



April 20, 2010

Dear |||||:

This Statement of Reasons is in response to your complaint filed on November 13, 2009. You alleged 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 Utility Workers Union of America Local 246 (“Union”) mail ballot elections held on June 1, 2009.

The Department of Labor (“Department”) conducted an investigation of both 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.

You alleged in your complaint to the Department that the Union’s Office Manager, |||||, campaigned against |||||, an incumbent candidate, while she was at work and thus on union time. Specifically, you cited a telephone conversation between ||||| and yourself whereby she openly discussed her dislike for |||||. You stated that during that conversation she questioned why any member would vote for |||||. Union officers and employees retain their rights as members to participate in the affairs of the union, including campaigning activities as long as that does not involve the expenditure of union funds. *See* 29 C.F.R. § 452.76. However, a union employee may not campaign on time that is paid for by the union. *Id.* The investigation revealed conflicting evidence as to whether or not campaigning occurred. ||||| does admit that the conversation with you took place and that she expressed frustration with |||||. However, ||||| denies that she spoke about the election in that conversation or |||||’s candidacy. In any event if improper campaigning did occur, it could only have affected the vote of one individual and, thus, not the outcome of the election. The margin of victory for the office of Business Manager was nineteen votes. The smallest margin of victory was sixteen votes for the office of the Financial Secretary. The LMRDA requires that the Department prove not only the existence of a violation but also that the violation may have affected the outcome of the election, before taking legal action to overturn that election. *See* 29 U.S.C. § 482. Thus, there was no violation of the Act that would provide a basis for litigation.

You alleged that members of a separate local union, the San Onofre Firefighters Association (“SOFA”), were improperly denied the right to participate in the election of officers for Local 246. You alleged that SOFA members had the right to vote because they pay union dues to Local 246. The Department investigated your allegation and found that SOFA members were properly excluded from the Union’s election. The Act states that “every member in good standing...shall have the right to vote for or otherwise support the candidate or candidates of his choice.” *See* 29 U.S.C. 401(e). The applicable regulations further state that “there is an

obligation on the labor organization to conduct its periodic elections of officers in such a way as to afford all its members a reasonable opportunity to cast ballots.” *See* 29 C.F.R. § 452.94. The Union was not in violation of the Act because SOFA members are not members of Local 246. SOFA is the exclusive representative of approximately twenty firefighters working onsite with Local 246 members at the employer’s site, SCE Mechanical. SOFA members pay dues to Local 246 which provides administrative, clerical and contract services in exchange for that fee. As an independent labor organization, SOFA has its own constitution, by-laws and separately elected officials. There is no history of SOFA members participating in an election of Local 246 officers, or visa versa. While a collaborative relationship between Local 246 and SOFA exists, SOFA is an independent and separately chartered organization that is merely affiliated with UWUA. Thus, there was no violation of the Act.

The investigation failed to disclose any violation of the LMRDA. Accordingly, I am closing the file on this matter.

Sincerely,



Cynthia M. Downing
Chief, Division of Enforcement

cc: D. Michael Langford
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