



March 6, 2012



Dear [REDACTED]

This Statement of Reasons is in response to your November 14, 2011 complaint filed with the United States Department of Labor (Department), alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) occurred in connection with the election of officers of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 4, conducted on August 5 and August 6, 2011.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to your allegations, that there was no violation of the LMRDA.

You alleged that Local 4 discriminated against various participants in the election process when participants were not able to contact election officials concerning campaign mailings, absentee ballots, and campaign postings, when information about the election was not provided equally to all candidates, and when candidates were not informed of opportunities to observe aspects of the election other than the polling.

Section 401(c) of the LMRDA provides that a union must comply with reasonable requests to distribute campaign literature and provide adequate safeguards to insure a fair election, including the right to an observer. The requirement of adequate safeguards imposes a "general rule of fairness" on a union's election procedures. 29 C.F.R. § 452.110. While the investigation determined that the election committee failed to respond to certain requests for information, there is no indication that the process of the union was sufficiently unfair to have prejudiced any of the candidates. No candidates were prevented from making campaign mailings or engaging in other campaigning, and no request to have an observer present at any stage of the election was denied. There was no violation of the LMRDA.

You allege that, in violation of Local 4's by-laws, the election committee did not provide absentee ballots to all members who requested them in writing. Section 401(e) of the LMRDA requires a union to conduct its election in compliance with its constitution and

bylaws. Article III, Section 9, of Local 4's by-laws provide that any member in good standing can request an absentee ballot in writing. OLMS review of the eligibility list and voter roster revealed that the absentee ballots were mailed to the members who allegedly requested ballots and did not receive them. Therefore, there was no violation of the LMRDA.

You alleged that Local 4 used union and employer funds to promote candidates when it allowed candidates to use union and employer resources to campaign. Section 401(g) of the LMRDA prohibits the use of union or employer funds to promote a candidate. You alleged that the financial secretary used union dues refunds as a campaign tool and used the union membership phone list at home to call members about the union dues refunds. The investigation did not substantiate that the issuance of the refunds around the time of the election amounted to campaigning or that there were any campaign phone calls from the financial secretary regarding the union dues refunds.

You alleged that candidates used the union resources of meat, electricity, tables, chairs, and a barbeque grill purchased with union dues to campaign. The investigation determined that the candidates reimbursed the local for meat used at an election day event and that no candidate was denied the use of the union's electricity, tables, chairs, barbeque grill or any other items.

You further alleged that candidates used employer resources to campaign by obtaining a job for the election committee chairperson's wife and by providing the employer's product to election committee members. There is no evidence that the employer's decision to hire the election committee chairperson's wife was part of any candidate's campaign and the employer's product is available to anyone visiting the union hall. Therefore, there was no violation of the LMRDA.

You alleged that Local 4 engaged in disparate candidate treatment and violated the local's by-laws when the election committee was not in attendance at the quarterly meeting to announce the official candidates and when the candidate announcement was made after some candidates had already made campaign mailings. Specifically, you alleged that the financial secretary, who processes all of the candidate nomination applications, could have used this information to his advantage by preparing and mailing to membership, prior to the candidate announcement at the quarterly meeting, a mock ballot that looked very similar to the official ballot.

Section 401(c) of the LMRDA provides that a union must treat candidates equally regarding the opportunity to campaign, and Section 401(e) requires a union to conduct its election in compliance with its constitution and bylaws. The official ballot was not mailed before the nomination process had concluded and there is no evidence that the financial secretary saw the official ballot before the official candidate announcement or

that there was any subsequent advantage to the financial secretary over other candidates. Furthermore, Article III, Section 4, of Local 4's by-laws does not specify who is to read off the candidate list or that it is to be done before campaign mailings; it only states that candidates running for office will be read off at the quarterly meeting and directs how candidate names appear on the official ballot. There is no by-laws provision regarding mock ballots. There did not appear to be any violation of the local's by-laws or any advantage to any candidate as a result of these actions and, therefore, there was no violation of the LMRDA.

You alleged that Local 4 did not provide adequate safeguards to insure a fair election when the ballots were not properly safeguarded during and after the election. Section 401(c) of the LMRDA provides that a union must provide adequate safeguards to insure a fair election. You alleged that you saw the financial secretary handling a ballot box after the election. The investigation determined that the activity you witnessed concerned the challenged ballot box, which did not contain any ballots or election records, as the challenged ballot box was opened and emptied during the tally. You also alleged that the election committee did not adequately secure the ballot box during and after the election. OLMS review of the election records found no evidence of ballot tampering and there does not appear to have been any compromise of the ballots cast in the election. Therefore, there was no violation of the LMRDA.

You alleged that Local 4 did not provide adequate safeguards to insure a fair election and violated the local's by-laws when members were allowed to remain in the polling area after voting, in violation of the union's no loitering rule. Section 401(c) of the LMRDA provides that a union must provide adequate safeguards to insure a fair election, and Section 401(e) requires a union to conduct its election in compliance with its constitution and bylaws. The investigation disclosed no evidence that members were permitted to remain in the polling area after voting or of any interference with any voting or campaigning. Further, the local's by-laws are silent on the issue of loitering. There was no violation of the LMRDA.

You alleged that Local 4 did not provide adequate safeguards to insure a fair election and failed to properly maintain election records when the union did not provide observers with an adequate opportunity to observe the voting process and ballot counting and did not properly maintain ballot records. Specifically, you alleged that the election committee would not allow observers into the polling area for more than 20 minutes after the polls closed, that the room was very noisy during the tally, that the election committee chair tore up and threw away a mismarked tally sheet, and that challenged ballots were missing.

Section 401(c) of the LMRDA provides that a union must provide adequate safeguards to insure a fair election, including the right to an observer and Section 401(e) requires a union to preserve records pertaining to elections.

The investigation disclosed that all candidates were permitted to have observers present at the ballot tally and that no candidate was denied the right to have an observer present. OLMS review of the election records showed no material discrepancies in the observer ballot tally and that any unused ballots that could not be accounted for were not challenged ballots. The investigation determined that observers had an adequate opportunity to observe and election records appear to have been properly maintained. Therefore, there was no violation of the LMRDA.

For the reasons set forth above, the Department has concluded that there is no violation of Title IV of the LMRDA. Accordingly, the office has closed the file on this matter.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

cc: Frank Hurt, International President
Bakery, Confectionary, Tobacco Workers & Grain Millers
10401 Connecticut Avenue
Kensington, Maryland 20895

Russell Yates, President
BCTGM Local 4
2615 Winnebago Street
St. Louis, Missouri 63118

Christopher B. Wilkinson
Associate Solicitor for Civil Rights and Labor-Management