



July 29, 2009



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint that you filed with the United States Department of Labor (the "Department") on May 6, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (the "Act"), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of Local 326 ("the Local"), Bakery, Confectionery Tobacco Workers & Grain Millers International Union, AFL-CIO, ("BCTGM") completed on January 7, 2009.

The Department 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 that may have affected the outcome of the election.

You allege that the Local did not afford all candidates the opportunity to include their nickname on the ballot. Section 401(e) of the Act, 29 U.S.C. § 481(e), provides, in pertinent part, "The election [of officers] shall be conducted in accordance with the constitution and bylaws of such [labor] organization insofar as they are not inconsistent with the provisions of this title." Section 15(F)(2) of the Local's bylaws states, in part, "Ballots are to be printed with the names of the candidates for every office and marked as to how many shall be elected to each office...." In addition, Section 401(c) of the Act provides, among other things, that "adequate safeguards to insure a fair election shall be provided." 29 U.S.C. § 481(c). As explained in 29 C.F.R. § 452.110(a), which specifically addresses the issue of nicknames, the adequate safeguards provision includes a general rule of fairness:

In addition to the election safeguards discussed in this Part, the Act contains a general mandate in section 401(c), that adequate safeguards to insure a fair election shall be provided. 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.

The investigation, however, did not substantiate your allegation. The investigation revealed that Nikee Craine, the local union president, told candidates that they could alter how their name appeared on the ballot and to contact the Local's office secretary during or after the nomination meeting to do so. Three candidates provided nicknames that were used on the ballot. You, however, did not provide a nickname. The investigation revealed no evidence that any candidate was denied the opportunity to use a nickname on the ballot.

You also allege that the sample ballot and official ballot used the term "Vote for three (3) only" for the executive board trustee position and caused members to think they were required to vote for three candidates, rather than a maximum of three candidates. As mentioned, section 401(c) of the Act provides that "adequate safeguards to insure a fair election shall be provided." 29 U.S.C. § 481(c). The investigation did not substantiate your allegation that these voting instructions confused members. While the Department's election guide suggests the use of "vote for no more than three" in such situations, this suggestion is not mandatory and there is no evidence that the terminology used by the Local confused voters or caused any unfairness.

You allege that the Local also violated its bylaws by not selecting the election committee by membership vote at the nominations meetings and by allowing two of the three members of the election committee to be from one shop. Section 15(E)(4) of the bylaws states, in part, "All elections shall be supervised by an election committee to be selected by a vote of the membership at the meeting during which nominations are made,... provided that not more than one member of such committee shall be selected from any one individual shop." The investigation did not substantiate your allegation. Rather, it revealed that only three election committee members were nominated at nomination meetings, making a vote unnecessary, and that the three committee members were not from the same shop.

You also allege that the Local improperly restricted the candidates' right to inspect the membership list to between 12:00 p.m. and 4:00 p.m. on December 14, 2008. Section 401(c) of the Act, 29 U.S.C. § 481(c), provides that a candidate has the right to inspect a list containing the names and last known addresses of all members once within 30 days prior to the election.

The Department's investigation did not substantiate this allegation. The investigation revealed that the Local's election rules informed candidates of their inspection right stating: "You have the right to inspect; you may not copy these records. You may do this on Sunday, December 14th, 2008 from 12-4 PM at the local union office...." The investigation also revealed that this Sunday time was scheduled in order to allow a time in addition to regular union office hours and not as a limitation on a candidate's inspection right. Further, the investigation revealed that no candidate requested to inspect the membership list on December 14 or any other day.

You also allege that the Local's use of Allen Park, Michigan, as the ballot collection and tally location discouraged candidates from outside the Detroit area, such as Kalamazoo, from observing or assigning an observer. The Act's adequate safeguards provision, cited above, provides that candidates have the right to "have an observer at the polls and at the counting of the ballots." 29 U.S.C. § 481(c). The Department's investigation did not substantiate this allegation. The investigation revealed that candidates or observers from Kalamazoo, Michigan, had to travel approximately 127 miles to observe the ballot collection and tally. This distance is not unreasonable and does not constitute a violation of the Act.

You also allege that the Local improperly counted ballots that were received after the 12:00 a.m. January 6, 2009 deadline. The investigation revealed that the ballot instructions advised voters to mail their marked ballots "in time to arrive at the designated return address before 12:00 a.m. on January 6, 2009." The election rules mailed to candidates listed January 7, 2009 at 1:00 p.m. as the time for the "return vote box" pickup. The evidence shows that the ballots were collected at 1:00 p.m. on January 7.

It is possible that inconsistent instructions as to the time to return ballots could, under some circumstances, violate the "general rule of fairness" that is part of the requirement for adequate safeguards, described above. However, there is no indication that the inconsistent instructions provided by the union in this case led to any particular unfairness. Further, in order for a challenged election to be declared void and a new election ordered, a preponderance of the evidence must show "that the violation ... may have affected the outcome of an election." 29 U.S.C. § 482(c). Here, the investigation revealed that 136 of the 151 return ballot envelopes showed postmarks on or before January 5, 2009. Of the remaining 15 return ballot envelopes, 5 showed a postmark of January 6, 2009, and 10 had indecipherable postmarks. Therefore, even if ballots were delivered after 12:00 a.m. on January 6 and were improperly included in the ballot tally, this would be insufficient to affect the outcome of the election, because the smallest margin of victory for any candidate was 46 votes.

You also alleged that the Local violated Section 15(E)(1) of its bylaws by not keeping complete minutes of the nomination meeting. That provision states: "Nominations and the conduct of the election and related questions shall be the first order of business at the nominations meeting and complete minutes shall be kept of that meeting."

Specifically, you allege that since you were not required to sign in when you arrived at the December 6, 2009, nomination meeting in Hastings, Michigan, the local failed to keep complete minutes of the nomination proceedings. The investigation did not substantiate your allegation. A review of sign in sheets and meeting minutes for the three nomination meetings revealed the union recorded into the minutes your late arrival to the December 6 nomination meeting.

Finally, you allege that an ineligible member was permitted to second the nomination of Nikee Craine as candidate for president. The investigation did not substantiate this allegation. The investigation revealed that the requirements for running for office and for nominating and seconding nominations are different. Section 15(D)(2) of the bylaws requires a member to have been in continuous good standing for 24 months to run for office. Section 15(D)(1) of the bylaws requires only that a member be in good standing, i.e., had his dues paid up through the month of nomination, for nominating or seconding a nomination. The member in question met the latter requirement. Therefore, the member's seconding the nomination of Craine, and his seconding the nomination of you as candidate for secretary-treasurer, did not violate the bylaws or the Act.

For the reasons set forth above, the Department has concluded that there was not a violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file in this matter.

Sincerely,

Patricia Fox
Acting Chief, Division of Enforcement

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