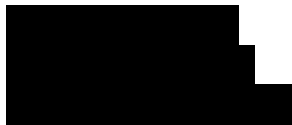




April 16, 2019



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed on February 20, 2018, with the United States Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA or Act) occurred in connection with the election of officers of United Food & Commercial Workers (UFCW) District Local 2 (Union), conducted on October 17, 2017.

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 election.

You alleged that the Union failed to provide a reasonable opportunity for the nomination of candidates because some members did not receive the notice of nominations. Section 401(e) of the Act requires that unions provide a “reasonable opportunity...for the nomination of candidates” in secret ballot elections. Section 401(e) also requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV of the LMRDA. The Department’s interpretative regulation at 29 C.F.R. 452.56(a) provides that labor organizations may give notice of nominations in “any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice” including by mail to the last known address. Article 35(C)1 of the International UFCW Constitution and Article XII, Section C of the Union’s local bylaws both require that notice with the times, dates, and places for conducting nominations be mailed to each member at their last-known home address at least 15 days prior to nominations. On August 4, 2017, the Union mailed 15,025 nomination notices to members’ last known addresses, though some notices were returned to the union as undeliverable. The nomination notices specified the twelve addresses for the different nomination meeting sites, with all of the meetings to be held at 3:00 p.m. on September 1, 2017. Because the notice – including the times, dates, and places for conducting nominations – was mailed to members’ last known home addresses more than 15 days before nominations, the distribution of the notice was consistent with the constitutions and bylaws. The

investigation further disclosed that the Union used a public website to verify addresses and sent business representatives to worksites to gather address updates from the members. Therefore, although the Union did not re-mail all of the returned notices, the Department determined that the Union, by mailing the notice to each member's last known home address approximately a month before the nominations meetings, took steps "reasonably calculated to reach all members in good standing." The LMRDA was not violated.

You further alleged that the Union failed to provide a reasonable opportunity for members to nominate candidates for office because the time and locations of the nomination meetings were too restrictive for members. Article 35(C)1 of the International UFCW Constitution and Article XII, Section G of the Union's local bylaws also require nominations to be conducted at times and locations that will give all active members a reasonable opportunity to nominate. The investigation established that the Union did reduce the number of nomination meeting times from previous elections. The Union also changed one of the nomination meeting sites from the last election because the former Kansas City office had closed. However, even if the nomination meeting hours and locations were so restrictive as to constitute a violation of the Act, there was insufficient evidence of its effect on the outcome of the election because no member was identified as being unaware of the nominations meetings or unable to be nominated. Significantly, the Union provided sufficient notice for members to adjust their work schedules in order to attend a nominations meeting. No violation of the Act occurred that may have affected the outcome of the election.

You also alleged that the Union denied members a reasonable opportunity to nominate when the Local President determined that member [REDACTED] could not be nominated because he was not in good standing. The investigation established that member [REDACTED] did, in fact, nominate [REDACTED] for Vice President but that [REDACTED] was ruled ineligible for candidacy due to a break in service. There was no violation of the Act.

You next alleged that union representatives campaigned on union time. Section 401(g) of the LMRDA prohibits the use of union resources to promote the candidacy of any person in union officer elections. Specifically, you alleged that [REDACTED] and Vice President-At-Large [REDACTED] campaigned to employees at the Kansas City retail stores. The investigation revealed that [REDACTED], a retired member, was not employed or paid by the Union at this time. [REDACTED] asserted that he was on vacation time when he campaigned at retail stores in September 2017. No witnesses attested that [REDACTED] campaigned at the Kansas City retail stores on union time. There was no violation of the Act.

You also alleged that union resources were used in the distribution of campaign literature. Specifically, you alleged that Director of Collective Bargaining [REDACTED] and Vice President-At-Large [REDACTED] campaigned for candidate [REDACTED] by bringing campaign literature – created with union funds – to retail stores while they were on union time. The investigation established that [REDACTED] and [REDACTED] campaigned for [REDACTED] at various stores on October 11, 2017, an approved vacation day for both [REDACTED]. Secretary-Treasurer [REDACTED] (ST Figueroa) disclosed that he created [REDACTED] campaign literature on his personal computer at home after work. Receipts from Office Depot show that ST Figueroa used his personal money to make 200 copies of the literature after work hours. Thus, no union funds or time were used to create or distribute the literature. There was no violation of the Act.

