



June 19, 2013



Dear [REDACTED]

This Statement of Reasons is in response to your complaint filed with the Department of Labor on March 5, 2013. Your complaint alleges that numerous violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the November 13, 2012 election of officers for Bakery, Confectionary, Tobacco, and Grain Millers Local 125.

The Department of Labor 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 there was no violation affecting the outcome of the election.

As an initial matter, Section 402(a) of the LMRDA provides that a member of a labor organization may file a complaint with the Secretary within one calendar month if the member has exhausted remedies available under the constitution and bylaws of such organization and of any parent body, or invoked such available remedies without obtaining a final decision within three calendar months after their invocation. Article XVI, Section 12(a) of the Bakery, Confectionary, Tobacco, and Grain Millers International Union's Constitution requires protests be filed with the local within 10 days following an election and that appeals be made in writing and sent to the General Executive Board within 10 days after the local's decision. You raised various issues for the first time on appeal with the General Executive Board, but not in your initial protest with the Local Executive Board and made other allegations in your initial protest that were not raised on appeal. Only issues that were properly exhausted were considered within the scope of OLMS's investigation.

Turning to the allegations you properly exhausted, you first allege that the local's current practice of limiting one Executive Board position to each of the local's 17 shops gives too much power to the Executive Board to appoint whomever it wants when positions remain vacant. You claim that Executive Board positions should be run like a delegate race in which candidates with the highest votes are seated on the Executive

Board. In this regard, you assert that there were only two contested Executive Board races in the election and it is unfair that the two losers of those races are not permitted to fill vacant positions.

Section 401(e) of the LMRDA requires union officer elections to be conducted in accordance with the union's constitution and bylaws. Article II, Section A of the bylaws states that "[t]he Local Union shall be composed of three divisions as follows: 1. Bakery-Retail and Sweet Goods Division, 2. Bakery- Wholesale Bread Division, and 3. Candy Division." Article III, Section A provides that the "Executive Board shall be composed of Secretary-Treasurer, Vice President, Recording Secretary, President, Sergeant-At-Arms, and three Trustees; plus duly elected or appointed members from the above Divisions. The Executive Board will set the number of Executive Board members from each division." Under these constitutional provisions, the Executive Board has discretion to determine how many Executive Board positions will exist within each division, each of which contains a numbers of shops. In addition, the investigation established that August 28, 2012 Executive Board meeting minutes indicate that the Executive Board voted to allocate one Executive Board member for each of the local's 17 shops for the November 13, 2012 election. Moreover, the policy of limiting one Executive Board position per shop has been the local's policy for more than forty years. There was no violation of the LMRDA.

Second, you claim that the nominations notice did not list the specific number of Executive Board members or trustees that would be voted on in the election. You further allege that because the number of positions was not identified, not enough people ran in the election. Section 401(e) of the LMRDA requires a reasonable opportunity to be given for the nomination of candidates. In addition, 29 CFR § 452.56(a) provides that the local must give notice that is reasonably calculated to inform all members of the offices to be filled.

The OLMS investigation established that you could not identify anyone who wanted to run for a position but did not because he or she was unaware of the specific positions available. In addition, the July 9, 2012 nomination notice used in the election stated that nominations for "Officers, Executive Board, and Delegates" would be taken at the September 15, 2012 nominations meeting and members were informed of each Executive Board and trustee position at the September 15, 2012 nominations meeting. The LMRDA requires that a new election be held only where a violation may have affected the outcome of the election. 29 U.S.C. 482(c). Even if the local's nomination notice was not sufficiently specific, the number of offices were determined in the same manner as had been done in past elections and the investigation found no individuals who were deterred from running for office by the lack of specificity. There was no violation that affected the outcome of the election.

For the reasons set forth above, the Department of Labor concludes that there were no violations affecting the outcome of the November 13, 2012 election. Accordingly, I have closed the file on this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: David Durkee, International President  
Bakery, Confectionery, Tobacco Workers & Grain Millers  
10401 Connecticut Avenue  
Kensington, MD 20895

Donna Scarano, President  
Bakery Workers Local 125  
14144 Doolittle Drive  
San Leandro, CA 94577

Christopher Wilkinson, Associate Solicitor  
for Civil Rights and Labor-Management