



July 14, 2011

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED], and [REDACTED]

This Statement of Reasons is in response to your complaint filed on November 4, 2010, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by Local 26, International Brotherhood of Electrical Workers (IBEW), AFL-CIO (local or union), on June 11, 2010.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of our investigation, the Department has concluded, with respect to each of your allegations, that there was no violation that may have affected the outcome of the election.

You alleged that union resources were used by the incumbents to support and advocate their candidacies for office. Specifically, you alleged that the union promoted the Graham Team (incumbent candidates) in the union magazine, *In Charge*, by including a cover picture of Local 26 Business Agent Chuck Graham and the assistant business agents shaking hands with President Barack Obama as well as several interior pictures of Graham shaking hands with various people in the issue that contained the nominations/election notice. You also alleged that Local 26 President Butch Ramos used the magazine to self-promote by advising that he could assist members in receiving a pension bridge. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), provides that no moneys received by any labor organization by way of dues, assessments, or similar levy, shall be contributed or applied to promote the candidacy of any person in

an election subject to the provisions of the LMRDA. Pursuant to Section 401(g), a union may neither attack nor promote a candidate in a union-financed publication.

The Department's investigation, which included a review of the 2009 and the first two quarters of 2010 issues of *In-Charge* magazine, revealed that incumbent candidate Graham did appear in a picture with President Obama. However, the investigation further revealed that this picture and other pictures of President Obama were printed in connection with his visit to the local, a newsworthy event. The picture was printed contemporaneously with the reporting of that event. That issue of the magazine did not contain any more pictures than other issues. The investigation also revealed that Ramos included the instructions for requesting pension bridges in the magazine and at a membership meeting. There was no campaigning in the union magazine. There was no promotion or denigration of candidacy. There was no violation.

You alleged that union resources were used to promote the candidacy of the Graham Team when several mailings were sent from the union around the time of the election that promoted the Graham Team. Many of these mailings were sent on union letterhead which included the incumbent officers' names and titles. You alleged that although the mailings were union business related (with the exception of the political event), the circumstances for these mailing seemed unusual and their timing appeared to promote the incumbents. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits the use of union funds to promote the candidacy of any person in an election subject to the provisions of Title IV. This section, however, is not intended to prohibit the expenditure of such funds for normal union business during the election period.

The investigation did not reveal that the mailings made to the membership during the period in question were not in keeping with the conduct of the regular business of the union. Further, the investigation did not reveal that the mailings involved issues related to the candidates or the election, such that the mailings would constitute the use of union funds to promote a candidate. There is no evidence that Graham's name was added to the masthead of the union's stationery for the election period. The union's regular letterhead was used in transmitting normal union business. There was no violation.

You alleged that Local 26 failed to treat candidates equally with respect to the distribution of campaign literature in that a member [REDACTED] was told he could not campaign on union property even though the Graham Team distributed campaign literature in support of the incumbents at the union hall on the night of the nomination meeting. Union resources may not be used to promote the candidacy of any person in an election subject to Title IV. *See* 29 C.F.R. § 452.73. The union may not discriminate between candidates with respect to campaigning. *See* 29 C.F.R. § 452.67.

The investigation did not substantiate your allegation. The investigation revealed that on the day of the nomination meeting, ██████ observed four or five members handing out stickers and brochures for the Graham Team outside the union hall in the parking lot and at the entrance to the union hall. The day after the nominations meeting, Tucker was distributing campaign flyers to members inside the union hall when he was informed by President Ramos that campaign literature could not be distributed in the union hall. The investigation did not reveal that ██████ was prohibited from distributing campaign literature outside the union hall. The investigation also did not reveal that the Graham Team was permitted to distribute campaign literature inside the union hall. There was no disparate candidate treatment. There was no violation.

You alleged that the union failed to provide proper notice of nominations and election, because the notice was on page 26 of the union magazine and there was nothing on the front cover indicating that the notice was included. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that notice of election must be mailed to each member at his last known home address not less than 15 days prior to the election. A labor organization may comply with the election notice requirement by publishing the election notice in the organization's newspaper which is then mailed to the last known home address of each member at least 15 days prior to the election. *See* 29 C.F.R. § 452.100. Where this procedure is used, the election notice should be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member. *Id.* There is no similar requirement concerning the placement of the notice of nominations.

