



January 12, 2010

Dear |||||:

This Statement of Reasons is in response to your complaints filed on August 12, 2009 and August 27, 2009, alleging that violations 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 UNITE HERE Local 2’s (“Union”) polling site elections held on May 12, 2009.

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.

You alleged a misuse of union funds. Section 401(g) of the Act, 29 U.S.C. §481(g), prohibits the use of union funds to promote the candidacy of any person. Specifically, you claimed that (1) President Mike Casey used the Union’s office to store campaign literature for his slate of candidates; (2) union funds were used to pay for taxis and vans displaying Casey slate literature to transport members to the polling site; (3) the van and taxi drivers as well as other unspecified union representatives campaigned on election-day while on union time; (4) throughout the campaign period, various members of the Casey slate and their supporters campaigned while on union time; and (5) |||||, independent candidate for Vice President, and |||||, Field Representative, campaigned at a union meeting at the Hilton on April 30. The Department found no evidence to support these allegations.

The Department interviewed several witnesses, including Election Committee Chair, |||||, ||||| and your supporter, |||||, regarding the allegation that Mr. Casey stored campaign literature at the union hall. None of the witnesses interviewed saw Casey campaign materials at the union hall. Further, the investigation revealed that the Casey slate stored campaign literature and held meetings at an alternate location.

Therefore, because the Department was unable to substantiate your allegation, it does not provide a basis for litigation.

With respect to your allegations that Union funds were used to pay for taxis and vans displaying Casey campaign literature on election-day, the investigation revealed records showing that the Casey slate paid for the vehicles with campaign funds. Further, the drivers were not on Union time as you alleged. Documents provided by the Union showed that each driver took leave on election-day. The investigation also revealed that every union official and employee that campaigned on election-day took leave in order to do so. Therefore, there was no violation of the Act.

You also claimed that on April 22, 2009, |||||, Field Representative, campaigned while on union time at the Westin St. Francis. ||||| denies the allegation. After interviewing multiple witnesses, the Department found no support for the allegation that ||||| campaigned on union time. The Department also found no merit to your allegation that ||||| reported your presence to management which caused management to remove you from the hotel. Hotel security alerted management of your presence. Therefore, there was no violation of the Act.

You further alleged that Mr. Casey; Financial Secretary-Treasurer, Lamoin Werlein-Jean; |||||; and Director of Field Representatives, |||||, campaigned at the Hilton on April 19 and 20, 2009, while conducting healthcare surveys. Through its investigation, the Department determined that the healthcare surveys were conducted on April 22 and 23. Only ||||| conducted surveys at the Hilton. ||||| denies campaigning while conducting the survey. Further, interviews with Hilton employees did not establish campaigning by |||||. The investigation revealed that Mr. Casey and Mr. Werlein-Jean did not participate in the survey at all. Finally, the Department interviewed several Hilton employees and no one saw Mr. Casey, Mr. Cuellar or Mr. Werlein-Jean campaigning while conducting the surveys. There is no evidence to support this allegation. Therefore, there was no violation of the Act.

You claimed that on April 30, 2009, ||||| and ||||| campaigned at a union meeting at the Hilton. The Department's investigation revealed that the April 30 meeting was not a union meeting. ||||| paid to rent a room at the Hilton on April 30 to hold a campaign event in support of his candidacy for Vice President. ||||| was not a union officer or a paid union employee. Therefore, he was not on union time during the meeting. ||||| was at the Hilton on April 30 attending a grievance meeting, but there is no evidence to support the allegation that she attended |||||'s meeting or engaged in any campaigning. Therefore, there was no violation of the Act.

You claimed that on April 22, 2009, Mr. Casey and ||||| campaigned at the Hilton on union time and in the course of doing so, Mr. Casey asked ||||| why she

supported you for Vice President. You alleged that this request was made in a hostile manner and was intended to intimidate | | | | |. Section 401(e) of the Act, 29 U.S.C. §481(e) states that every member in good standing shall have the right to vote for or otherwise support the candidate of his choice without being subject to improper interference or reprisal by the union or any union member. The Department's investigation revealed that Mr. Casey and | | | | | campaigned at the Hilton on April 23 not April 22. Moreover, they campaigned before work hours. Accordingly, they were not on union time. Mr. Casey and | | | | | agreed that Mr. Casey spoke with | | | | | while at the Hilton on April 23. However, there is no evidence that Mr. Casey interfered with | | | | |'s right to support the candidate of her choice. The evidence shows that she continued to support your candidacy and acted as your observer on election-day. Therefore, there was no violation of the Act.

You alleged disparate treatment. Specifically, you claimed that members and supporters of the Casey slate were allowed to campaign at hotels that denied you access, including the: (1) Westin St. Francis; (2) Holiday Inn Civic Center; (3) Moscone Center; (4) Cathedral Hill Hotel; and (5) Palace Hotel. You further alleged that Casey slate candidates and supporters encouraged hotel management to deny you access. The Department's investigation revealed no evidence to support this allegation.

The investigation revealed no evidence of disparate candidate treatment by an employer. Hotel management did not discriminate among candidates. To the extent candidates campaigned inside these hotels in derogation of employer policy, they did so without the permission or knowledge of hotel security or management. Also, there was no evidence that union officials encouraged hotel management to deny you access to the hotels for the purpose of campaigning.

Moreover, the investigation revealed that you campaigned or could have campaigned at these sites. During your interview with the Department, you stated that you were able to campaign outside the employee entrance at the Westin St. Francis and the Palace Hotel and on the public sidewalk outside the employee entrance at the Moscone Center. With respect to the Holiday Inn Civic Center, you were allowed to campaign in the employee cafeteria before the Human Resources Director asked you to leave. The Director informed you that hotel policy requires that you make an appointment to campaign inside the hotel and she suggested that you make an appointment to come back on another day. You did not take advantage of that opportunity. Cathedral Hill also requires candidates to make an appointment in order to campaign inside the hotel. Although the Human Resources Director asked you to leave, he offered you the opportunity to post campaign material on the union bulletin board and to make an appointment to return another day. Again, you did not take advantage of these offers. Therefore, there was no violation of the Act.

Finally, you claimed that Mr. Casey tried to intimidate you in an effort to keep you from running for office. Section 401(e) of the Act, 29 U.S.C. §481(e) states that every member in good standing shall be eligible to be a candidate and to hold office without being subjected to improper interference by any member thereof. Specifically, you alleged that Mr. Casey refused to let you announce your candidacy for Vice President at a meeting of the union membership on April 16, 2009. The Department's investigation revealed that the April 16 meeting was not an election meeting and therefore, it was not an appropriate forum for campaigning. Therefore, there was no violation of the Act.

In addition to the allegations discussed above, the Department notes that you raised other allegations during your interview with Department investigators, which were not raised in your internal union protest, and therefore, are not properly before the Department for investigation. 29 CFR §452.136 (b-1).

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA affecting the outcome of the election, and I have closed the file regarding this matter.

Sincerely,

Cynthia M. Downing
Chief, Division of Enforcement

cc: | | | | |, Associate Solicitor
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