



April 16, 2010

Dear |||||:

This Statement of Reasons is in response to your December 11, 2009 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the July 30-31, 2009 United Food and Commercial Workers, Local 538 (UFCW or union) regular election of officers, which was a runoff of the original election held on January 29-30, 2009.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your specific allegations that no violation of the LMRDA affecting the outcome of the election occurred.

You alleged that members were denied the opportunity to vote. You stated that ballots were not available at the Oscar Mayer polling place for the first 45 minutes after the polls opened at 4:00 a.m. on July 30, 2009. You asserted that some Oscar Mayer workers may not have been able to vote at a later time when the ballots were available because these workers were on a compressed or alternative work schedule and therefore not returning to work during voting times.

The investigation revealed that the Oscar Mayer polling hours were July 30 and 31, 2009, from 4:00 a.m. to 5:00 p.m. On July 30, Election Committee Chair ||||| realized that the ballots were not included with the election records and went to retrieve them. ||||| returned with the ballots around 4:30 a.m. and voting began. The Election Tellers told ||||| that about five people tried to vote during the time ||||| was away.

OLMS obtained the names of 58 members who punched out between the hours of 3:30 a.m. and 5:00 a.m. on July 30. Forty of the 58 members voted. Of the 18 remaining members, 17 of them punched back in before the close of polls on July 30 or were punched in during polling hours on July 31 and, therefore, had an opportunity to vote.

The remaining member, |||||, who neither voted nor punched in while the polls were open, stated that he went to Oscar Mayer at 4:00 a.m. on July 30 to vote and when he was told the ballots were not available, he decided to go home. ||||| had other plans for later that day and on July 31 which prevented him from coming back to Oscar Mayer to vote.

Section 401(c) of the LMRDA provides that unions must ensure that adequate safeguards to ensure a fair election shall be provided. 29 U.S.C. § 481(c). Further, section 401(e) provides that members shall have the right to vote for or otherwise support the candidate or candidates of his or her choice without improper interference. 29 U.S.C. § 481(e). However, section 402(c) of the Act requires that the Secretary prove by a preponderance of the evidence that a violation of section 401 “may have affected the outcome of [the] election.” 29 U.S.C. § 482(c).

The investigation confirmed that the polls opened late. However, the polls were open for almost over 12 hours on July 30th and 13 hours on July 31st. No member complained that they were unable to vote because the only time they could vote was when the ballots were unavailable the morning of July 30 at the polling site. Moreover, the investigation revealed that all but one potential voter had an opportunity to vote because they were at the jobsite when the polls were open. The closest margin of votes in the election was 12 votes. There was no evidence that 12 or more members tried to vote and were unable to do so during the time the ballots were unavailable. Accordingly, while the late opening of the polls was a violation of the LMRDA that prevented ||||| from voting, the violation had no effect on the outcome of the election.

You alleged that there was disparate candidate treatment in connection with the runoff election because the ballot for the runoff election listed candidates in the same order as the original ballot. You allege that the proper procedure should have been to hold a drawing of the candidate names to establish their order of appearance on the ballot for the runoff election just as had been done for the original election.

The investigation revealed that there was a drawing for ballot name placement before the January 2009 election. The same name placement was used for the runoff ballot for the July 30-31, 2009 election. The local does not have a past practice of conducting a new drawing for name placement in runoff elections.

As set out above, labor organizations must provide adequate safeguards to ensure fair union elections. 29 U.S.C. § 481(c). Department regulations indicate that this provision provides a general rule of fairness. 29 C.F.R. § 452.110(a).

There is no support for your contention that the union’s failure to redraw the names of the candidates for the runoff election ballot was unfair or constituted a violation of the LMRDA’s adequate safeguards provision. Accordingly, there was no violation of the LMRDA.

campaign card was by his register in the cafeteria because someone found the card and turned it in to one of the cash registers.

Section 401(g) of the LMRDA provides that: "no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title." 29 U.S.C. § 481(g). The results of the investigation failed to substantiate your claim that the employer's disciplinary decision constituted employer support or promotion for || || || || || || || || as a candidate. There was no violation of the LMRDA.

For the reasons set forth above, it is concluded that with respect to each of your specific allegations that no violation of the LMRDA occurred that may have affected the election. Accordingly, I have closed the file in this matter.

Sincerely,



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Chief, Division of Enforcement

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