The Department's investigation revealed that the union magazine containing the combined nominations/election notice had no conspicuous information on the front cover regarding the union's upcoming nominations and election or informing members that the notice was included in the magazine. This constituted a violation of Section 401(e) of the LMRDA with respect to the election notice. However, the union mailed ballots to members' last known home addresses at least 15 days prior to the election. In a mail ballot election, mailing the ballot to members' last known home addresses at least 15 days prior to the election satisfies the Act's election notice requirement. The local's bylaws require that "the nomination notice be mailed to all members at least 20 days prior to the meeting for nominations." There are no additional requirements in the bylaws for the nominations notice. The investigation did not reveal any members who did not have an opportunity to participate in nominations due to lack of notice. The nomination notice provided to members was deemed sufficient. The violation of Section 401(e) with respect to election notice in the union magazine was cured by the mailing of the ballots.

You further alleged that the notice did not include details on the availability of absentee ballots. The Act requires the union to provide absentee ballots in polling place elections in those instances where a union knows that some members may not be able to exercise their right to vote in person. *See* 29 C.F.R. § 452.95. While Article 3, Section 8(a) of the local's bylaws states that the availability of absentee ballots must be included in the notice, Section 3(c) of this same article specifies that "all voting shall be by mail ballot." Therefore, the union's bylaws are contradictory and there was no need to provide for absentee ballots in a mail ballot election. Moreover, the union mailed ballots to members over 20 days before the election. The union also provided a liberal duplicate ballot procedure. There was no evidence that any member failed to vote because there was no absentee voting available. Any violation of the bylaws did not affect the outcome of the election.

You alleged that the union failed to provide adequate safeguards to ensure a fair election, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the union selected [REDACTED] as the election judge even though he has not worked in covered employment for 10 years, may be considered management, and his employment is influenced by incumbent candidate Ramos.

Article 3, Section 4(a), of Local 26's bylaws states that the president shall appoint an election judge. The bylaws do not contain any qualifications for appointment as an election judge. [REDACTED] has been a Local 26 member in good standing for 22 years and had served as the election judge in the last three elections. He does not hire or supervise in his duties as an employee of the Joint Apprenticeship and Training Committee (JATC). Ramos is a JATC trustee, but he does not have any influence on the JATC or [REDACTED]'s employment. There was no violation.

You alleged that the local failed to follow its constitution and bylaws, in violation of Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), in that no alternate convention delegates were elected as required by the Local 26 Bylaws. Section 401(e) of the LMRDA provides that the election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV. *See* 29 U.S.C. § 481(e).

Article 2, Section 10, of the IBEW Constitution provides that "the election of delegates and alternates shall be decided by those receiving the most votes and ballots." The union has interpreted this provision as providing that those 10 candidates receiving the highest number of votes are elected as delegates. The losing candidates in the order of descending vote totals are elected as alternates. Thus, all of the candidates who were not elected as delegates were elected as alternates, in accordance with the local's constitution and its past practice. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), in that the candidates were given insufficient notice of the initial printing and mailing of the ballots, and were unable to observe the printing and mailing of duplicate ballots.

The LMRDA does impose an affirmative duty on the union to give notice of the ballot printing and mailing. Under the provisions of Section 401(c) of the LMRDA, candidates, upon request, must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots. *See* 29 C.F.R. § 452.107(c). The investigation did not reveal any evidence that any request to observe the printing or mailing of the ballots was made and denied. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), inasmuch as the limit of one observer at the ballot tally was insufficient to allow observation of all of the events at the tally. You further alleged that observers were not able to see what was on the screens used to display the ballots. Section 401(c) provides that adequate safeguards to ensure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. The Department's interpretative regulations make it clear that allowing observers to be present is not sufficient; the observers must be able to effectively observe the entire election process. The right to observe encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. The observer may note the names of those voting in order to ascertain whether unauthorized persons voted in the election. *See* 29 C.F.R. § 452.107

The investigation revealed that at the tally each ballot was scanned and projected onto two different screens; the top half of the ballot was shown on a screen to the left of observers, and the bottom half of the ballot was shown on a screen to the right of observers. Ballots were on the screens for only a brief moment. The investigation further revealed that observers were required to stand about 17 feet away from the screens and at least 10 feet from the tally tables. The investigation confirmed that from this vantage point, observers could not see names on envelopes to challenge voter eligibility. Additionally, the placement of the observers 17 feet away from the screens and the fact that the ballots were not on the screen long enough to properly observe the markings on the ballots, prevented effective observation, in violation of Section 401(c) of the LMRDA.