You next alleged that union resources were used to make and distribute campaign literature advocating against your candidacy to the [REDACTED] retail stores. The investigation was unable to establish who created or mailed the literature, or if union funds were used to create the literature. Again, only 34 out of 200 eligible voters in the election may have been exposed to the campaign literature at retail locations. Thus, no violation of the Act occurred that may have affected the outcome of the election.

You next alleged that union representatives may have campaigned on union time when [REDACTED] sat in the lobby of the polling site on the day of the election. [REDACTED] attested that he was only at the polling site to observe the election proceedings. No witnesses observed either [REDACTED] campaigning at the polling site. Again, [REDACTED] is not an employee of the union, and thus did not use union resources even if he was campaigning. There was no violation of the Act.

You further alleged that the Union disparately allowed some candidates to campaign at the Smithfield Ham Plant but not others. Section 401(c) of the LMRDA prohibits disparate treatment among candidates for union office. Section 401(c) also requires unions to provide adequate safeguards to ensure a fair election. Thus, 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 revealed that the Smithfield Ham Plant's Solicitation Policy states that non-employees "shall not be permitted to engage in solicitation or distribution at any time on Company premises" but permits Smithfield employees to solicit or distribute to other employees during non-work times and in non-working areas of the plant. No other non-employees were permitted to campaign at the Smithfield Ham Plant. Further, there was no evidence that the Union caused any campaigning requests to be approved or denied by management of the Smithfield Ham Plant. There was no violation of the Act.

You next alleged that the Union failed to provide adequate safeguards and to follow its constitutions and bylaws during voting at the Four Points Sheraton poll. Specifically, you contended that: 1) the number of members who signed the sign-in sheet did not match the number of members who signed the voting eligibility list, 2) one member was permitted to vote without showing her identification, and 3) three candidates were improperly selected to serve as election judges. The investigation revealed that the election judges counted the number of members on the eligibility lists rather than the sign-in sheets. The Department's review of election records confirmed that there were 199 signatures on the voting eligibility lists and 203 voted ballots – 197 regular ballots and six challenged ballots. Four members that voted a challenged ballot failed to sign the eligibility list. However, there was no evidence of ballot tampering. Although no witnesses confirmed that any member was permitted to vote without showing identification, one voter would not have affected the outcome of the election.

Article 35, Section 5 of the International Constitution and Article XII, Section G (2) of District Local 2's bylaws state that election judges "shall not be candidates for local union office." The investigation determined that election judges [REDACTED] were not candidates when appointed to be election judges because they had already won their offices by acclamation. Thus, the Union reasonably viewed them as no longer candidates but rather officers before the Union's election. There was no violation of the Act.

You further alleged that the members were denied the opportunity to vote in violation of the Act, as well as the Union's constitution and bylaws, by using limited polling locations and hours. Section 401(e) of the Act provides that every member in good standing has the right to vote for or otherwise support the candidate or candidates of her choice. Multiple polling locations may satisfy a union's obligation to provide all members a reasonable opportunity to vote "depending on factors such as the distance between the members' work site or homes and the polling place...and their hours of work." 29 C.F.R. 452.94. Consistent with the LMRDA, Article 35, Section C (2) of the International Constitution states: "the elections shall be conducted at such times and places as will afford all active members a reasonable opportunity to vote. If distance is an issue then multiple polling places shall be provided." Article XII, Section G of the local bylaws states that, "the nominations and elections shall be conducted at such times and places as will afford all active members a reasonable opportunity to nominate and vote." Even if a violation of Article XII, Section G had occurred, the investigation found no evidence of members who did not vote because they could not get to the polls. The investigation revealed that after the previous polling site in Kansas City had closed, the Union attempted to get a polling location at each work site, but only the Smithfield Plant consented. The Union selected the Four Points location as a second polling location because it was a centrally located site where membership meetings are held. The furthest worksite from a polling location was 54 miles, which is not an

unreasonable distance to travel. The investigation also determined that 38 members' work schedules could have conflicted with the polling hours; 37 members worked for employers that did not provide work schedules for the investigation. Thus, a maximum of 75 members total may have been affected by the limited polling hours. Because the margin of the election was 141, there was no violation of the Act that could have affected the outcome of the election.

