



June 15, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your March 17, 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 UFCW Local 8 election of officers held on July 3, 2008.

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 that affected the outcome of the election occurred.

You alleged that the local failed to provide proper notice of nominations and failed to use alternative methods for notifying union members of the nominations. During the investigation, you admitted that the union bylaws require only one method of distribution of the nominations notice. Local 8 Bylaws, Article XI, Section D, provides that "Not less than 30 days prior to the deadline for the receipt of nomination petitions, notice shall be mailed by the Local Union to each member at the member's last known address..." Section 401(e) of the LMRDA provides that in any election that is to be held by secret ballot, "a reasonable opportunity shall be given for the nomination of candidates..." 29 U.S.C. 401(e). The Department's regulations provide that the union must give "timely notice reasonably calculated to 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.

You alleged that the union mailed three similar looking newsletters but only one newsletter contained the nominations notice and that newsletter did not have a reference on the front cover indicating that it contained the nominations notice. You also alleged that the nominations notice was printed in a smaller type font in the masthead and continued on a later page appearing beside and under a headline in large type that stated: "HIPPA Makes Health Insurance Portable." The investigation corroborated your allegations with regard to the appearance of the nominations notice.

As further evidence that the local failed to give proper notice of nominations, you also alleged that there were members who did not receive the notice. You provided the Department with the names of 17 active members who did not receive the notice. The Department was able to contact 12 of the 17 members. Ten members did not receive the newsletter with the notice and none of the members stated that they were interested in running or nominating a candidate for office. You stated that you were made aware of the existence of nominations notice on June 12 and received a copy on June 16. You considered running for office after you received the notice but decided not to run for office. The investigation also revealed that the union mailed the first newsletter on or around May 23 and the second newsletter, the one containing the notice of nominations, to the members' last known address on or around May 30, 2008, more than 30 days prior to the July 3, 2008 election. The USPS verification of mailing showed that 30,623 pieces were mailed and 156 pieces were returned for bad addresses.

The Department agrees that the notice did not comply with the Department's regulations because the notice was not reasonably calculated to inform the members of the impending election. Two newsletters with almost identical covers, mastheads, and tables of contents were sent to members approximately one week apart. Only the second newsletter contained the nominations notice. Because the second newsletter appeared to be almost identical to the first and because its cover contained nothing to alert the reader that the notice was in that issue, it is likely that a member would have disregarded or discarded the second newsletter believing it to be a duplicate of the first and thus not received notice of the nominations and election.

Moreover, even if a member reviewed the content of the second newsletter, it is likely that the member would overlook the nominations notice because of its typeface and placement in the masthead and under the HIPAA heading on a subsequent page. Accordingly, the Department finds that the method used by the union to provide notice of the nomination and election was not reasonably calculated to inform the members of the upcoming nomination deadline and was a violation of the LRMDA.

Section 402(c) of the LMRDA requires that the Secretary must find a violation of the LMRDA "may have affected the outcome" of an election before filing a civil action against the union in district court. 29 U.S.C. § 482. The investigation did not reveal any member who wished to nominate a candidate or run for office and was prevented from doing so due to the method the union used to provide notice of nominations. Accordingly, while there was a violation of the LMRDA, there was no effect on the outcome of the election.

You also alleged that the General Election Chairperson [REDACTED], a salaried employee of the local, had a conflict of interest because he was a vice president with the

union and had family members that worked for the union. During the investigation, you were unable to provide any evidence to support an allegation of bias. Moreover, the investigation revealed, and you later admitted, that Berns resigned from his position as vice president on March 28, 2008, more than three months before the July 1, 2008 election, to prevent the perception of a conflict of interest.

Section 401(c) of the LMRDA requires that labor organizations provide adequate safeguards to ensure fair union elections. 29 U.S.C. § 481(c). There is no support for your contention that the Election Chairperson was biased. There is no evidence that shows that, with regard to the conduct of the Election Chairperson, the union failed to provide adequate safeguards to ensure a fair election. Accordingly, 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,

Cynthia M. Downing
Chief, Division of Enforcement

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