The violation of Section 401(c) did not affect the outcome of the election. As part of its investigation, the Department reviewed the eligibility of those voting in the election and

conducted a representative ballot recount of the financial secretary's race. The investigation revealed that only eligible voters participated in the election. The recount found minor discrepancies in the ballot tally. These discrepancies, however, were not sufficient to affect the financial secretary's race because the margin of victory in that race was 1,058 votes. There was no violation affecting the outcome of the election.

You alleged that the union failed to follow the constitution and bylaws in that the election board did not select the post office box for the returned ballots, did not count the ballots, and did not certify the results as required in the Local 26 Bylaws. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that in any election that is required to be held by secret ballot, it shall be conducted in accordance with the provisions of the constitution of such organization insofar as they are not inconsistent with the provisions of Title IV. Article 3, Sections 4(b) and (j) of the local's bylaws provide that the election board shall select a depository to which the envelopes containing the ballots shall be mailed and that the election board shall count the ballots and certify the results to the executive board.

The investigation revealed that Local 26 Financial Secretary Michael Shoemaker was authorized by the executive board to rent three post office boxes for the election and to hire TrueBallot to count the ballots. The investigation further revealed that Election Judge [REDACTED] certified and reported the election results to the executive board and announced the results to the membership at the general membership meeting later that night. Although the actual ballot tabulation was performed electronically, the election board was directly involved in the process. The local's bylaws specify that the election board should rent the post office boxes for the election. While the election board did not perform this specific function, which constitutes a technical violation of the local's bylaws and Section 401(e) of the LMRDA, there is no evidence that this violation may have affected the outcome of the election.

The investigation further revealed that the ballots were returned to a secure post office box and retrieved in the presence of observers. Moreover, the Department performed an examination of the ballots to ensure that there was no ballot fraud. The examination included a check for any suspicious markings, indentations on the ballots that could indicate that they were marked in stacks or on top of one another, a pattern of erasures for one candidate and corresponding votes for the same opponent and frequent use of an unusually colored pen or pencil. The Department's examination did not find any discrepancies with the voted ballots. There was no violation that may have affected the outcome of the election.

You alleged that the local failed to provide adequate safeguards to ensure a fair election, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because ballots were not properly safeguarded after the ballot tally.

The investigation revealed that observers were no longer in the tally room when Murphy, the election judge, boxed and sealed the election records. TrueBallot officials, including TrueBallot President [REDACTED], were present and confirmed that once the tally was completed, a CD of the election results was burned and then all of the election records were put in boxes and sealed. The investigation revealed no violation of the Act connected with the securing of the ballots after the election. The investigation and review of the election records did not reveal any evidence of tampering with the election records after they had been sealed. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the incumbents received a CD containing all of the information from the 2007 election and could have used it to determine which members voted so that they could campaign to them in the 2010 election. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided.

The investigation revealed that although the incumbent candidates campaigned, none admitted to and the investigation revealed no evidence confirming use of information from the 2007 election CD to assist them in their campaign efforts. [REDACTED] stated that the two CDs from the 2007 election were included in the sealed election records that were destroyed a year after the election was completed in 2008 in accordance with the local's bylaws. The investigation did not reveal any evidence that the incumbents had a copy of the 2007 election CD. There was no violation.

You alleged that Local 26 members who are supervisors and managers were improperly permitted to vote in the election. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that every member in good standing shall have the right to vote for or otherwise support the candidate of his choice. Article 3, Section 4(d) of the local's bylaws states that "all members in good standing and qualified shall be entitled to vote."

The investigation did not reveal any evidence of any provision in the IBEW Constitution or the local bylaws prohibiting supervisors and managers from voting in the local's election. However, Article XV, Section 5 of the IBEW Constitution, states the following: "No local union shall allow any member who becomes an electrical employer or a partner in an electrical employing concern, to hold office in the local union or attend any of its meetings, or vote in any election of a Local Union." The investigation did not reveal any evidence that electrical employers or partners participated in the election. There was no violation.

You alleged that [REDACTED], a delegate candidate in the election, was ineligible to run for convention delegate because he is a project manager and outside superintendent.

