



February 16, 2010



Dear [REDACTED]:

This Statement of Reasons is in response to the complaints that you filed with the United States Department of Labor ("Department") on August 11, 2009, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA" or "the Act"), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers of UNITE-HERE ("International"), Local Union 355 ("Local 355") completed on April 28, 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 no violation occurred that may have affected the outcome of the election. A discussion of each of these allegations follows below.

You initially alleged that Local 355 failed to provide the right to inspect its membership list to a bona fide candidate once within 30 days prior to the election, as required by Section 401(c) of the LMRDA. *See* 29 U.S.C. § 481(c). However, the Department's investigation found that, at the April 10, 2009 candidates' meeting, a member of Local 355's Election Committee informed all candidates that each slate had the right to inspect the full membership list. You later admitted that, while you did not attempt to inspect the list, you were not denied the right to do so. Accordingly, there was no violation of the LMRDA as to this allegation.

You further alleged that Local 355 acted in a discriminatory manner with regard to the membership list, in that the list was only available to Slate 3 candidates and supporters who subsequently used the list to make house visits and telephone calls for the purpose of campaigning.

While the LMRDA and its attendant regulations prevent discrimination among candidates with respect to the use of and access to membership lists, *see* 29 U.S.C. §

481(c); 29 C.F.R. § 452.72(b), the Department's investigation found no evidence that such discrimination occurred. Rather, the Department's investigation found that candidates from Slate 3 obtained members' information by utilizing pledge cards. The pledge cards were given to members by Slate 3 candidates, and the members who chose to do so filled out the pledge cards, including their contact information (such as phone number or home address). The collection of this information by Slate 3 candidates was done in February and March of 2009, outside of work hours and outside the members' work sites. Approximately 1000-1200 members voluntarily signed these pledge cards, and Slate 3 candidates entered the contact information on the pledge cards into a database, which they then used to contact members and campaign. This campaigning also occurred outside of work hours and outside the members' work sites. The Department's investigation also found that no candidate on Slate 3, or any other slate, exercised their right to inspect Local 355's membership list. Accordingly, no discrimination regarding the membership list took place, and no violation of the LMRDA occurred.

You further alleged that the union failed to elect its members by secret ballot in that Slate 3 candidates and supporters interfered with the right of members to vote for and support candidates of their choice by intimidating, threatening, and physically confronting union members. The nature of this allegation – interference during campaigning, prior to the voting – does not implicate the secret ballot protections of the LMRDA, which pertains only to the election ballots themselves. *See* 29 U.S.C. § 481(b); 29 C.F.R. § 452.97. Instead, actions of the type described in your allegation could implicate the LMRDA's protections against improper interference in the election process. *See* 29 U.S.C. § 481(e); 29 C.F.R. § 452.105.

However, the Department's investigation found that either the behavior described did not constitute a violation of the Act, or that there was no corroborating evidence supporting this allegation. Specifically, you and other members running on your Slate 2 interviewed by the Department reported that Slate 3 candidates told Local 355 members that "[their] benefits would be taken away" if Slate 2 won the election. While candidates on Slate 3 deny making such comments, even if they had done so, such comments are within the free speech rights of officer candidates, and do not constitute unlawful interference under the LMRDA. *See* 29 C.F.R. § 452.76. Additionally, you and some members of your slate reported that candidates on Slate 3 forcibly took Slate 2 campaign flyers from the hands of union members. However, neither you nor other members of your slate interviewed by the Department were able to provide the names or any sort of detailed description of these union members. The Department conducted interviews of several Local 355 members in an attempt to identify these targets of alleged interference, but were unable to corroborate these allegations. The

Department's investigation did not reveal evidence establishing a violation of the LMRDA.

You further alleged that Local 355 engaged in disparate candidate treatment when Slate 3 candidates were permitted to campaign on employer property while other candidates were not. Disparate candidate treatment violates section 401(c) of the LMRDA, 29 U.S.C. § 481(c), which provides that unions must provide adequate safeguards to ensure a fair election. *See also* 29 C.F.R. 452.66. In support of this allegation, you stated that on March 26, 2009, you saw [REDACTED], a Local 355 shop steward, speaking with two organizers sent by the International in the cafeteria of the Sky Chef, and suspected that they were "campaigning or doing union business." You further stated that on April 9, 2009, you attempted to enter Sky Chef but were informed that you could not enter the premises to engage in campaign activity. You also asserted that beginning on April 18, 2009; you saw [REDACTED] or other Slate 3 supporters inside the workplace and suspected that they were campaigning.

