the election chair made sure members moved out of the polling area after voting. There was no violation of the LMRDA.

You alleged that the election chair applied different rules to your observers than to the election judges. Section 401(c) of the LMRDA requires unions to provide adequate safeguards to insure a fair election. The Department's investigation revealed that one of your observers, who admitted that there were no problems with the polling or the tally, felt disrespected as an observer because the election committee judges were able to use

their cell phones and read during the polling, whereas observers were not allowed to do so. Additionally, observers had to sign in and out when entering and exiting the polling site, but the election committee member did not have the same restrictions. Even if true, these rules would not constitute a violation of the Act. The LMRDA does not prohibit unions from having different rules for observers than it has for election committee judges. There was no violation of the Act.

In addition to the allegations discussed above, you raised a new issue that was not included in your initial protest to Local 648. Section 402 of the Act requires that the complaining union member must have “exhausted the remedies available under the constitution and bylaws” of their union in order to file a complaint with the Secretary of Labor. In your November 16, 2016 letter to Local 648’s election committee chairman, you failed to include this additional allegation. Accordingly, this allegation is not properly within the scope of your complaint to the Department and was not investigated. The Department also did not investigate two issues that you specifically withdrew from your appeal to the UFCW International.

For the reasons set forth above, I have concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

Sharon Hanley,  
Chief, Division of Enforcement

cc: Marc Perrone, International President  
United Food and Commercial Workers Union  
1775 K Street NW  
Washington, DC 20006

Dan Larson, President  
UFCW Local 648  
1980 Mission Street  
San Francisco, California 94103

David A. Rosenfeld  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501

Raquel A. Ortega  
Hayes & Ortega, LLP  
3625 Ruffin Road, Suite 300  
San Diego, CA 92123

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