



April 17, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on January 12, 2009 alleging that a violation of Title IV of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Act"), 29 U.S.C. § 481-484, occurred in connection with the Bakery, Tobacco & Grain Millers Union, Local 4 ("BTGM Local 4" or "Union") election held on August 1-2, 2008.

The Department of Labor ("Department") conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation of the LMRDA affecting the outcome of the election that has not been remedied.

You alleged that 214 Union members were sent a delinquency notice prior to the election informing these members that they were ineligible to vote, which may have discouraged members from voting. According to the Union's International Constitution, dues must be paid on, or before, the first day of the calendar month to avoid delinquency and ineligibility in voting. Under Department regulations, a labor organization may condition the exercise of the right to vote upon the payment dues. *See* 29 C.F.R. § 452.86. The regulations also provide that members who are not late in their dues payments must not be denied the right to vote.

The Department investigated and found that 80 members were sent a delinquency notice 10 days prior to the election, which informed the members that in order to be eligible to vote in the election they must be current in dues and could become so by contacting the Financial Secretary. While the investigation revealed that some of these letters were sent in error, there was no denial of the right to vote, as any member who was eligible and requested a ballot in sufficient time was given the opportunity to vote. There was no evidence that any member was discouraged from voting by the letter. The Department determined that the notice did not prevent members from voting. Thus, there was no violation of the Act.

You also alleged that the Union failed to send absentee ballots to some eligible members who requested a ballot. The Department's investigation determined that one member requested an absentee ballot and was not sent a ballot and another member was improperly ruled ineligible to vote. Because two voters were denied the opportunity to vote, there was a violation of the Act under Section 401(e).

The LMRDA requires that, before taking legal action to overturn an election, the Department prove not only the existence of a violation, but also that the violation may have affected the outcome of the election and has not been remedied. *See* 29 U.S.C. § 482(b), (c)(2). With respect to the effect on the outcome of the election, the votes of two members could only have had an effect on the outcome of the Vice President/Business Representative/Financial Secretary position, because the margin of victory in this race was two votes. However, the winner of that race subsequently voluntarily resigned from the position. A union may fill vacancies in office in accordance with its constitutional obligations. As stated in the regulations there are "no requirements imposed with respect to the filling by election or other method of any particular office which may become vacant between such regular elections...a vacancy may be filled by appointment, by automatic succession, or by a special election." *See* 29 C.F.R. § 452.25. In accordance with the BCTGM Local 4's Constitution and Bylaws and past practice, the Union appointed the second place finisher to the position. The remaining candidate, who lost by a margin of well over two votes, has since retired. Therefore, any effect on the outcome of the race of this violation at the time of the election has been remedied by the appointment of the sole remaining candidate to the position.

It is concluded from the analysis set forth above that the investigation failed to disclose any violation of the Act which may have affected the outcome of the election and has not been remedied. Therefore, there is no basis for bringing an enforcement action. Accordingly, I am closing the file on this matter.

Sincerely,

Cynthia M. Downing  
Chief, Division of Enforcement

cc: International President Frank Hurt  
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