



April 20, 2011

Dear [REDACTED]

This Statement of Reasons is in response to your complaint dated December 17, 2010, filed with the United States Department of Labor, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the United Food and Commercial Workers (UFCW), Local 648 election of officers on August 26, 2010.

The Department has conducted an investigation of your allegations. As a result of the investigation, the Department has concluded that there was no violation that may have affected the outcome of the election.

First, you allege that the Local violated the UFCW International Constitution and the LMRDA because [REDACTED], the General Chairperson for the election, was not "in charge" of the two nomination meetings on July 26, 2010, and the election judges were not selected by the time of the nomination meetings. Section 401(e) of the LMRDA requires that union elections be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV. Article 35(C)(5) of the UFCW International Constitution provides that "[t]he President shall select a general chairperson, who shall be a member of the United Food and Commercial Workers, to supervise the conduct of the nominations and the election and no less than three members to act as election judges to the assist the general chairperson."

The investigation determined that the Local did not violate its constitution, and, consequently, did not violate the LMRDA. [REDACTED] did chair the nomination meeting and made all decisions regarding each candidate's eligibility. He therefore "supervised the conduct of the nominations." With respect to your allegation that the election judges were not selected at the time of the nomination meeting, the language of the constitution and bylaws does not explicitly require that the election judges be selected at that time. While the constitution details specific duties of the election judges at other times such as "maintain[ing] custody of all ballots and election registers"

(Article 35, Section G(2)), it is silent with respect to any specific duties of the election judges at the nomination meeting.

Second, you allege that the General Chairperson improperly disqualified vice presidential nominees, [REDACTED] and [REDACTED], because they did not work in the appropriate divisions. The investigation concluded that he disqualified them because they both worked in the Grocery Division yet sought vice presidential offices limited to employees of the Bakery and Candy and Cigar and Liquor Divisions. Local Bylaws, Article VII, Section A provide that "[t]he constitutional officers of this Local Union shall be a President, Secretary-Treasurer, Recorder and Vice Presidents elected as follows: four (4) from the Grocery Division, one (1) from the Bakery and Candy Divisions, one (1) from the Cigar and Liquor Division, and one (1) from the Drug Division, plus seven (7) Vice Presidents elected at-large."

Section 401(e) of the LMRDA, provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)." The Department's regulations further specify that "[i]n the case of a position which is representative of a unit defined on a geographic, craft, shift, or similar basis, a labor organization may by its constitution or bylaws limit eligibility for candidacy and for holding office to members of the represented unit." The Local's requirement that some vice presidential offices be held by members of specific divisions is the very type of permissible representative offices contemplated by the Department's regulations. Disqualifying [REDACTED] and [REDACTED] from running for vice president of the Bakery and Candy and Cigar and Liquor Division because they did not work in those divisions was consistent with the union's bylaws and did not violate the LMRDA.

You also allege that the requirement that vice presidential offices be held by members of specific divisions was not uniformly imposed. Specifically, you assert that the General Chairperson improperly permitted [REDACTED] an employee of Torgysn's Gifts and Cigars, to be a Cigar and Liquor vice presidential candidate and her employer does not sell cigars. The investigation established that: 1) the Local determines if a candidate is "from" a particular division based on the division's contract; and 2) [REDACTED] is covered by a Cigar and Liquor Division contract. Hence, the General Chairperson properly allowed her to run as a Cigar and Liquor vice presidential candidate. The investigation further established that all of the accepted nominees for division-specific positions were from the appropriate division. No violation of the LMRDA occurred.

Third, you allege that the General Chairperson improperly disqualified vice presidential nominee [REDACTED] because she could not meet UFCW's continuous active membership requirement. Under the constitution and bylaws, in order to be eligible to hold office a candidate must either: 1) maintain continuous active

membership in the Local (or an organization merged with the Local) for at least twelve months preceding the election; or 2) maintain continuous active membership in the International Union for twenty-four months preceding the election. UFCW International Constitution, Article 35(A). The investigation established that the local's sole requirement for active membership is to pay dues and that a member is not suspended until she has neglected to do so for sixty days.

Section 401(e) of the LMRDA provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)." Under the Department's regulations a local's "requirement of continuous good standing based on punctual payment of dues will be considered a reasonable qualification only if (1) it provides a reasonable grace period during which members may make up missed payments without loss of eligibility for office and (2) the period of time involved is reasonable." 29 C.F.R. § 452.37(b). The investigation established that the local satisfies the grace period requirement because it will not suspend a member until she has been delinquent in her dues for sixty days. The reasonableness of a time period depends upon the circumstances. However, the Department usually considers any continuous good standing not exceeding two years to be reasonable. 29 C.F.R. §452.37(a). Therefore, the local's requisite length of membership is reasonable.

As stated above, the Local's continuous active membership requirement does not violate the LMRDA so long as the requirement is uniformly applied. The investigation concluded that the Local verified each candidate's length of active membership and did not permit any candidate to run for office who could not meet the requirement. Because [REDACTED] had no prior UFCW membership before affiliating with the local, in order to be eligible to hold office she needed to be a continuous active member of the local for twelve months. Her union affiliation date is July 1, 2010, one month prior to the election, therefore, the General Chairperson properly disqualified her.

Fourth, you allege that union staff informed two members, [REDACTED] and [REDACTED], that they could not vote because they were not U.S. citizens. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for or otherwise support the candidate or candidates of his choice. The investigation revealed that the local sent ballots to both members and that the local permits all members in good standing to vote regardless of whether or not they hold U.S. citizenship. Consequently, this allegation is without merit. There was no violation.

Fifth, you allege that the General Chairperson disposed of campaign literature that a supporter had placed in a break room. Section 401(c) of the LMRDA requires that "adequate safeguards to insure a fair election shall be provided." The Department's regulations further specify that "[a] labor organization's wide range of discretion

regarding the conduct of elections is thus circumscribed by a general rule of fairness.” 29 C.F.R. § 452.110. In sum, the Local is required to treat all candidates equally. Thus, the General Chairperson would violate the Act if she disposed of one candidate’s literature and left another candidate’s literature undisturbed. However, the investigation established that no one witnessed the alleged disposal and there were no other facts to substantiate the claim. This allegation is also without merit. There was no violation.

For the reasons set forth above, the Department concludes that there was no violation of the LMRDA affecting the outcome of the election. Accordingly, I am closing the file on this matter.

Sincerely,

Patricia Fox  
Chief, Division of Enforcement

cc: Joseph T. Hansen, International President  
United Food & Commercial Workers  
1775 K Street Northwest  
Washington D.C.

Michael Sharpe, President  
United Food & Commercial Workers Local 648  
1980 Mission Street  
San Francisco, California 94114

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