



October 19, 2015



Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on April 2, 2014, alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by the Bakery, Confectionery, Tobacco Workers and Grain Millers Union, Local 203T (Local or Union), AFL-CIO, on December 17, 2015.

The Department of Labor (Department) conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there was no violation that may have affected the outcome of the election.

You alleged that the location of the ballot tally in relation to the location of tally observers did not allow for either the observation of the ballot count or the verification of the accuracy of the ballot count. Section 401(c) of the LMRDA provides that adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. 29 U.S.C. § 481(c). The right to an observer encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording and reporting of tally sheets. In mail ballot elections, the right includes the right to have an observer present at the preparation and mailing of the ballots and their receipt by the counting agency. 29 C.F.R. § 452.107(a) and (c).

The Department's investigation revealed that the ballot tally occurred at center stage in the union's auditorium. Inasmuch as the observer seating area was approximately 15 to 20 feet from the stage and at ground level, observers could not see ballots being opened, verified, or tallied. The investigation confirmed that one of your observers, candidate [REDACTED], went to the union hall on December 4, 2014, the first day of the tally, and asked Local President Linwood Henley to allow an observer on the stage with the accountant, but Henley refused. The union's actions violated section 401(c)'s observer rights provision. However, the violation did not affect the outcome of the election. The Department of Labor investigation included a review of the voted

ballots and other election records as well as a ballot recount. The Department's records review and counting of the ballots did not reveal any evidence of ballot fraud or any form of ballot tampering that may have affected the outcome of the election.

You alleged candidates were denied the right to have observers because the union did not notify candidates and observers of the dates and times of the election activities such as the mailing of the ballots, ballot retrieval from the post office box, and the ballot tally so that candidates and observers could observe these processes. The LMRDA does not impose an affirmative duty on unions to provide candidates this information. Under the LMRDA, the union has the duty to comply with a candidate's request to have an observer present. The Department's investigation revealed that your observer, candidate [REDACTED], acknowledged that he was aware he could observe the ballot printing, mailing and ballot retrieval from the post office, but he chose not to request the opportunity to observe these processes. Also, the investigation established that none of the election officials, President Henley, Recording Secretary Romel Edmonson, or [REDACTED], the accountant who conducted the tally, received any requests to observe the preparation and printing of the ballot, the mailing of the ballots or retrieval of ballots from the post office. Consequently, no one was denied the opportunity to observe these election processes. There was no violation.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file regarding this matter.

Sincerely,

Sharon Hanley  
Chief, Division of Enforcement

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