The investigation established that [REDACTED] was not a superintendent at the time of his nomination in May 2010. During this period, he was assigned by his employer to be a working foreman, worked with his tools, and was covered by the wages and fringe benefits provisions in the CBA. Article 3, Section 4(b), of the local's bylaws requires that the local election judge assess the eligibility of all candidates nominated for office. Election Judge [REDACTED] verified the qualifications of each nominated candidate by reviewing the dues status of all nominees, including [REDACTED]. The investigation did not reveal any evidence that [REDACTED] was working as a superintendent at the time of his nomination for office. In any event, [REDACTED] did not win his race. There was no violation.

You alleged that [REDACTED] engaged in improper campaigning while on the clock. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), 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 the LMRDA.

The investigation did not reveal any evidence of any improper campaigning by [REDACTED] or any witnesses who may have observed [REDACTED] campaigning while on the clock. You provided no evidence to this effect. Moreover, [REDACTED] did not win his race. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the ballot package had information on the outer envelope indicating that a ballot was inside, but it did not note that it was time-sensitive material which needed to be returned by a certain date.

The union's constitution and bylaws, its past practice, nor the LMRDA require that this information be printed on the ballot package. Moreover, the investigation established that the outer envelope from the ballot package had Local 26's logo and the message: "IMPORTANT! I.B.E.W. LOCAL 26 2010 ELECTION BALLOT ENCLOSED" next to the logo. There was no violation.

You alleged that the local failed to provide adequate safeguards to ensure a fair election, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the ballot instructions were difficult to follow. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. A union's failure to provide voters with adequate instructions for properly casting their

ballots may violate the requirement of adequate safeguards to ensure a fair election. *See* 29 C.F.R. § 452.110(b).

The investigation did not substantiate your allegation. The investigation revealed that the top of the ballot had instructions on how to mark the boxes. There was an indication next to each race that informed the member as to the number of candidates to vote for in that race. The bottom of the ballot stated, "see reverse side for instructions." The instructions on the reverse side included how to vote, as well as what to do after the ballot was completed. The ballot format was similar to the previous election's ballot. There was no evidence that any member was confused by the ballot instructions. There was no violation.

You alleged that members may not have voted because they believed that the barcode on the ballot contained information that could be used to identify them. Section 401(b) of the LMRDA provides that every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing. A secret ballot under the Act is "the expression by ballot, voting machine, or otherwise a choice cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." *See* 29 C.F.R. § 452.97.

The investigation disclosed that the ballot, along with a detachable stub, contained a barcode in the upper left corner with the number "01" which represented the ballot type, but did not identify the voter. The investigation revealed that there was also a different barcode on the detachable stub which was used to verify voter eligibility. This stub was inserted into the return window envelope. As the return envelopes were scanned, the voter's name appeared on the screen. After the envelopes were scanned, they were opened and the secret ballot envelopes were removed and separated from the return envelopes to maintain secrecy. There was no violation of secrecy. Further, no member stated that s/he did not vote because of the barcode. There was no violation.

You alleged that the local failed to treat candidates equally as ██████████'s nickname was not listed on the ballot for the convention delegate race, in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c). Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. *See* 29 C.F.R. § 452.110. Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed. A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness. For example, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege. *See* 29 C.F.R. § 452.110.

The investigation disclosed that all of the other candidates' nicknames were properly listed. The investigation revealed that Election Judge ██████████ acknowledged that he

erred when he did not include [REDACTED]'s nickname for the race for convention delegate. The failure to include [REDACTED]'s nickname on the ballot for the race for convention delegate constitutes a violation of Section 401(c) of the LMRDA, but there is no evidence that this violation may have affected the outcome of the election. Complainant [REDACTED] acknowledged that not many members know him by the nickname, "[REDACTED]" [REDACTED] ran for financial secretary as well as convention delegate and his nickname did appear for the financial secretary race. [REDACTED] lost the financial secretary race by a wider margin (1,058) than he lost the delegate race (327). [REDACTED] is the only member with that last name in the union. The investigation did not reveal any evidence that the missing nickname confused voters. The violation of the LMRDA did not affect the outcome of the election.

You alleged that the local denied candidates the right to inspect the membership list in violation of Section 401(c) of the LMRDA, 29 U.S.C. § 481(c). Section 401(c) of the LMRDA provides that every bona fide candidate shall have the right, once within 30 days prior to an election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the organization. *See* 29 C.F.R. § 452.71.