The Department's investigation found no evidence that violations of the Act occurred. With regard to the first part of this allegation, the Department found that [REDACTED], along with UNITE-HERE International organizers [REDACTED] and [REDACTED], were present in the Sky Chef cafeteria on the day in question in order to recruit employees as members. Witnesses who were present confirmed that these individuals were discussing union representation and were not engaging in campaign activities. With regard to your allegation that you were subsequently denied access to Sky Chef, the Department's investigation found that after [REDACTED] saw you and other Slate 2 supporters inside the Sky Chef on March 26, 2009, she informed Sky Chef's HR Manager [REDACTED] that, because you and your slate were not union representatives conducting union business, but rather were seeking to campaign, that you were not allowed in the workplace per union rule. *See* UNITE-HERE Local 355 Election and Campaign Rules, Item #8 (issued 4/1/09). Finally, the Department's investigation found that [REDACTED], as a union officer, was authorized to enter Sky Chef for the purpose of conducting union business. There was no evidence that [REDACTED], or others on his slate, engaged in any campaign activities while in the workplace. Accordingly, as all candidates were prevented from engaging in campaign activities in the workplace, there was no disparate candidate treatment, and thus no violation occurred.

In a related allegation, you identified several instances in which Slate 3 candidates and/or union organizers allegedly engaged in campaign activities during their working hours. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits the use of union funds, including paid union time, to promote candidacy. Also, use of paid union time to campaign was specifically prohibited by Local 355 campaign rules. *See* UNITE-HERE Election and Campaign Rules #8 (issued April 10, 2009); UNITE-HERE Local Union

Election Guidelines Section I, Subsections 5(a), 6, and 7. The Department's investigation found that Local 355 working hours were from 8:00 a.m. to 4:00 p.m., Monday through Friday. Several of the instances of campaigning that you identified did not occur during these times, and thus did not constitute improper campaign activities. Further, Slate 3 required that their candidates/supporters submit a copy of an approved leave request if they were campaigning during normal work hours. The Department's records analysis found that a number of Slate 3 candidates took leave during the campaign period, and their leave requests generally corresponded with the instances you identified in your allegation. In short, the evidence discovered by the Department in its investigation does not support your allegation that campaigning on paid union time occurred.

You further alleged that the International Union paid expenses to transfer at least ten employees to the area in order to campaign for Slate 3 in violation of section 401(g), 29 U.S.C. § 481(g). The Department found that the International did not pay expenses to transfer any employees from areas outside of South Florida for the purpose of campaigning. The International did transfer eight employees there to develop the Broward/Dade counties for union organizing. Two additional employees were volunteer organizers from other locals. Local 355 did not pay these organizers, except for minor reimbursements pertaining to parking expenses. After these organizers arrived in the area, Slate 3 candidates met with them to request their help in the election, and the organizers agreed to volunteer on their off-duty time to help with Slate 3's campaign. There was no evidence that these organizers campaigned on paid union time, and any donations made by these organizers to Slate 3 were their personal funds, not the funds of a union. Accordingly, no violation of the Act occurred.

You also alleged that Slate 3 used the union office as headquarters for its campaign, and used union funds to rent vans to transport members to the polls for the election. However, the Department's investigation found no evidence that violations of the Act's prohibition on the use of union funds occurred. The evidence you provided that Slate 3 was using the union office for campaigning consisted primarily of "flip charts" that you saw in the union office. The Department's investigation found that these "flip charts" were not related to campaigning, but rather were used for organizing purposes to map out the workforce and identify possible "leaders" at the various local shops. Further, the Department's records review found that Slate 3 paid out-of-pocket expenses to rent a hotel conference room in order to hold campaign meetings. The Department also found that various other expenses, including office supplies, printing services, cellular service, and transportation rentals, were not paid for by the union but rather out-of-pocket by Slate 3. Slate 3's campaign fund was managed and maintained separately from the union's funds. Accordingly, no violation of the Act occurred.

Finally, you alleged that the union failed to provide adequate safeguards to ensure a fair election, specifically due to the presence on election day of an out-of-town volunteer union organizer by the name of [REDACTED], who you saw speaking with union members at the Fountainebleu Hotel employee cafeteria. However, while you suspected that [REDACTED] was engaged in campaign activity, you stated that you could not understand what she was saying to other union members, as she was speaking Creole. You also could not provide any other witnesses who understood what [REDACTED] was saying. None of the witnesses interviewed by the Department could provide information that [REDACTED] or anyone else campaigned in the polling area, and the Department's investigation further found that all campaigning on election day occurred outside of the buildings where polling took place. Accordingly, no violation of the Act occurred.

For the reasons set forth above, it is concluded that there was no violation of the LMRDA that 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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