



September 24, 2019

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on March 12, 2019. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), occurred in connection with the election of officers of the Bakery, Confectionary, Tobacco Workers and Grain Millers (BCTGM) Local 125, which was completed on November 13, 2018.

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

You allege that [REDACTED], a judge on the election committee, used her fingers to remove the chads that were attached to approximately ten ballots, as opposed to blowing on the chads. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. The Department's investigation disclosed that a representative from the election vendor, California Elections Company (CEC), instructed that if a ballot had a hanging chad, the election committee should blow on the chad to see if it would fall off, and that if this was not successful, the election committee could use their fingers to pull the chad off the ballot. [REDACTED] actions therefore did not violate the rule. The CEC representative and numerous members and candidates stood near [REDACTED] as she was removing the hanging chads and could see what she was doing. The CEC representative stated that [REDACTED] did not punch any races on the ballots. The Department's investigation found no evidence of ballot fraud or tampering. There was no violation.

You also claim that another CEC employee was sitting behind the Election Committee during the ballot tally and that she should have been sitting closer to the Election

Committee. CEC representatives indicated that at various times throughout the tally the representatives were seated behind the Election Committee. One representative remembered sitting behind the Election Committee at some point to alphabetize the returned ballot envelopes. Other members who were present at the tally confirmed this. The Department's investigation found no evidence of ballot fraud or tampering. There was no violation.

You further allege that one of the ballots showed that candidate [REDACTED] name was circled, but that your name had an arrow pointing to it. The Election Committee decided to set the ballot aside for further review and you stated that you agreed with the Election Committee's decision, but were told by [REDACTED] that it was not appropriate for you to comment on the Election Committee's decision. You acknowledge that no other candidates were treated differently from you in this respect. This exchange did not affect the outcome of the Election Committee's decision regarding the ballot in question and there was no evidence of any improper conduct. There was no violation.

You also allege that the nomination notice was defective. Initially, you claimed that the nominations notice did not provide the date of nominations, but you later admitted that the notice did indicate the date on which nominations would occur. You also claim that the nominations notice did not list the individual positions open for nomination. Section 401(e) of the LMRDA provides that a reasonable opportunity shall be given for the nomination of candidates. Additionally, a nominations notice must inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. 29 C.F.R. § 452.56. However, the specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. 29 C.F.R. § 452.99. The nomination notice indicated that the nomination and election would be for Officers and the Executive Board, in accordance with Article V of the BCTGM Local 125 Bylaws, which deals with regular, periodic nominations and elections. You could not identify anyone who wanted to be nominated but was not nominated as a result of the nomination notice. Accordingly, to the extent that there was any violation, it would not have affected the outcome of the election.

Relatedly, you claim that you were confused at the nominations meeting because one position was only announced as "secretary-treasurer" rather than the full title of "secretary treasurer-business agent," and that you would have sought to be nominated for this position had the full position title been announced. You admitted that each position was announced three times before the position was closed for nominations and that [REDACTED] asked if there were any questions during each open nomination. As stated above, you also admit the secretary treasurer-business agent position was one of the

combined positions that has never changed, and that it was listed as the full position in the Bylaws. There was no violation.

Finally, you allege that the ballot tally machine was not accurate because it first showed that you had more votes than [REDACTED], but that the second and third print-outs showed that [REDACTED] had received more votes. You claim that the computer counting the ballots may have been manipulated. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote and that adequate safeguards to ensure a fair election shall be provided. CEC employees stated that they ran test batches in the machines before the ballots were officially counted. Three test counts were performed prior to the first tally. The first tally showed that 180 ballots were processed, with [REDACTED] receiving 91 votes and you receiving 84 votes. There was another test count performed prior to the second tally. The second tally again showed 180 ballots were processed, with [REDACTED] receiving 91 votes and you receiving 84 votes. Additional test counts were performed following the second tally. The test and tally results were certified by the Election Committee. The Department's investigation found that the ballot count was accurately reported and that the ballot tallies were consistent. There was no violation.

Your additional allegations were determined to be either not within the scope of the investigation or not covered by the LMRDA.

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,

[REDACTED]

Brian A. Pifer
Chief, Division of Enforcement

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