You also alleged that the Union denied members the opportunity to vote in violation of the Act when it eliminated the hiring hall, causing members to have breaks in service and affecting the voting eligibility of approximately 35 members. The investigation determined that some members attempted to maintain their voting eligibility by submitting their dues, but the union refused to accept their dues while they were out of work. The Department's interpretive regulations at 29 C.F.R. § 452.92 state that "[m]embers who are otherwise qualified to vote may not be disqualified from voting merely because they are currently unemployed...provided, of course, that such members are paying dues." However, even if the Union's actions regarding these 35 members constituted a violation, there was no violation of the Act that could have affected the outcome of the election because the voting margin was 141 votes.

You next alleged that the Union placed improper restrictions on observers. Section 401(c) of the LMRDA provides that candidates have the right to have an observer present at the polls and at the counting of the ballots. The Department's interpretive regulations at 29 C.F.R. § 452.107(a) make clear that the right to have an observer "encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots" and that the observer need not be a member of the union unless required by the union's constitution and bylaws. Specifically, you alleged that Election Chair [REDACTED] inappropriately informed you that observers needed to be members of District 1. The Union acknowledged that this was a mistaken instruction. However, the Department's review of records uncovered no evidence of ballot tampering. Additionally, you were able to have an observer at both polling locations. To the extent there may have been a violation, there was no effect on the outcome of the election.

You further alleged that the Union failed to properly count the ballots in violation of the constitution and bylaws and Section 401(e) of the Act. Specifically, you alleged that a ballot with "scribbling" on it was improperly counted at the Smithfield plant during the morning tally. Article 35, Section C(6) of the International Constitution and Article XII, Section G(3) of the local bylaws state that: "the voter shall be given a ballot authorized by the general chairperson and shall be provided an opportunity to vote his or her ballot in secrecy. Ballots shall bear no number or marks which might identify the voter." The Department's recount of the ballots revealed four ballots with markings;

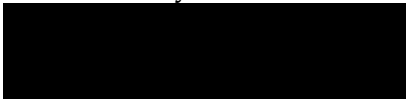
however, the markings did not identify the voters and each voter's intent was clear. The ballots were properly counted. Thus, there was no violation of the Act.

Section 401(e) of the LMRDA requires unions to "preserve for one year the ballots and all other records pertaining to the election." Although you did not allege a records violation, during its review of records, the Department found that the Union failed to maintain records because it did not keep any unused ballots. However, the Department found no evidence of ballot tampering occurred. Therefore, to the extent that a records retention violation occurred, there was no effect on the outcome of the election.

Your complaint to the Department contained additional allegations that were not timely filed under Section 402(a)(2) of the LMRDA. These allegations are not properly before the Department and were not investigated.

For the reasons set forth above, the Department has concluded that no violation of the Act occurred that may have affected the outcome of the election in connection with your allegations. Accordingly, I have closed the file on this matter.

Sincerely,



Brian A. Pifer  
Chief, Division of Enforcement

cc: Mr. Joseph T. Hansen, International President  
United Food and Commercial Workers International Union, Ind.  
1775 K Street, NW  
Washington, DC 200061598

Margo Feinberg  
Schwartz, Steinsapir, Dohrmann & Sommers  
6300 Wilshire Blvd., Suite 2000  
Los Angeles, CA 90048

Martin Rosas, President  
UFCW District Local 2  
3951 N. Woodlawn Court  
Bel Aire, KS 67220

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