The investigation revealed that on May 16, 2010, Election Judge [REDACTED] mailed a letter to the candidates stating that the "list of all members and their last known home addresses" would be available "no later than three days prior to Friday, June 11, 2010," the return date for ballots. He offered four blocks of time to view the list, but stated other times could be arranged. The letter was sent via express mail for next day delivery and was postmarked on May 17, 2010. The ballots were mailed to the members on May 21, 2010 with a ballot return date of June 11, 2010. Although the letter notifying candidates of their right to inspect the membership list was mailed only a few days prior to the ballot mailing, there was no evidence that anyone was denied the opportunity to inspect the list. In fact, four candidates requested to view the list and were given the opportunity to do so. The primary purposes of the inspection, to allow candidates to challenge eligibility determinations made by the union and to determine the accuracy of the union list, are not thwarted by an inspection date that follows the mailing of the ballots. The Act does not require that the inspection take place prior to the mailing of the ballots. There was no violation.

You further alleged that the local violated Section 401(c) when candidate [REDACTED] [REDACTED] was given an incomplete list to view and was prevented from viewing the entire list due to intimidation by union officers.

The investigation revealed that [REDACTED] was allowed to inspect the list on May 11, 2010. On that day, the local realized that [REDACTED] had been given the wrong list, and Financial Secretary Shoemaker allowed [REDACTED] to return on May 12 to inspect the list. The

investigation further revealed that when [REDACTED] returned on the second day, he noticed errors on the list and began to take notes. As a result of the note taking, [REDACTED] got into an argument with two union officials and never completed his inspection of the list. The union officials did not ask [REDACTED] to leave or prohibit him from continuing to inspect the list. In any event, the Department investigation included a review of the list of eligible voters. Only eligible voters participated in the election. The investigation did not reveal and it was not alleged that there were eligible voters who were denied the right to vote because of inaccuracies in the union's list of members. There was no violation.

You alleged that the local failed to treat candidates equally with respect to the distribution of campaign literature in that candidate campaign mailing requests from insurgent candidates were ignored or delayed. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), contains a general mandate that adequate safeguards to ensure a fair election shall be provided to all candidates. This section also provides that every local labor organization shall be under a duty to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature. When the organization or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate. *See* 29 C.F.R. § 452.67.

The investigation revealed that the campaign mailing procedures were explained at the nomination meeting by Financial Secretary Shoemaker. The investigation established that following the nomination meeting, Shoemaker mailed a letter, dated May 14, 2010, to all candidates who were not present at the nomination meeting regarding campaign mailings. The investigation disclosed that candidates were permitted to make campaign mailings at their personal expense using the membership list. They had to provide the local with a copy of the mailing and make payment to the union office. After receiving the campaign material to be mailed, the local sent the material to AccuMail, the mailing house.

The investigation further revealed that candidate [REDACTED] sent two email requests to Election Judge [REDACTED] inquiring about the cost of a campaign mailing and the number of pieces of literature needed. Five days after the second email was sent, [REDACTED] responded as to cost, but did not mention the number of pieces needed for the mailing. The investigation also disclosed that in May 2010, candidate [REDACTED], prior to the ballot mailing, contacted the union about sending out a campaign mailing. [REDACTED] told [REDACTED] that he would have to wait a week to distribute his campaign literature because Shoemaker was out of town. When [REDACTED] contacted the union to ask about the cost of the mailing, [REDACTED] told him it would cost \$4,600 to distribute a mailing to the full membership. [REDACTED] asked [REDACTED] if he could do a limited mailing. The investigation revealed that [REDACTED] instructed [REDACTED] to email him with the details of his limited

mailing, but [REDACTED] never followed up with [REDACTED]. The investigation also disclosed that candidate [REDACTED] signed up at the nomination meeting for a campaign mailing, but he never followed through. The investigation established that [REDACTED], [REDACTED] and [REDACTED] were given the opportunity to send out campaign literature, but chose not to do so. There was no evidence that the local refused to comply with a reasonable request from these candidates to mail campaign literature. There was no violation.

You raised other issues that were protested to the union including allegations regarding internal union business, union bylaws, and the content and distribution of the union's magazine. These allegations, even if true, would not constitute violations of the union officer election provisions of Title IV of the LMRDA.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election. I am closing our file regarding this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Edwin D. Hill, President
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Ramiro G. Ramos, President
IBEW Local 26

[REDACTED]

Beverly Dankowitz, Acting Associate Solicitor for Civil Rights and Labor-
Management