



July 27, 2011

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor on January 6, 2011, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), U.S.C. §§ 481-484, occurred in connection with the election of officers for Local 324 of the United Food and Commercial Workers (UFCW) concluded on August 31, 2010, with the election by acclamation of all successfully nominated candidates.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that no violations affecting the outcome of the election occurred.

You allege that the Local's petition nomination requirement is unreasonable. Specifically, you challenge the requirement to obtain 448 unduplicated signatures of active members (2% of the Local's active members) within 30 days. Section 401(e) of the Act provides that in every election required to be held by secret ballot, a reasonable opportunity shall be given for the nomination of candidates. This section also provides that every labor union member in good standing is eligible to run for and to hold union office subject to "reasonable qualifications uniformly imposed." The LMRDA does not prescribe a particular procedure for nominations; a labor organization is free to use any method, including nomination by petition. If properly and fairly employed, use of nomination petitions will provide a reasonable opportunity for making nominations and will not then operate as an unreasonable qualification on candidacy. A petition requirement, in general, is reasonable and serves legitimate union needs. It ensures that candidates can marshal minimal support thereby eliminating fringe and frivolous candidates. Further, courts have not found the requirement to obtain unduplicated signatures to be unreasonable absent a showing that factors such as travel distance, travel cost, or number of members hinder obtaining the signatures.

Here, the investigation did not uncover facts to support a finding that the Local's petition requirement of 448 unduplicated signatures is unreasonable. The investigation determined that the Local has approximately 22,000 active members who work in grocery stores, drug stores, and Disneyland, among other businesses, located in Orange and Los Angeles counties, California. There are many employer sites within close proximity and potential candidates and their supporters were often able to obtain members' signatures at their work sites and during work hours. Members who could not be contacted on the job were accessible leaving and entering work at shift changes. In addition, potential candidates were allowed to enlist the help of other members to aid in the collection of petition signatures. In this case, the facts do not support a finding that the petition requirement was unreasonable. There was no violation of the Act.

You also allege that the Local improperly disqualified signatures on your nomination petition. Section 401(c) of the Act requires that unions have adequate safeguards to insure a fair election. As described above, the election rules required candidates to submit a nomination petition with the unduplicated signatures of 448 active members. The investigation disclosed that you submitted 59 petition pages with 462 signatures. Upon review of your petition, the Local's election committee chairperson disqualified 50 of your signatures, reducing the number of valid signatures to 412, well below the required 448. The Department's investigation determined that 40 of the 50 signatures disqualified by the election committee were improperly disqualified and should have been deemed valid because the individuals were active dues paying members at the time of nomination. The Local's failure to properly determine the validity of these 40 signatures was a violation of Section 401(c) of the Act. However, in order for the Department to seek to overturn an election, there must be evidence that the violation may have affected the outcome of the election. 29 U.S.C. § 482(c)(2). In this case, there is no such evidence. Rather, the investigation disclosed that the election committee chairperson, having determined that the number of valid signatures did not reach the 448 threshold, did not continue the review process by examining the petitions for duplicate signatures. The investigation revealed that had the Local done so an additional 65 signatures from both your and the incumbents' petitions would have been disqualified. Therefore, while the Local's disqualification of valid signatures was a violation of the LMRDA, it did not affect the outcome of the election.

You also allege that Local representatives solicited signatures for the incumbents' petition on union time. The investigation did not substantiate this allegation. Section 401(g) of the LMRDA prohibits the use of union resources and funds to promote the candidacy of any person in an election subject to the Act. Section 401(c) of the LMRDA requires unions to refrain from discrimination in favor or against any candidate. The investigation determined that the union representatives solicited signatures on their vacation days and were not provided with union vehicles. There was no violation.

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

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Joseph T. Hansen, International President
United Food and Commercial Workers International Union
1775 K Street, N.W.
Washington, D.C. 20006-1598

Greg Conger, President
United Food and Commercial Workers Local 324



Joseph Paller
Gilbert & Sackman
3699 Wilshire Blvd., Suite 1200
Los Angeles, California 90010-2732

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